

REPORT OF PROCEEDINGS BEFORE

**SELECT COMMITTEE ON THE KOORAGANG
ISLAND ORICA CHEMICAL LEAK**

**INQUIRY INTO THE KOORAGANG ISLAND
ORICA CHEMICAL LEAK**

At Sydney on Monday, 21 November 2011

The Committee met at 9.00 a.m.

PRESENT

The Hon. Robert Brown (Chair)

The Hon. Luke Foley
The Hon. Trevor Khan
The Hon. Matthew Mason-Cox
The Hon. Melinda Pavey
The Hon. Adam Searle
The Hon. Jeremy Buckingham (until 4.30pm)
The Hon Cate Faehrmann (after 4.30 pm)

CHAIR: Prior to commencing the opening of the hearing I will make a brief public statement relating to the change of membership of the Committee.

My colleague, Robert Borsak, is no longer a member of the Committee and has asked me to make a short statement about his resignation.

On Thursday last week Mr Borsak became aware that one of his business interests has a commercial relationship with one of Orica's business units. When he became aware of this situation Mr Borsak followed the correct procedure in relation to potential conflicts of pecuniary interest and sought advice of the clerk of the Legislative Council.

Following the precedent the clerk obtained the advice of the Crown Solicitor on the matter and on the basis of that advice Mr Borsak tendered his resignation from the Committee on Friday.

As a result of the nomination process, I have joined the Committee as the second cross bench member and this morning I have been elected as its new Chair.

Welcome to the third public hearing of the Select Committee on the Kooragang Island Orica Chemical Leak. The Committee was established by the Upper House of New South Wales Parliament to examine the chemical leak which occurred at Orica's Kooragang Island plant on 8 August last year.

Before I commence I acknowledge the Gadigal people of the Eora nation who are the traditional custodians of this land. I also pay respects to the elders, past and present, of the Gadigal people and extend that respect to other Aboriginals present.

Our terms of reference ask us to carefully examine the incident and Orica's response to it. We heard from representatives of Orica in the first two public meetings, as well as members of the Stockton community and environmental groups.

Our terms of reference also require the Committee to examine responses from the New South Wales Government to the incident. Today we are hearing from the Premier and three ministers with responsibility for the response of various government agencies to the incident.

Firstly we will be hearing from the minister responsible for WorkCover, the Hon. Greg Pearce MLC. We are then hearing from the Minister for Health, the Hon. Jillian Skinner MP and Health Department officials. We will then be hearing from the Premier and later in the afternoon we will be hearing from the Minister for the Environment, the Hon. Robyn Parker MP and officials from the Office of Environment and Heritage. I would like to thank the Premier and the three ministers for their appearance today.

Before we begin with our first witness I need to make some brief comments about certain procedural matters.

The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the guidelines governing broadcasting proceedings are available from the staff at the side table.

In accordance with the guidelines, media can film Committee members and witnesses but people in the audience should not be the primary focus of any filming or photographs.

In reporting the proceedings of this Committee, the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee.

If there are questions that you are not able to answer today minister, you are able to take those questions on notice and we would appreciate an answer within 21 days of that notification.

Mobile phones – I will say it once and say it loudly and clearly, could everyone please turn off their mobile phones for the duration of the hearing. That goes for the witnesses or members of the Panel or people in the public gallery.

Now I would like to welcome Minister Pearce. Minister, you have already sworn an oath in your office; you do not need to be sworn in today. Would you like to make a short opening statement? If so, please keep it to approximately five minutes. Anything left unsaid can be tabled.

GREG PEARCE, Minister for Finance and Services examined:

Thank you Mr Chair and congratulations on your elevation to chair this Committee. I do have an opening statement which may be a little bit longer than five minutes, but I do not intend to have any government questions so if you will indulge me in that respect.

As I said, I thank the Committee for allowing me to make an opening statement. As Minister for Finance and Services, I have been given responsibility under the administration order for the Occupational Health and Safety Act 2000 and the Occupational Health and Safety Regulation 2001 and other associated regulations.

WorkCover's role is to ensure compliance with the relevant legislation as it pertains to the safety of workers. The Act was introduced under previous government by the late Hon. Jeff Shaw in Legislative Council on 26 May 2000.

At the outset I want to emphasise that the Act and the Regulation, neither of them contain any requirement for WorkCover to inform the minister of incidents. Where an incident is serious however, where there are fatalities or a number of serious injuries, or where the matter involves a potential very serious breach of the Act, the minister's office is usually informed.

In the case of the Orica leak in August, it was not until 11 August 2011 that WorkCover decided to commence an investigation. Up until that point WorkCover knew of the leak but did not know the full scale of the leak and in fact had been informed that there had been no injuries to workers and no exposure to risk.

As a result, I am informed WorkCover did not inform my office until the matter had escalated significantly.

I am aware that you have before you a submission made by WorkCover that explains the actions of its officers following the notification of the incident.

I would like to set out the reasons that I have been given for WorkCover's involvement in this incident.

Firstly, there are general duties under the relevant legislation introduced by the previous government. Because the incident involved a leak of hexavalent chromium from a workplace, WorkCover has powers given to it under the Occupational Health and Safety Act and its associated regulation.

This legislation gives powers to WorkCover inspectors to enter workplaces for the purposes of the Act and the Regulation. Inspectors are also empowered to investigate possible offences. To do this WorkCover inspectors have wide powers to undertake inquiries and inspections.

The Act creates a duty so far as is reasonably practical to ensure the health, safety and welfare at work of all employees and all other persons in the workplace. Similar duties are placed on the controllers of workplaces.

Accordingly, an uncontrolled chemical leak from a workplace gives rise to the possible use of an inspector's powers for breach of the general duties. Specific provisions in the Occupational Health and Safety Regulation create other specific duties and obligations in relation to workplaces, including those designated as major hazard facilities.

WorkCover is also involved because of the notification requirements under the relevant legislation. Occupies of workplaces have a duty to notify WorkCover immediately of any serious incident as defined.

In the case of the Orica incident, notification was made to WorkCover the following day. The chronology in part four of the WorkCover submission at page 19 gives a fuller explanation of all of the relevant events.

Mr Chair, WorkCover is currently investigating both the incident and whether this notification complied with the requirements of the legislation.

WorkCover views the incident that occurred on 8 August very seriously and is taking all steps to ensure that the facility takes the appropriate corrective actions to ensure the safety of workers and others who may be affected by its operations.

Mr Chair, the plant at Orica is designated as a major hazard facility by regulation. This category of facility came into effect on 14 July 2008 when the Occupational Health and Safety Amendment Major Hazard Facilities Regulation 2008 commenced.

The minister who made the recommendation for that regulation to be made was the Hon. Eric Roozendaal MLC, who was styled as the acting minister assisting the Minister for Finance at the time.

This amending legislation inserted a new chapter 6B into the Occupational Health and Safety Regulation 2001. The amending regulation introduced a hazard identification and risk assessment approach for the regulation of major hazard facilities, adopted in the national standard.

Major hazard facilities are locations such as oil refineries, chemical plants and large fuel and chemical storage sites where large quantities of hazardous materials are stored, handled or processed.

The regulation of major hazard facilities now within the Occupational Health and Safety Regulation, followed changes introduced by the Occupational Health and Safety Amendment Dangerous Goods Act 2003. The bill was carried through the Legislative Council by the Hon. John Della Bosca MLC.

These changes enabled regulations to be made for major hazard facilities and the using and keeping of specified dangerous goods, whether at a place of work or not.

The Major Hazard Facilities Regulation adopts the national standard for the control of major hazard facilities, which is a national agreed standard developed by the national health work and safety body, Safe Work Australia, which was established in 2009 under former Prime Minister, Kevin Rudd.

The approach adopted with major hazard facilities was to establish a process of provisional registration, moving towards full registration over time, and this is an important point.

During this progressive registration process, occupiers of major hazard facilities have to develop safety management system requirements, emergency plans and safety reports, which are also known as safety cases.

A safety case must provide assurance that the potential for a major incident has been systematically assessed and that effective and appropriate controls are in place.

Orica must submit its safety case, updated emergency plans and safety management systems requirements to WorkCover by February 2012 under the current program for assessment to determine whether the facility will be granted registration to operate as a major hazard facilities under the Occupational Health and Safety Regulation.

Orica has preliminary registration while it completes the extensive process of reviewing and risk assessing all its processes and preparing its safety case. The operation of the Orica plant now being shut down.

WorkCover's submission makes it very clear that is focus and role under work health and safety legislation and the welfare and safety of persons in the workplace. To achieve this, WorkCover provides technical and other assistance to stakeholders and ensures compliance with the legislation.

Although WorkCover has a supporting role under various sub-plans of the New South Wales State Disaster Plan, it is very important to understand that WorkCover is not a combat agency. WorkCover does not have a first responder role under the New South Wales Disaster Plan with respect to unplanned or uncontrolled spills or releases of hazardous substances. WorkCover is not an emergency service.

However, it does have a role to provide support where requested and has been working closely with the Department of Health and the Office of Environment and Heritage, including the Environment Protection Authority.

Mr Chair, I emphasise again, there is no role under the Act or the Regulation for the minister in these circumstances. Ministers Roozendaal and Della Bosca did not think that there was any reason to insert such a role or a provision.

Turning to WorkCover's actions at the time of the incident, I note in brief the following events immediately following the incident.

I am advised the incident occurred between 6 and 6.30 pm on 8 August 2011. WorkCover was notified the next day, 9 August at approximately 11.10 am by a telephone call from Mr Peter Smith, compliance manager of Orica. Mr Smith reported that there had been a release of chromium into the workplace. The report included advice that the workplace was being cleaned up.

There was no report of injuries; no indication of offsite impacts and no detail of the substance released or the seriousness of the leak.

As I have already mentioned, if Orica had fully disclosed the nature of the incident, then WorkCover would have taken immediate action in response to the incident. Moreover, had WorkCover been fully informed at that point, they may also have advised my office.

Mr Chair, a further telephone notification was received by WorkCover the same day, a couple of hours later, from an anonymous caller. This reported that the release was hexavalent chromium, that all workers were sent home and that there were no injuries.

On the same day these notifications were provided to WorkCover's Strategic Assessment Centre and based on information provided and in accordance with the protocols then in place, the incident reports were not classified as serious.

They were then allocated to WorkCover's regional north team based in Newcastle. However, protocol for the Strategic Assessment Centre to notify the major hazard facility team of incidents at major hazard facilities was not followed and I am sure you would be aware that was the conclusion of the O'Reilly report.

However, this did not have a material effect on securing health and safety at the site as the plant had already been shut down by the Office of Environment and Heritage and workers had already been removed from the site by the employers.

Mr Chair, WorkCover has reviewed its systems and developed a chemical incident improvement plan, which is essentially adopting the O'Reilly report recommendations to address the lessons learnt from the Orica incident and has reviewed existing policies and practices to ensure that all major hazard facilities chemical incident notifications, including near misses and where no injuries are reported, are prioritised as serious incidents.

On 10 August 2011 at approximately 3.20 pm, the incident was reviewed by a Regional North Team and contact was made with the major hazard facilities team who contacted Orica to obtain further details. On 11 August 2011, the incidents were assigned to an inspector for preliminary assessment. At approximately 1.00 pm, a site inspection was undertaken and later that day a report of the incident was submitted to work cover general manager and was passed on to a liaison officer in my office at approximately 5.12 pm.

WorkCover, I am informed, had waited this long to inform my office because until that stage it was not regarded as a critical enough incident to inform the Minister's office. Moreover, there was no obligation under the Act or the regulations for WorkCover to inform me, and indeed, there was no role for me in these circumstances under the Act or the regulation which were both introduced by the previous Labor Government.

On 12 August 2011 at approximately 9.25 am a critical incident report was forwarded to my office detail the incident and advised the matter would be fully investigated. In the following days there were several visits to the plant by WorkCover inspectors and WorkCover staff worked with the Offices of Environment and Heritage and the Department of Health in preparing and updating the Public Incident Action Plan.

During this time I am informed WorkCover's focus was on protecting the safety of workers at the facility and other staff engaged in the clean-up; ensuring onsite clean-up had been done properly and safely; ensuring appropriate health surveillance available to the workers who were on site at the time of the incident and; ensuring Orica workers were not exposed to risks and health and safety during the clean-up and ensuring that Orica complies with its duties and work health and safety legislation in the future operation of the facility, if indeed it is operated in the future.

WorkCover did not need to comply with any further requirements to notify me as the Minister because there are none. WorkCover focused on its safety role. On 18 August 2011 a WorkCover inspector issued two improvement notices to Orica under the Occupational Health and Safety legislation relating to Emergency Management Procedures and Dangerous Goods Spill Containment. I am advised that both notices have been complied with.

The investigation into the incident is progressing. Those investigating the matter have been provided with ongoing advice by WorkCover's legal group. This has included assistance in obtaining the experts' advice with regarding the potential effect of the substances released on those at the site. Regular conferences have also been held and will continue to be held between those investigating the incident and WorkCover's legal group, including Council briefed by WorkCover to provide ongoing advice in the matter during the investigation.

I am advised that to date, conferences have been held on 29 August, 21 September, 19 August, and 17 November 2011. My office has been kept up-to-date with developments as they have happened and we have been informed of WorkCover's progress to date in investigating the matter. WorkCover has also obtained approval from the attorney general to brief senior counsel Mr John Agius SC to advise in relation to prosecution proceedings.

Mr Chair, two further separate incidents took place at Orica's Kooragang Island plant on 9 November 2011. In one incident, two off site workers were affected by a chemical leak of ammonia. In the other incident, pressurised hot steam was released as a result of a failed welding exercise onsite. None of the workers were injured in the incident.

WorkCover has issued Orica with an improvement notice with respect to the chemical leak which requires the company to prevent the further release of ammonia and ensure appropriate control and procedures and staff training is in place. This notice must be complied with by 9 December 2011. On 11 November 2011, WorkCover wrote to the Chief Executive Officer of Orica asking it to explain why WorkCover should not suspend or cancel the facility's provisional registration, as I mentioned earlier, as a major hazard facility under the Occupational Health and Safety Regulation 2001. This information is required by 25 November 2011.

The 9 November 2011 incident is also being investigated and will also be the subject of ongoing legal advice and regular conferences between those investigating the incident and WorkCover's legal group, including (inaudible). In addition to other matters, the O'Reilly report, in part, pointed out to WorkCover some opportunities for improvement. WorkCover has fully adopted all the recommendations of the report as they pertain to WorkCover.

WorkCover conducted a review of its system and procedures and has developed and is now implementing a chemical assistance improvement plan, which I mentioned earlier, is essentially those recommendations. Further information on the plan is provided in WorkCover's submission. Changes

include WorkCover now automatically arrange all chemical incidents at major hazard facilities as high risk incidents.

WorkCover is conducting verification inspections of all major hazard facilities to focus on lessons learnt from the Orica incident and compliance with the emergency response and plant recommission and protocol. WorkCover is reviewing its emergency response policies and practices including inter-agency protocol, calls with the Fire and Rescue New South Wales.

WorkCover has updated instructions and change in relation to the protocols to the receipt and processing of notifiable incidents to the Strategic Assessment Centre. Highly trained WorkCover officers now staff the emergency phone line during business hours in the Strategic Assessment Centre and all after hours' serious incident notifications are referred to a senior officer for review.

Further capability review is to be conducted of the Strategic Assessment System. I recognise the importance of ensuring the safety of workers and officers who may be affected by the operations of this facility. As I have said on a number of occasions, the Act and Regulations as they stand introduced by Jeff Shaw, Eric Roozendaal, John Della Bosca, and in operation for at least the last 15 years, or last 11 years, assign no role for the Minister in an incident of this sort; having said that, the challenge now is to ensure that WorkCover is as best place as possible to deal with these matters more efficiently in the future. I have instructed to implement the chemical and improvement plan without delay.

Mr Chair, I have been repeatedly asked in the House about when my office was told about the Orica leak. I can say, as I had earlier here in the opening statement; that no notification was sent to my office until late on 11 August 2011, three days after the incident. And on the same day WorkCover commenced formally its investigation. I have already outlined the reasons WorkCover had given for that.

It is an interesting conclusion when the current leader of the Opposition, Mr Robertson, was the Environment Minister, there were two similar incidents, and he did not utter a single word about either of them as a result of the consequence. There were two ministers for Finance during that time when John Robertson was the Environment Minister: Joe Tripodi and Michael Daley. I am not aware of either of one of them making any comment or statement in relation to the notifications of those incidents, including in the case of Mr Daley where one of the incidents, I understand, took place in (inaudible). Thank you for your indulgence, and I am sure you would agree with me the comprehensive outline I have given to you will be of great assistance and the understanding response and action in this matter.

CHAIR: Yes, Minister. Thank you. I can confirm that very detailed statement was read for the Committee admirably. Before we move to questions from the Opposition, could I just ask for clarification please, if we do not already have that information, do you think you could provide on notice the number of hazard, major hazard facilities that are on the register in New South Wales?

MINISTER: The number of major hazard facilities?

CHAIR: Hazard facilities that are --

MINISTER: I don't know I have --

CHAIR: The second question is I take it that the February 2012 date by which Orica was to achieve their full registration was just a matter of course from the formal registration process starting in 2008?

MINISTER: That is correct. I advise there are 42 major hazard facilities. I am sure you would like a list of them.

CHAIR: If we can have them; that will be fine. I will now move to the opposition.

The Hon. Adam SEARLE: Minister, I think your WorkCover submission says that the WorkCover investigation commenced on 11 August?

MINISTER: The investigation?

The Hon. Adam SEARLE: The investigation. Do you have any idea when that investigation may be concluded?

MINISTER: Well, they have issued the two notices that I have already mentioned to you and the investigation is ongoing. I cannot predict how long an investigation will take and given your background and experience, I'm sure you would understand the reasons that these things take time.

The Hon. Adam SEARLE: Indeed.

MINISTER: But I can assure you, as you heard, we are regularly chasing up WorkCover to make sure the work is done as soon as possible.

The Hon. Adam SEARLE: Thank you, Minister. What steps is WorkCover as an agency taking to ensure appropriate health surveillance of workers who were onsite at the time of the incident?

MINISTER: Well, as I have outlined in my statement, there are people (inaudible) the investigation. They had given the notices and the investigation is ongoing

The Hon. Adam SEARLE: What I was really getting at is the ongoing health surveillance of workers who may have had some exposure at the time. Do you have a conclusion for me either now or on notice if you need to about the different procedures or steps being taken by WorkCover to ensure their health surveillance?

MINISTER: Basically, you want their protocols?

The Hon. Adam SEARLE: Yes.

MINISTER: Yes, we will get those to you.

The Hon. Adam SEARLE: Thank you.

MINISTER: If they have not already been provided.

The Hon. Adam SEARLE: If they already have been, I apologise in advance. From your opening statement, I think from the work submission, WorkCover was notified by Mr Peter Smith, the Compliance Manager of Orica, about the incident, and I think you said there was some document where he indicated the plant had become pressurised and chromium was released into the workplace. Do you know if there was a voice recording notification or if that was a notation taken by someone in the workplace management system?

MINISTER: I believe it was a note taken, but I will check that in case there was a voice recording, and I will get that. I am sure we can find that out.

The Hon. Adam SEARLE: I understand that WorkCover says that based on the information that it was provided by Orica, I think from that notification, and I think from a further anonymous notification, an assessment was made that the incident was not a serious incident within the meaning of clause 344 of the Occupational Health and Safety Regulation. Can you just confirm that that assessment was made by the Strategic Assessment Centre just based on these two pieces of information or if there was anything else, what other information WorkCover had to make that assessment?

MINISTER: That is the advice that I had been given. It was based on those two pieces of information. And just in relation about the previous question, it was just a notification. There was no voice recording.

The Hon. Adam SEARLE: Someone on the end of the phone took the notation. Do you know when the Strategic Assessment Centre made that notification, made that assessment that it was not a major incident based on the bases of that information?

MINISTER: Only to the extent that it has been covered.

The Hon. Adam SEARLE: WorkCover and its facility team contacted Orica on 10 August, late in the afternoon, to seek further details of the incident, as I understand it?

MINISTER: Yes, I mentioned that in my opening statement.

The Hon. Adam SEARLE: You are able to confirm there was no contact from WorkCover to Orica before that time?

MINISTER: Well, I cannot confirm something that did not exist.

The Hon. Adam SEARLE: I suppose, you know there was no intermediate step?

MINISTER: No, I had not been told there was no intermediate step.

The Hon. Adam SEARLE: And WorkCover's inspectors attended the site of the incident on the afternoon of 11 August at about 1.00 pm; is that correct?

MINISTER: Yes, that is covered in my statement.

The Hon. Adam SEARLE: That is the first time anyone from WorkCover physically went to the site?

MINISTER: So far as I am informed, yes.

The Hon. Adam SEARLE: WorkCover's submission indicates that Fire and Rescue New South Wales were aware of the incident prior to the afternoon of Wednesday 10 August. Do you know whether that information came from WorkCover?

MINISTER: I cannot speak for Fire and Rescue.

The Hon. Adam SEARLE: Is it the case that the first request by WorkCover to Orica for a comprehensive report on what had happened in the incident; that occurred only on the afternoon of 10 August?

MINISTER: Let me just check my notes on that. On 10 August at approximately 3.20 the incident was reviewed by the regional north team and contact made with the major hazard facilities team, who contacted Orica to obtain further details.

The Hon. Adam SEARLE: That was a good day and a half after the first notification?

MINISTER: Yes it was.

The Hon. Adam SEARLE: Are you able to explain why there was that gap between getting initial notification and then WorkCover following up and asking for a full report?

MINISTER: Yes I did and I covered that in length in my opening statement, so I refer you to that again.

The Hon. Adam SEARLE: Just so that I have got a better understanding, is it simply because of what was contained in that initial notification of what WorkCover understood to be in that first notification, was that the reason for the delay?

MINISTER: Well there was no delay, in the sense that WorkCover was given information. It went through and assessed that information in accordance with its protocols. It was given a second

set of information, that was assessed and it went through the normal processes that WorkCover had in place to arrive at the further stage when they got to that stage.

The Hon. Adam SEARLE: But it was 50 hours, was it not minister, between WorkCover first receiving notification of an incident and WorkCover inspectors attending the site to make their own investigation?

MINISTER: I have not done the calculation but if you have done the calculation Mr Searle, I am sure it is right.

The Hon. Adam SEARLE: I think WorkCover indicated that it was not until 12 August in the morning when WorkCover first notified its own chief executive of the incident, is that normal operating procedure?

MINISTER: I did not say that and I do not know if that is the case. I cannot speak for the chief executive; when the chief executive was notified. But I have gone through at length into the information that WorkCover has given me.

The Hon. Adam SEARLE: In WorkCover's submission, the information I am reviewing, indicates that on the morning of 12 August was the first time that WorkCover gave the first written notification of the incident to its own CEO. I guess the question is, and maybe you will need to take this on notice, is that the first time the CEO knew of the incident or had there been earlier less formal, maybe oral notifications?

MINISTER: You would like me to take on notice the question to the CEO of WorkCover as to when the CEO was first notified?

The Hon. Adam SEARLE: Or indeed to perhaps use your own terminology, when the CEO first became aware of the incident and how and in what circumstances.

MINISTER: Yes I am sure we can get that on notice.

The Hon. Adam SEARLE: When do you say that WorkCover first became aware that it was hexavalent chromium that was exposed into the site?

The Hon. Trevor KHAN: The second phone call.

MINISTER: Yes, I am just going to check that. To my knowledge the first time that they became aware it was hexavalent chromium was the second phone call, the anonymous phone call.

The Hon. Adam SEARLE: That is at 12.45 on the Tuesday. WorkCover knows hexavalent chromium to be a carcinogen. Do you know whether that is the case?

MINISTER: No I do not but I assume--

The Hon. Adam SEARLE: Can you take that on notice?

MINISTER: Yes I am happy to take that on notice.

The Hon. Adam SEARLE: Leaving aside that Minister, you assume that WorkCover knows it is a carcinogen?

MINISTER: No I do not assume anything. I have taken it on notice.

The Hon. Adam SEARLE: So we have got a situation where WorkCover has got two notifications, one from--

MINISTER: No, it has got a notification and an anonymous phone call from an unnamed person who is not prepared to back up what they are saying by giving their name or in any way being identified or having their information tested in any way; so it is an anonymous phone call.

The Hon. Adam SEARLE: I understand that but you would accept that information that hexavalent chromium, a carcinogen, has been exposed into a workplace would be a serious matter?

MINISTER: If it was information, yes. Whether I categorise an anonymous phone call as information, I do not think that it is information in the sense that you are putting it to me. It is an anonymous phone call. The information before the authority was the information that had been given by Orica, which we now know may have been misleading or certainly was incomplete.

The Hon. Adam SEARLE: At least in terms of the way it was recorded when the notification was given?

MINISTER: Correct.

The Hon. Adam SEARLE: But in terms of the anonymous phone call, are you saying that the strategic assessment centre, in making an assessment about whether this was a major incident or a serious incident, disregarded the anonymous phone call?

MINISTER: No I did not say that. I said they took note of it and then they assessed it.

The Hon. Adam SEARLE: Given that they then did not act on it until some considerable time later, are we to--

MINISTER: Well they did act on it, they continued to investigate the issue and it went up the chain as it was meant to in accordance with the regulations and law and the protocol.

The Hon. Adam SEARLE: Sure, but Minister we have on 9 August at 12.43 an anonymous phone call saying that hexavalent chromium had been exposed into the workplace. WorkCover does not then make a request of Orica for a detailed or further report, according to the information I have got here, until 5.06 pm on the following day, 10 August. That is a considerable gap between the anonymous tip off and trying to at least ask Orica for some further information. Would you accept that that is a significant gap in time, given the potential exposure?

MINISTER: Yes, I think that that gap was unsatisfactory and that is why we have ensured that WorkCover have reviewed all of their practices and implemented the suggestions of the O'Reilly report.

The Hon. Adam SEARLE: And again, I accept that the phone call was anonymous, but given the serious nature of the allegation shall we say of what may have taken place, not having anyone from WorkCover attending the site until 1 pm on 11 August 2011, that is again an unsatisfactory delay you would accept?

MINISTER: No I do not think you can jump to that conclusion. It was still an anonymous phone call and WorkCover did not have any more material or information than that.

The Hon. Adam SEARLE: In part because they took a while to ask Orica for a further report?

MINISTER: Correct; which is why I have said we instructed them to review those protocols and those procedures.

The Hon. Adam SEARLE: When the WorkCover inspector attended the Orica site, the indications are that Orica's own consultants had commenced clean up and air monitoring and that initial health surveillance of Orica's health centre had been commenced or had been offered to workers known to have been directly exposed. Are you aware of whether WorkCover has taken any steps as perhaps part of its own investigation to engage in any air monitoring of the site at the time or whether WorkCover has engaged any occupational physician to examine the workers who may have been exposed?

MINISTER: So you are asking whether WorkCover has engaged someone to do air

monitoring itself?

The Hon. Adam SEARLE: Yes, at the site, when the WorkCover inspectors were there?

MINISTER: Ordinarily WorkCover would rely on the business to actually undertake that. I will have to take that on notice, I do not know. I do not think so but I will take that on notice.

The Hon. Adam SEARLE: And the same would go for the occupational physician?

MINISTER: Yes.

The Hon. Adam SEARLE: Although WorkCover was there investigating--

MINISTER: And would ordinarily not itself engage such assistance but I will take that on notice.

The Hon. Adam SEARLE: On 14 August, as one of the no doubt innumerable tasks undertaken by the WorkCover inspectors when they were on site, they had done some surface sampling testing, had done some air monitoring of their own. Do you know what the results of those steps have been?

MINISTER: No and it would be highly unusual for a minister to be informed of the outcomes and results of individual air testing and monitoring activities but I am certainly happy if those activities took place, to get that information for you.

The Hon. Adam SEARLE: Again, I am not seeking for you to reveal anything that should not be revealed, I am just asking if that was done and what the results may have been.

MINISTER: Just on the monitoring issue Mr Searle, I am advised that - I cannot read the writing, so I will have to come back to you afterwards. So I will still give you the answer later.

The Hon. Adam SEARLE: Take it on notice. When WorkCover was notified of the incident, do you know whether WorkCover itself took any steps to notify other related government agencies or other government agencies that may have a role in exposures or incidents such as this?

MINISTER: I do not know that WorkCover has any obligation to notify other agencies but as I indicated in my opening statement, the agencies were all talking to each other; but in the sense of any sort of formal notification, no.

The Hon. Adam SEARLE: Minister, the reason I ask is that I think on 11 August the Department of Health contacted WorkCover to notify WorkCover of the incident. I think WorkCover already knew at that stage.

MINISTER: I think they probably did.

The Hon. Adam SEARLE: I am just asking whether WorkCover itself notified any other agency, but not to your knowledge?

MINISTER: No.

The Hon. Adam SEARLE: Leaving aside the issue of the anonymous phone call at 12.43 on the 9th, what is your information of when WorkCover itself learnt that the exposure was of hexavalent chromium?

MINISTER: Well, you cannot have it both ways Mr Searle. You are suggesting to me that the anonymous phone call was when they became advised or notified that--

The Hon. Adam SEARLE: No, no, just to be clear Minister. I asked the question as to when WorkCover first knew it was hexavalent chromium. Mr Khan supplied you with the answer that it was the anonymous tip off. You said well that is only an anonymous piece of information, nothing to back

it up; so I am asking you very clearly when do you say WorkCover knew the exposed substance was hexavalent chromium?

MINISTER: I have already covered that in my opening statement.

The Hon. Adam SEARLE: Could you repeat it in that case, because I must have missed it?

MINISTER: I am happy to do so.

The Hon. Trevor KHAN: Not the whole 22 minutes.

The Hon. Adam SEARLE: Just that piece of information please Minister.

MINISTER: A further telephone notification was received a couple of hours after the first notification from Mr Smith is it?

The Hon. Adam SEARLE: This is the anonymous phone call?

MINISTER: Yes; from an anonymous caller. This recorded that the release was hexavalent chromium; that all workers were sent home and that there were no injuries. On the same day these notifications were provided to WorkCover Strategic Assessment Centre. Based on the information provided and in accordance with protocols then in place, the incident reports were not classified as serious.

They were then allocated to WorkCover's regional north team based in Newcastle. A protocol for the Strategic Assessment Centre to notify the major hazards facilities team of incidents at major hazard facilities was not followed.

This did not have a material effect on securing health and safety at the site as the plant had already been shut down by the Office of Environment and Heritage and workers had already been removed from the site by the employer.

The Hon. Adam SEARLE: Minister, that is already in the written submission as well as your opening. Can you just tell us when you say WorkCover --

MINISTER: WorkCover has reviewed systems and for chemical incidents, improvement plans from the Orica incident. And we have used existing policies and practices to ensure that all major chemical facilities can make instant notifications, including near misses and may be categorised as important and prioritised as serious incidents.

On 10 August 2011, at approximately 3.20 pm, the incident was reviewed by the regional north team and contact made at the major hazard facilities team to contact Orica to obtain further details. On 11 August 2011, the incident was assigned to an inspector for a preliminary assessment; and at approximately 1.00 pm, a site inspection was undertaken. Later that day, I report that the message from an inspector to a WorkCover general manager and then was passed down to a liaison in my office at approximately 5.12 pm.

The Hon. Adam SEARLE: Is that when WorkCover, the inspectors went onsite, on the 11th?

MINISTER: I answered that question.

The Hon. Adam SEARLE: With respect, no, Minister, you have not answered the questions, and I can only infer it is because you do not know. You have not told us.

MINISTER: You do not--

CHAIR: Order. Order. It is time for your questioning to conclude. Mr Buckingham?

The Hon. Jeremy BUCKINGHAM: Thank you, Mr Chair. Minister, in WorkCover's submission to the Inquiry there is an email from a professional officer in chemical hygiene and toxicology at WorkCover to an officer at New South Wales Health outlining his concerns about the urine test of the Orica employees after the incident. The WorkCover officer states that urine testing did not begin of Orica's employees until three day's post exposure. For some workers, there was a delay of a week. Further, the officer writes that the half life of absorbed chromium is in the order of eight to 20 hours, and then three days the chromium levels in urine will be down one to five per cent of maximum levels and may represent zero to two to three per cent of the absorbed dose. Does not this mean that the tests were next to useless and what are your views on this?

MINISTER: Well, obviously the officer had concerns and I encourage your Committee to fully investigate those concerns.

The Hon. Jeremy BUCKINGHAM: Do you have any concerns?

MINISTER: I am not an expert in that field or area.

The Hon. Jeremy BUCKINGHAM: Are you going to investigate that; the effectiveness of those tests?

MINISTER: Well, I am not a scientist. I cannot investigate. I do not know the effectiveness of tests, Mr Buckingham, and I am not about to, at this stage in my life, obtain a science degree that will enable me to review those.

The Hon. Jeremy BUCKINGHAM: So you do not seem to care whether or not those tests are effective to actually test the exposure of those employees who were affected or not?

MINISTER: No, Mr Buckingham. What you point out is that two of the experts in this area were discussing the issue, and it is a matter for them to do their job, to work out whether there was problem or not, and if there is then it would come up to a relevant Minister in the normal way which is a public service worker.

The Hon. Jeremy BUCKINGHAM: Are you the Minister?

MINISTER: In this case, we have your Inquiry and I invite you to do the investigation yourself. If you reach any conclusions, I am sure you will be able to make recommendations about it; are you asking whether I have been given any briefing or any policy suggestions as result of those, and the answer is not yet.

The Hon. Jeremy BUCKINGHAM: So do you not think that Orica should know what tests it needs to carry out on its worker in the event of a spill of toxic chemicals to properly establish their level of exposure?

MINISTER: I did not quite understand that question, Mr Buckingham.

The Hon. Jeremy BUCKINGHAM: Well, the correspondence between the officer from WorkCover and the person from New South Wales Health is saying that the tests to establish a level of exposure were useless, so should not Orica know what tests it has to conduct and when it has to conduct them to actually establish what impact it has had on employees health?

MINISTER: Well, I think you are missing your own point, with respect, Mr Buckingham. You have quoted from emails - and I am assuming that you have correctly quoted and they are in context - where WorkCover and Health experts whose role it is to give advice and to intercept protocols intercept (inaudible) in this space are in the course of discussions, now, they will, in their normal exercise of their duties, ensure that whatever protocols are necessary, whatever rules are necessary, are put in place.

The Hon. Jeremy BUCKINGHAM: Should you not be doing that as the Minister for WorkCover?

MINISTER: When you say do I know whether Orica knows what it should be doing, I cannot speak for Orica. But as I say, WorkCover, Health, and the other agencies do this work routinely as I pointed out in my opening statement. Well, you missed a bit at the beginning. The legislation we have dates back to 2000. The Regulations have been regularly updated. As a result of these spills, obviously, we are all focusing on these issues, as we should, and I am sure that in due course either your Committee's good work or one of the agencies' good work will produce the changes that are required, if there are any changes required. I cannot jump to that conclusion. I am not a scientist. I am not expected to make judgments about what testing levels are required.

The Hon. Jeremy BUCKINGHAM: Thank you, Minister. In the same emails, the WorkCover professional officer recommended that the workers be checked for Chromium VI exposure by blood test. Are you aware of these recommendations, something which has appeared to have been recommended more than once?

MINISTER: And further --

The Hon. Jeremy BUCKINGHAM: What do you think the Government's responsibility is here?

The Hon. Trevor KHAN: Point of Order. I think he has got three questions to answer.

CHAIR: Point of Order. Order. Ask the first part of the question and then after he has answered, ask the second part of the question.

The Hon. Jeremy BUCKINGHAM: Sure.

MINISTER: What was the first part of the question?

The Hon. Jeremy BUCKINGHAM: In the same email, the WorkCover's professional officer recommended that the workers be checked for Chromium VI exposure by blood tests. Are you aware of this recommendation, something, it appears, to have been recommended more than once?

MINISTER: No, I am not. I would not get into the detail of that sort of investigation. I mean it is the job of WorkCover. It is the job of Health. It is the job of various other agencies to actually get to that level of detail. I cannot go around, as the Minister, working out and recommending whether you or anybody else should have urine tests in the workplace or anything else. It is not the role of the Minister to do that.

The Hon. Jeremy BUCKINGHAM: In Graeme Liebelt's letter to the Government dated 4 November in response to the O'Reilly report findings regarding Orica's obligation under clause 344 of the Occupational Health and Safety Regulations regarding the company's obligation when there is a serious incident, he stated this: in Orica's view the incident of 8 August 2011 was not "a serious incident," within the meaning of clause 344; and, therefore, did not require notification to WorkCover. Yet, clearly, it was and it is. Under clause 344, the definition of a serious incident applies in relation to a major accident at a major hazard facility.

A major accident is defined as an incident involving a schedule 8 material occurring in the course of the operation, commissioning shut down of a major hazard facility that poses a risk of serious danger or harm. Do you agree that this was, in actual fact, a serious incident?

MINISTER: Yes, I do. I gather Mr Liebelt is someone that one would have some difficulty being confident in believing on anything in relation to this, and certainly I saw a little bit of his evidence before this Committee the other day and at best you can describe it as shifty and evasive. And that gentleman is not someone I would be relying on in your case, Mr Buckingham, to give any judgments about the performance of Orica, and indeed, it is pretty obvious.

The Hon. Adam SEARLE: Point of Order, Mr Chair. Point of Order, Mr Chair.

CHAIR: Order. Order. Order. Point of order has been taken.

The Hon. Adam SEARLE: I might have missed it in your opening, but it is customary to remind the Minister not to take personal swipes of other persons just because they can.

CHAIR: Order. Order. Order. I will remind the Minister that even though we are under Parliamentary privilege, that privilege is not to be stretched too far.

MINISTER: With respect, Mr Chair, I did not intend to stretch the privilege. I was simply making an observation.

CHAIR: Proceed, please.

The Hon. Jeremy BUCKINGHAM: Speaking of shifty and evasive, what (inaudible) to make sure that Orica becomes a safe workplace. Do you think that Orica has been and will continue to be or has been and will be a safe workplace?

MINISTER: Orica is a top 200 company, a well-respected company, but clearly there have been some significant failures of this management in relation to this matter and others, and I think that the Government has been very firm on our view that Orica's plant will not be reopened until they have rectified these issues. Until their management is able to actually give confidence to the community and the facility, and it is a very important facility, by the way. The products produced at this facility are essential across a number of different activities in the community, including mining and things like fizz in your soft drink, and we want to see this facility properly managed.

We want to see that the community can have confidence in this facility. We want to see this major, top 200 company performing well in the economy, and I encourage you, as I am, and as the whole Government is, to ensure that the pressure continues to be applied to make sure that this company operates properly in the future.

The Hon. Jeremy BUCKINGHAM: So can you categorically state here under oath that it has been a safe workplace, yes or no?

MINISTER: I have not suggested for one second that it has been totally a safe workplace. The reason we are here, Mr Buckingham - I do not know if you missed something, Mr Buckingham - we are here because on several occasions, it has not been a safe enough working place.

The Hon. Jeremy BUCKINGHAM: Thank you.

CHAIR: Minister, there will be no further questions. I think we will draw this session to a close. Thank you very much for your presentation.

MINISTER: Thank you.

(Short adjournment)

CHAIR: I now welcome our second witness, the Hon. Jillian Skinner MP. Minister, you have already sworn an oath for your office; you do not need to be sworn in today.

JILLIAN SKINNER, Minister for Health, examined:

KERRY CHANT, Deputy Director General Population Health and Chief Health Officer, New South Wales Ministry for Health, sworn and examined:

CHAIR: Before we proceed to questions, Minister, would you like to make a short opening statement. If your statement is extensive, your Government colleagues have agreed to take it off their time; so do not be hurried.

MINISTER: Thank you. I do have a statement; it is a very brief one. I am pleased to attend the Kooragang Island Orica Chemical Leak Committee and I am accompanied by the Chief Health Officer, Dr Chant.

Dr Chant is the most appropriate person to provide the Committee with information about the specifics of New South Wales Health's role and actions in regard to this incident and answer any technical questions that the Committee may have.

I also acknowledge the work done on this issue locally by the Director of Public Health Unit in the Hunter, Professor David Durham and Acting Director Tony Merritt, who was present at the time, and also Professor Wayne Smith, Director of Environmental Health Branch in the Ministry of Health.

Throughout the incident I was briefed regularly in regard to the incident as my office was in regular contact with the Chief Health Officer. However, it is appropriate that incidents of this nature are co-ordinated by the Chief Health Officer.

Mr Brendan O'Reilly prepared a report for Government which reviewed the response to the incident. The report concluded that Health did adopt the roles and responsibilities as detailed in the HAZMAR/CBR sub-plan.

Mr O'Reilly further notes, "That Health reacted quickly and in the public interest. Staff worked very long hours and over weekends and are to be commended for the professional services they provided."

He also supported Health's approach in regard to timing of the direct communication with residents, noting "A cautious approach is appropriate because the early release of information that may have to be corrected later can cause a loss of confidence by the public."

Regrettably, incidents occur which have the potential to pose a risk to public health. These range from water quality incidents resulting from flooding events, through to chemical emissions from factories such as the 2007 incident involving the release of carcinogenic ethylene oxide from a factory situated in Sydney's northern beaches.

It is Health's role in these incidents to assess the risk, identify strategies to mitigate or control the risks and work with partner agencies, the community and industry to ensure this happens.

Since the Kooragang Island incident of August 8 there have been a small number of other chemical incidents that have allowed the testing of communications across government agencies, such as the ammonia release from the Orica chemical plant on 9 November.

I am advised that New South Wales Health has been notified early in relation to these incidents and that there has been good across agency communications.

Can I conclude this initial statement by saying I have the greatest regard for Dr Kerry Chant and I at all times have relied upon her representing me in terms of this incident.

The Hon. Luke FOLEY: Minister, you were first informed of the leak at 5.50 pm on the Wednesday, were you not?

MINISTER: That is correct.

The Hon. Luke FOLEY: And Dr Chant, you were first informed on the Tuesday evening, is that correct?

Dr CHANT: No, that is incorrect, on the Wednesday evening at about 5.40.

MINISTER: By whom?

Dr CHANT: I had returned from a flight from Canberra and I checked my message bank when I left Sydney airport, left the plane as soon as possible. There was a message on the phone from Lisa Corbyn, who is the head Director General of Office of the Environment. She alerted me to that incident. I think spoke to my Director of Health Protection, Dr Jeremy McAnulty, who gave me a brief précis and then spoke to the Director Environmental Health Branch, Wayne Smith.

Then there were a couple of other calls on the phone. I can take you through that sequence but I think it is reflected in the timeline of our submissions.

The Hon. Luke FOLEY: Minister, given that you were notified at 5.50 pm on the Wednesday and the Chief Medical Officer at 5.40 pm on the Wednesday, do you share the view expressed by the Environment Minister in the House in August that “people were informed when they needed to be informed”?

MINISTER: When I was advised about this incident by my staff, who had been in contact with the Office of Environmental Health, I was told that the - the first question I asked was is Dr Kerry Chant involved and the answer was yes, because there was a potential public health risk, she was going to be responsible then for doing the testing and determining the communication strategy to alert the public. I was totally confident that that is how it should be and that is in fact how it turned out.

The Hon. Luke FOLEY: Yes, but are you satisfied that Dr Chant, who you have confidence in, who we all have confidence in, was told and that your Department was told when they needed to be told?

MINISTER: I think the events since then and particularly the inquiry conducted by Mr O'Reilly has shown that there were lessons to be learned about the timeliness of advice. First of all from Orica itself and then others and I believe that we have responded to that and there are now processes in place to make it more effective. That is demonstrated by the most recent event with the leak from Orica.

The Hon. Luke FOLEY: It is unacceptable for a potential public health risk as a result of the release of Chromium VI into a residential area, for the Chief Medical Officer and health officials in this state not to be notified for 47 and three quarter hours, is it not?

MINISTER: Well, I believe that you will have to ask them specifically and maybe Dr Chant can advise of that, but I believe that there was some notification of the local area but as I said, you will have to ask Dr Chant about that.

I have already said, there is no doubt there were delays in people being informed. That is in fact what the Government has responded to in responding to the O'Reilly recommendations.

The Hon. Luke FOLEY: Were you satisfied Minister with the Office of Environment and Heritage taking from 10.30 am on the Tuesday until 5.40 pm on the Wednesday when Ms Corbyn telephoned Dr Chant? Were you satisfied with the Office of Environment and Heritage taking however many hours that is, to advise your Department?

MINISTER: I think there were advices given earlier than that but they were done locally in

the Hunter.

The Hon. Luke FOLEY: Let us go to that. The New South Wales Health Orica chromium incident timeline August 2011, are you familiar with that document Minister?

MINISTER: I think it is this one in here, is it not?

The Hon. Luke FOLEY: It is five pages.

MINISTER: Yes it is this one. Yes, I am aware of that.

The Hon. Luke FOLEY: Dr Chant, you would be familiar with that?

Dr CHANT: Yes, I am too.

The Hon. Luke FOLEY: Let us go to that. It appears to me that the first notification to Health officials was at 11.30 am on Wednesday 10 August to the Hunter New England Population Health, is that right?

MINISTER: Correct.

Dr CHANT: That is correct.

The Hon. Luke FOLEY: And the first test results were received at 4.45 pm on Wednesday 10 August, is that correct.

Dr CHANT: I would have to just confirm the exact time, but that certainly fits my recollection of the timeframe.

The Hon. Luke FOLEY: Those first test results detected Chromium VI in those tests taken in Stockton on the Tuesday, did they not?

Dr CHANT: That is correct.

The Hon. Luke FOLEY: Could I ask either of you, given that, why was not an alert then issued regarding a discharge of Chromium VI into a residential area and the potential effects of exposure to Chromium VI?

Dr CHANT: In relation to the work, the Hunter public health unit earlier that day had been advised by Orica that there had been a release of sodium chromate. They then initiated some investigations with the Office of Environment and also locally to assess whether there were any workers impacted or whether any residents had attended any facilities.

In terms of what was then known, there was a confirmation of hexavalent chromium as you rightly point out. The public health unit locally had been working with Orica on a series of precautionary messages. The precautionary messages cover the areas which were subsequently confirmed by the expert panel the following day.

By 7 pm 25 households had been doorknocked by Orica.

The Hon. Luke FOLEY: 7 pm Wednesday?

Dr CHANT: By 7 pm on the Wednesday night, 25 households had been door knocked by Orica and in addition little cards had been left in the letterboxes of a number of others.

Orica had advised the public health unit that their survey had identified some scant deposits. The level of chromium detected in the samples was quite low and they had initiated letterbox dropping at the most affected.

At that point it was considered the direct communication path with translating the messages

from the public health unit was the most appropriate way of getting the most highly affected zone.

We rapidly gathered more information in terms of the zone and worked during the night to get a better handle of the situation. It was evident that the company had also been engaged with its own toxicological advice and had formed a reassessment.

It was important that we understood what advice Orica had been given from their independent toxicologists so we could better understand it.

In that evening I made the decision that appropriate precautionary actions were underway and that we would rapidly convene an expert panel the next morning, work on it and have a facts sheet, and the idea was that we would go out first thing in the morning.

It was also important to consider the ways in which the public can be impacted by the chromium. At that point in time, we felt that the major risk to the community was around the time of 6 pm on the Monday in terms of if people had been outside at the time when the plume was going over.

Subsequent studies I can talk to you about our assessment of the risk of the plume, but at that point that was considered the most important route.

The next ways in which people in the community could become exposed would be things like outdoor exposure and ingesting soil and other things. Given the time that we were dealing with, which is past 6 pm at night; that was not considered to be a pressing issue for communication to people. We felt we had the opportunity of going out in the morning and that was the time sequence of events.

The Hon. Luke FOLEY: Are you saying that you thought the risk had passed the residents by?

Dr CHANT: We were saying that at that assessment in relation to the assessment our thinking that night was that the greatest risk to the community from exposure was via inhalational route at the time of the plume passing. The next way in which the community could be exposed is through - skin absorption is not an exposure part. The next part is through re-suspended soil or inhaling that, which again is not going to be a very significant source and the other source would be hand mouth contamination and very much for smaller children as a route or eating soil.

The Hon. Luke FOLEY: Eating leafy vegetables?

Dr CHANT: And eating leafy vegetables. The assessment was that there have been precautionary measures undertaken in conjunction with Orica. Orica were also that evening trying to ascertain what Orica's advice was that they had received and what basis, and what additional tests, and what additional understanding Orica had had.

I also draw your attention to the information sheet, which is in our submission, which included the correspondence and script for Orica employees, which referenced the fact that they had sought advice from Occupational Hygiene and independent medical advice. We really needed to find out on what basis they were asserting that level of risk. There was a real concern out in the community about mixed messages; so on that assessment, we had taken a precautionary approach, messages had gone out to the most affected households, in terms of ongoing exposure pathways, I think that we had until morning to get the best advice as possible so we could go out and initiate that. I am happy to take you through the order of that morning.

The Hon. Luke FOLEY: Is it not the case that until the Environment Minister made a statement at around 3.30 Thursday afternoon, I think you held a press conference at almost exactly the same time, that the community was not informed apart from those 25 households door knocked by Orica. That is the case, is it not?

Dr CHANT: My understanding is Orica continued its activity on the Thursday. I think it is important for those questions to be directed at Orica. Our focus on the Thursday was then our independent communication. We made the decision that despite what communication was occurring from Orica that this was going to be of such concern to the community that we also wanted to get

information out from the timeline, you can see that those actions were initiated early for us to be in that position.

The Hon. Luke FOLEY: Yes, we are certainly - we have asked Orica representatives many questions and will continue do so but it is the case, Minister, the New South Wales Disaster Plan mandates that where there is a serious risk to a public health, it is the responsibility of New South Wales Health to inform the community, is not it?

Dr CHANT: In terms of the advice to the community, as I said, the initial precautionary advice was given out. In some circumstances we liaise, for instance, in water quality incidents with local council. Local council might actually give out the water notice but we are often involved in that in terms of a local council; like with asbestos, we may craft the message and or be notified and check off if the message is correct, but it may be through another party that gives that.

At that point, given the Public Health Unit had been working with Orica all afternoon, that direct face to face door knocking had occurred; that was considered the appropriate action, and I am happy to take you through the decision-making the next morning and the considerations by the expert panel by which we were guided.

The Hon. Luke FOLEY: Can I put it to you this way: You were treading a fine line between not wanting to alarm the community by putting out potential information about a risk if you thought the risk was minimal, but at the same time needing to discharge your obligations to inform the community of any risk. Would that be a fair way to characterise the position you were in on the Wednesday night?

Dr CHANT: I think in regards to Wednesday night we were satisfied the exposure pathways would not be significant at that point; that we had initiated precautionary messages through the Public Health liaison along with Orica and that the morning would be the most appropriate process to have staff on standby to then be going out and communicating to the public.

And that was the exact intent of the officers from the local Public Health Unit who participated in the teleconference, with the intent of then immediately going out with health advice; and I can take you through the expert panel why there was a deviation for that but at all times the risk was considered extremely low, but we actually chose to take a very precautionary approach.

The Hon. Luke FOLEY: But precautionary advice on the Wednesday evening was simply to 25 households, was it not, that Orica was communicating with?

Dr CHANT: The advice I have is that it was for a large number of households, and again, you have to check that with Orica, but what I can say is at 7.00 pm, the Public Health Unit had confirmed that 25 households had been directly spoken to and there were a number of little cards left in the letterboxes, which I would say is a less optimal communication.

The Hon. Luke FOLEY: Indeed.

Dr CHANT: To go to those other households.

The Hon. Luke FOLEY: The New South Wales Health timeline advises us or tells us that at 14.25 on Wednesday 10 August there was precautionary health measures to be conveyed to Stockton developed with HNEPH, which I think is Hunter New England Public Health, including direction not to drink tank water or eat vegetables from the yard garden. That is at 14.25 on Wednesday. Can I ask then, given that it was identified for an action for you to take on 14.25 on Wednesday, why was it not done until late on the Thursday afternoon?

Dr CHANT: That was the action where the Public Health Unit was working with Orica on the messaging. That was the engagement of the Public Health Unit using Orica. Orica was saying we are door knocking. The Public Health Unit was saying these are the message you need to convey in the door knocking. The Public Health Unit also wanted the written form and had been emailing Orica in regard to that.

That action was occurring and at 7.00 pm, we could ascertain that they had made contact with the 25 households in person and that there were little cards put in the letterboxes of the others. That is the information we had.

In terms of the exposure routes to which people were going to be exposed that evening, given this was in the middle of winter, it was considered that the people would not be significantly exposed overnight and allow us to give the best possible information to the community first thing in the morning. That was the intent as at the Wednesday night.

We needed to understand what additional information that Orica had that we were not aware of at that point in time; and hence, we asked them - you will notice on the timeline, that there was a further request for information at 21.00, and that post-dated when we became aware of the script; that it had come from Orica which indicated they had sought advice. It was then clear that they had been working with an independent toxicologist called Toxikos who had been doing some work in this area.

We requested that company give us information so that we could provide the best advice to the community. In this circumstance, it is not desirable to have randomly changing advice to the community as well, so we felt that we had assessed the situation as not representing any significant exposure that evening and that is what course of action we took.

The Hon. Luke FOLEY: But can I put to you that Orica, even if they had door knocked every house potentially exposed to Chromium VI, logic tells you some houses you would not get an answer. They would not get an answer; that it would have been a far more effective means of communication for you to follow through on the step identified at 14.25 on the Wednesday and get that health alert out on the Wednesday, rather than waiting more than 24 hours to Thursday afternoon. Can I put that to you?

Dr CHANT: In relation to the door knocking - in relation to the O'Reilly report, it indicates that door knocking is one of the preferred methods that the community prefers in terms of getting direct contact. They both serve two purposes. It allows for clean-up and mediation, for Orica to quickly and effectively remediate as well as providing the information of the nature of the emissions. So it serves two purposes for the community.

In regards to 7.00, the fact that 25 households had been communicated with, that was I think a good form of direct communications. Now you will need to direct your questions to Orica. We have no reason to believe and the Acting Director of the Public Health Unit had no reason to believe in relaying to us in our discussions, that Orica was other than communicating the messages as defined by the Public Health Unit. We had no reason to believe that.

So by 7.00 at night the exposure pathway for people in the ongoing way did not in my mind justify us going out that night, when we had a chance to get a better handle on the information so we were not switching and changing messages, and the assessment risk was low.

The Hon. Luke FOLEY: But you already developed the precautionary health message to be conveyed to Stockton residents not to drink tank water or eat vegetables from yard gardens. You had already developed that message, had not you?

Dr CHANT: And that was communicated through Orica. That was the mechanism for distribution --

The Hon. Luke FOLEY: But only to 25 houses, Dr Chant.

Dr CHANT: Well, to more households. My understanding, and I would have to check with Orica, all I know from the Acting Director is that 25 houses were directly spoken to by Orica. There were a number of households visited by Orica and cards left and a call number provided.

The Hon. Luke FOLEY: What about the early childhood centre? Were they given this advice on the Wednesday?

Dr CHANT: The early childhood centre was visited early the following afternoon.

The Hon. Luke FOLEY: The Thursday afternoon?

Dr CHANT: The Thursday afternoon. There was no indication of - visual inspection of the premises indicated no evidence contamination; and in addition to that, testing on the childcare centre did not find any samples in sand pits and swabs of slippery dips and various other sites and also I can show you the map, and it clearly shows that the plume direction would have been south of the childcare centre, so on all of those bases, I am very confident that the childcare centre was not impacted and we have communicated extensively with the childcare centre.

The Hon. Luke FOLEY: Why was it shut then?

Dr CHANT: Well, it is precautionary in these circumstances for the childcare centre for reassurance to change the sand in the sand pit and to clean the facility. The childcare centre was in no way responsible for this, Orica was. It was important that the families had confidence in relation to the childcare centre for safety, and I understand Orica covered the cost of changing the sand and cleaning up in the childcare centre.

The Hon. Luke FOLEY: But families would have had a lot more confidence, surely, if they had been told on the Tuesday when the State Government first knew or indeed Wednesday when Health first knew rather than waiting till Friday to clean out the sand pit, surely?

Dr CHANT: I think you raise a valid point, that it would have been most appropriate for all agencies to be aware about this incident on the Monday. That would have positioned us most appropriately to have a co-ordinated response, to get answers to questions and get precautionary measures out. I think no one disputes that fact, that the Monday was the best time for Orica to notify and that would have set in train an emergency response that would have been in the community.

The Hon. Luke FOLEY: Indeed, but Orica's failure to tell the Government till Tuesday morning does not absolve Government of the requirement to then tell the community straight away, does it? Surely logic suggests that if the best thing for Orica to do was to notify immediately, then the Government once it was aware surely had a responsibility to notify the community straight away?

Dr CHANT: I think that the Brendan O'Reilly report, which has looked at the issues of notification in great detail, identifies that there were shortcomings in the notification procedures and the connections between agencies.

All I can is in terms of future incidents that have happened, there has been a number of other incidents that have happened, for instance, the mercury issue in Botany, the ammonia leak in Kooragang Island from the Orica plant and in all of those cases the information was provided to the community quite rapidly.

It still does take a few hours for us to get the facts collected, but those communities were notified in those events and interestingly, the ammonia leak, the fire brigade issued a press release but concurrently the Office of Environment and our own offices were involved in cross checking the information from the fire brigade and we ourselves were comfortable.

Then we followed up with the local community representatives to check that the community had got those messages and did not need any further reassurance from Health.

The Hon. Luke FOLEY: Minister, could I ask you, given all we have heard and given the extensive submission that Health has put to our Committee, given that Health's timeline tells us that at 14.25 on the Wednesday they decided to issue a precautionary health message to the people of Stockton, including advising them not to eat leafy vegetables and not to drink tank water, are you satisfied that it took well over another 24 hours for your Department to actually get that message out to the people of Stockton?

MINISTER: As I have already said, I have total confidence in Dr Chant and her team. I think your referral to the 14.25 was a precautionary message. It was one developed by Hunter New England Public Health with Orica. If you look on the map, it is quite clear that there are a number of

houses, those 25 that Dr Chant is referring to, plus others that were left written material because they were not home I presume, that were most likely affected.

I absolutely support Dr Chant's explanation that it was important to get the message right, to undertake the further testing before putting the messages out and in fact that is what happened.

You have also got to remember, as Dr Chant has said, the precautionary measure was not only to those most immediately affected but because this incident happened on the Monday, there was a lesser degree of potential impact by the time we are talking.

So that was important therefore in getting the further testing and the independent toxicologist report before the message was put out and that is in fact what happened.

I think it would be useful to show you on the map exactly what we are talking about. There is quite a large gap away from some of these facilities and where the plume was likely to have gone.

The Hon. Adam SEARLE: Minister, in terms of the messages that were going out and I think Orica asked Health to comment on the messages, annexure C to your Department's submission has the script that was used by Orica and in it there is repeated reference to sodium chromate; it looks like small spots of yellow salt. It says there is little to no risk from this substance.

I do not detect anywhere there is a reference to hexavalent chromium. Now Health knew that it was hexavalent chromium that was released.

Dr CHANT: Sorry, can I just say that this script came to us via Lisa Corbyn, who emailed it to us from their media unit. Now we had no understanding - this came through to me and I will have to check the time, but it was much later in the evening.

On reading this we had no reason to believe that the - I did not know that this was the script that was used. This had come through the media unit. It is likely that there had been progression of the information in liaison with the public health unit.

The Hon. Adam SEARLE: You say Health did not approve this script?

Dr CHANT: Health did not approve this script in any way. This came to us and you will see on the timeline that on receiving this email, I then forwarded it to Wayne Smith, the Director of Public Health Unit, also Tony Merritt, the local public health unit director and this also was another factor that prompted us ascertaining the additional independent toxicological advice that they were alluding to.

The Hon. Adam SEARLE: Did you take issue with it? It does not mention hexavalent chromium at all, does it?

Dr CHANT: We would not be happy with this information. We had already made the decision that we needed written communication with the facts to the community and in every fact sheet that Health wrote, we certainly did describe it as hexavalent chromium. We were very, very clear in relation to the health risks associated with hexavalent chromium.

The Hon. Adam SEARLE: Did you tell the company not to mention hexavalent chromium in their communications?

Dr CHANT: No. We in no way told them to not use the words hexavalent chromium.

The Hon. Adam SEARLE: No, it was the other way around. Did you tell them to use the term hexavalent chromium in their script?

Dr CHANT: The local public health unit was liaising with Orica. I would have to talk directly to the--

The Hon. Adam SEARLE: Could you take that on notice please?

Dr CHANT: I will take that on notice but I would have no - in no way would I believe that the public health unit would other than describe this hexavalent chromium.

The Hon. Adam SEARLE: I understand that but I just want to know what steps were taken when you knew that this was the script proposal to rule it out.

Dr CHANT: Yes.

CHAIR: Dr Chant, could I ask you just to verbally describe what is depicted on the map so that Hansard have an understanding of what you are tabling.

The Hon. Trevor KHAN: Perhaps it could be held up?

CHAIR: Could you please describe what the map shows?

Dr CHANT: This is a map depicting - this is available on two sources, both the New South Wales Health website and also the Office of Environment website. The Office of Environment website also has numbers, sampling numbers and then that is correlated to sample collection numbers which were collected between 9 and 12 August. So you can correlate the sample detection levels.

Here what we have demonstrated is the purple dots indicate positive detections, as do the mauve dots. Basically green is negative is probably simplest.

These two samples here relate to water, a bird bath and a water tank. These samples were within the drinking water guidelines - not that I am recommending drinking them.

CHAIR: For the purposes of Hansard, the map shows an arrow from the Kooragang Island plant over the residential area giving the direction of the plume and that was what you referred to in your evidence, was it not?

Dr CHANT: That is correct.

The Hon. Trevor KHAN: I assume that is the SP-8 stack?

Dr CHANT: Yes, that is right, that is the stack and this shows the wind direction at the time of the incident. This shows the positive detections, and as I said, these were detections in water, which indicate those were within drinking water guidelines. These were positive detections.

The greatest detections were just on the foreshore and that demonstrates and is consistent with the scant nature of deposition.

CHAIR: Can I ask, are you able to table that map for the purposes of the Committee?

Dr CHANT: Yes. The childcare centre for your information is on Barrie Crescent.

CHAIR: Hence your comment that it was north of the plume?

Dr CHANT: It is north of the plume. Barrie Crescent is there. Multiple overlaid dots represent the multiple--

CHAIR: Thank you; that will clarify the matter for Hansard.

The Hon. Jeremy BUCKINGHAM: A question to either of you. In WorkCover's submission to the Inquiry there was an email from a professional officer in chemical hygiene and toxicology at WorkCover to an officer at New South Wales Health outlining their concerns about the urine testing of Orica employees after the incident.

The WorkCover officer states that urine testing did not begin of Orica employees until three days post exposure. For some workers there is a delay of a week; that the half life of absorbed

chromium is in the order of eight to 20 hours and that at three days the chromium levels in urine will be down to one to five per cent of maximum levels and may represent zero to two to three per cent of the absorbed dose.

What action did New South Wales Health take upon receiving this email?

Dr CHANT: The point I think of your question relates to the utilisation - worker health is under the aspect of WorkCover. We did consider as a routine in all chemical incidents, we predicted a question around is there any way we can test for exposure? Is there a blood test that gives us a reliable indicator? How do we know if we were exposed?

That was considered in depth by the expert committee and the advice is that in this context urinary testing or even red blood cell testing for chromium would not be a valid measure; that the most valid measure for exposure for the population would be derived from the health risk assessment that was undertaken. The health risk assessment I am referring to is the one on toxicology.

The Hon. Jeremy BUCKINGHAM: Why was it not a valid measure to test the workers or those people why may or may not have been exposed?

Dr CHANT: WorkCover needs to talk about what they - in relation to workers, WorkCover will set up the standards for what they use. I am talking in reference to the community exposures. Blood testing was not considered appropriate in this situation. There is no correlation between one off blood test and any predictor of health outcomes. In addition, it was considered that the most valid measure to assess the community exposure was the health risk assessment, which models worst case exposures through all inhalational and ingestion routes.

The Hon. Jeremy BUCKINGHAM: The two parts to the question were in terms of what action New South Wales Health took upon receiving an email from a professional officer from WorkCover raising the concerns about the effectiveness of urinary testing; the answer was New South Wales Health took no action in response to that email?

Dr CHANT: I would need to see the email in front of you to provide specific comment. WorkCover participated in a number of the teleconferences that we had and there was general discussion of issues that were relevant to cross agencies.

I know there were issues around worker screening, discussed as part of it and I think you will find in the incident action plan that was authorised by the three agencies, there was some discussion of WorkCover's screening in relation to the workers.

In addition, we were interested in--

The Hon. Jeremy BUCKINGHAM: In terms of there was some discussion, can you elaborate on that?

Dr CHANT: Well in compiling the incident action plans, they were meant for a whole of government and so WorkCover, ourselves and the Office of Environment participated in those incident action plans and hence there was a description of what assessments were then undertaken by WorkCover incorporated into those incident action plans.

The Hon. Jeremy BUCKINGHAM: In the same email the WorkCover professional officer recommended that the workers be checked for Chromium VI exposure via blood test. I am taking from your previous answer that you did not think and you maintain that this would not have given any indication of exposure by members of the community?

Dr CHANT: Our expert advice is that blood testing would not have been appropriate in this community setting; that it is not a valid measure in terms of a one off. It does not predict health outcomes.

The Hon. Jeremy BUCKINGHAM: Not so much health outcomes, but what about the level of exposure or exposure at all? Are you saying blood tests would not establish--

Dr CHANT: The difficulty is it is a one off blood test which does not indicate exposure. There are other reasons why you also have chromium in your blood.

The Hon. Trevor KHAN: Point of order. Dr Chant is not being given a proper opportunity to answer a question. Mr Buckingham seems to be intent on cutting her off.

CHAIR: I will take the point of order. It is a highly technical question, Mr Buckingham, I think you should allow Dr Chant the opportunity to explain to the best of her ability the technical aspects of her answer.

The Hon. Jeremy BUCKINGHAM: Certainly Mr Chair.

Dr CHANT: I suppose just to reiterate, in this context, the expert advice available to us is the urine testing or serum test for red blood cell for chromium testing was not useful, was not valid, and the best way of testing exposure was the health risk assessment process, and that is by which we use the environmental contamination levels of contaminants where we look at what concentration of hexavalent chromium was in the air and then we model assumptions, including controls for things like children. We add sensitivity factors. We basically do what we call worst scenario but also best justified case scenario, which look at what people could be potentially exposed to, and that that could provide a more robust and worst case scenario for maximum exposure for population protocols, including adjustment to vulnerable groups.

The Hon. Jeremy BUCKINGHAM: Thank you, Dr Chant. So you are saying that those blood tests were not useful or valid - that was the term - and that you received advice that that was effective?

Dr CHANT: That is correct.

The Hon. Jeremy BUCKINGHAM: Could you please table that advice for us?

Dr CHANT: Certainly.

The Hon. Jeremy BUCKINGHAM: Thank you. I am also aware that the New South Wales Government has recommended to Orica several times; once, for example, its admission to an application for expansion of its ammonium nitrate facility, that Orica should establish an early warning system. What is your view about this now?

Dr CHANT: I think that there needs to be a mechanism of notification to the community, so I would strongly support that. I think some of the O'Reilly report recommendations in terms of mandating early notification of the agencies is important. I think that if they work around the Kooragang Island plant, and the Committee is an important mechanism for ensuring that there is close community engagement around Kooragang Island.

The Hon. Jeremy BUCKINGHAM: Thank you for that answer. Is there any similar early warning system for a community anywhere will else in New South Wales around similar facilities that you know of?

Dr CHANT: Not that I am aware of off the top of my head, but I would be happy to take that on notice. Could I also draw your attention to Tab D. I think I can provide it to you, which is just to give an indication that we did provide advice to general practitioners saying given the measured levels of environmental leaks of the Orica plant on Kooragang Island and the very low levels of hexavalent chromium emission in environmental (inaudible) in Stockton, there is no indication that testing residents in the area, of human blood or urine, testing of hexavalent chromium does not provide a predictor to human health impact. That was communicated to general practitioners in the area by the Director, but that does show the issue was considered and talked about. But I can provide the tests to you in relation to that question on notice, expert toxicological advice and the facts go to all concerned.

The Hon. Jeremy BUCKINGHAM: That is interesting. What is the difference between the human health impact and just the level of exposure you receive? This human health impact relate to your long-term health, as opposed to the level of chromium that you may or may not have absorbed in the last three days or 24 hours?

Dr CHANT: Sometimes there different uses for testing in an occupational setting as opposed to a community setting, so an occupational setting, you often have - you monitor the same individuals over time so that you can actually see where a particular event has increased their background levels and that gives advice around whether the mitigation strategies that the companies put in place are actually working; so sometimes we monitor for different purposes; so monitor checks of the procedures are working to keep people's exposure minimised.

There are only a very small number of cases where there is a good correlation between a one-off level and then how we would use it for (inaudible) exposure and has an impact. Lead is probably a good example where we do, for instance, childhood lead service studies in Broken Hill, and we have a monitoring program for lead in Broken Hill. There is a very good correlation between your lead levels and your outcome, and we know how we need to drive lead levels lower to avoid any adverse health outcome.

In relation to chromium, hexavalent chromium, the one-off measures would not be useful because you get variety in the population in terms of baseline measures so in terms of being a much more conservative and valid approach, as I said, the advice was modelling people's exposure through a variety of standard assumptions about how much people breathe, how much soil a one-year-old consumes, and how much green-leaf vegetables people consume. That will give a very conservative estimate of what your exposure is and that is what we are interested in in terms of being able to provide advice to the community about whether there are any acute health effects or any long-term health effects.

The Hon. Jeremy BUCKINGHAM: I am not a doctor, and I can understand why that would be a model that is widely adopted if you are doing long-term health studies; but with a one-off incident rather than you use standard assumptions about levels of exposure to highly toxic compounds, would you not think that it would be smarter to - and give greater rigour or also certainty to the community for them to understand exactly how much chromium they had? Because you could do a comparison between people in New South Wales or Stockton who were unlikely to have been exposed and had a look at their background of exposure and then actually do a blood test of those people who may well have been, because the key thing with the urine test is that you would have to have done it relatively quickly, so do you not think rather than standard assumption, you could have just done the testing to make sure those people who may or may not have been exposed, exactly what they may or may not have been exposed to?

Dr CHANT: I think there is also a fundamental - I think it is probably best to address why I provided a detailed response because this is, obviously, something that these are very a technical areas, and I think it is very important that we spend the time articulating the rationale for it.

I am very convinced that blood testing and urine testing in this circumstance was not appropriate. One of the other considerations I suppose to highlight perhaps the impact undertaken, to give you a much more synthesised report on this, is the fact that within a pocket small number of the affected households, you will get incredibly large variations in a population. I am referring to a study that was actually done and the differences between the exposed and non-exposed, you have this magnitude between individuals and when you have got a small number of individuals possibly exposed; you are really not going to be able to conclude without a history of their previous levels of chromium exposure.

Things like tobacco smoke and exposure to cigarettes and other things can influence the levels. So there is significant variability in humans and my understanding is there is also genetic variability in the way one deals with chromium, including in relation to uptake by the red blood cells which are a genetic perimeter as well. So for all of those reasons, one-off result for an individual will not give you an indication that is what you got from that exposure, so hence --

The Hon. Jeremy BUCKINGHAM: So you are saying if you had been exposed and had inhaled it, that a blood test would not show beyond what could just be background chromium exposure, it would not spike much higher?

Dr CHANT: You would not necessarily know. The levels we encountered here are so low; you would not be expected to see a dramatic difference.

The Hon. Jeremy BUCKINGHAM: What does New South Wales Health do to measure the human impact of the emissions from Orica's operation, not to mention the continued breaches as well as the emissions of all the other heavy industries on Kooragang Island, such as the coal loader, the proposal by Orica to increase ammonia nitrate production, as well as the proposal by Incitec Pivot to build an ammonia nitrate plant adjacent to the Orica plant?

Dr CHANT: The New South Wales Health Services directly monitor emissions. The Office of Environment and Heritage has a regulator and has a series of air quality monitors throughout New South Wales. So in terms of what the plans are in relation to the monitoring, it is most appropriate that the Office of Environment or Heritage or EPA to comment on that.

New South Wales Health has been engaged in understanding the impacts of air quality on human health, and we have been doing some particular work in the Hunter. Certainly this incident has violated the importance of Kooragang Island and having a good understanding of that and Health has been engaged on the start up committees for the Kooragang Island, David Durham from the Local Public Health Unit sits on that. And also Mr Durham had also attended the consulting forums in the community, so both those ways the Local Public Health Unit will certainly have a significant issue for them to follow up.

The Hon. Jeremy BUCKINGHAM: Thank you, Doctor. The door knocking - I know you have answered it in a previous question related to this - but the door knocking script was written by employees of Orica advised the company's door knockers that if they find evidence of hexavalent chromium on a resident's property to say to the resident, I quote:

"This appears to be sodium chromate. Please do not be too concerned. We have consulted with our internal medical and occupational hygiene professionals and they have advised that there is little to no risk from this substance. However, we would like to clean this up for you."

In contrast to this, the material safety data sheet for Chromium VI, which Orica must be very familiar with says Chromium VI is:

"Toxic if swallowed, inhaled, or absorbed through skin, causes burns by all exposure routes, may cause allergic, respiratory, or skin reactions, is harmful if swallowed, toxic to organisms, may cause long term effects in the aquatic environment and is a cancer hazard."

Doctor, which one do you think is correct, the door knocking script to the communities affected by the fall-out or the material safety data sheet of Chromium VI?

Dr CHANT: I think the most useful information is that provided by Health fact sheets. The Orica script, I would have to look also in terms of timing issues and probably goes back to the previous question; the confirmation of the hexavalent chromium (inaudible) that day, so there is a possibility that this script was constructed much earlier; that they were basing it on the sodium chromate.

I could not actually verify what their thinking was in terms of saying what they were saying, but the pure test result came back a day later which would also explain the timing issue with Hunter Public Health Unit; but certainly in terms of the community, New South Wales Health's communication with the community has always been clear, that it is hexavalent chromium that we are concerned about. We do talk about chromium existing in other states and other states are not harmful, and that we have provided advice in relation to both the acute and long term effects that can be experienced by chromium.

The Hon. Jeremy BUCKINGHAM: You could certainly say that that script downplayed the toxic nature of what ended up being a compound identified as hexavalent chromium?

Dr CHANT: In reading that script, certainly that was my concern and I did forward that on to get some reconciliation between the advice that the Public Health Unit had been working with them. It may turn out that that script was forwarded through a media channel and the scripts had not connected in terms of what information Orica employees were giving.

The Public Health Unit Director had no reason to believe in his discussions with the major projects manager, who he was liaising with, that the door knockers were giving other than the messages that had been agreed between him and the public health unit.

The Hon. Melinda PAVEY: I just have a follow up question to Dr Chant in relation to the childcare centre. Just confirming, that that was north of the plume and you found no traces of Chromium VI at the childcare centre?

Dr CHANT: That is correct. The childcare centre was in the six block area that was given the precautionary advice but as you can see from the map, the childcare centre was certainly located in the northern area and the most affected zone of the six blocks that we have identified as potentially affected, which are these areas here, certainly the childcare centre is in the northern aspect of that.

CHAIR: I just note for Hansard's information that Dr Chant was pointing to the map in an area south of the predicted direction of the plume.

Minister, the Committee may wish to put some questions on notice. Would you be happy to accept them?

MINISTER: Absolutely.

CHAIR: Could we have an undertaking that the answers to the questions are returned within 21 days of them being sent to you?

MINISTER: Yes.

CHAIR: Thank you Minister, thank you Dr Chant, your evidence was erudite and very professionally worded.

I will now adjourn the hearing until 11.45 am.

(The witnesses withdrew)

(Short adjournment)

CHAIR: I will restate the broadcasting guidelines because we have a few more media personnel here.

The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the guidelines governing broadcasting proceedings are available from the staff at the side table.

In accordance with the guidelines, media can film Committee members and witnesses but people in the audience should not be the primary focus of any filming or photographs.

In reporting the proceedings of this Committee, the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee.

I will also remind all members and people in the public gallery, please turn off your mobile phones. Thank you.

I will now proceed to welcome the Premier. Premier, as you have already sworn your oath of office, you do not need to be sworn in today. Would you like to make an opening statement Premier?

BARRY O'FARRELL, Premier of New South Wales, examined:

PREMIER: Thank you for the opportunity to present to this Inquiry. As you are well aware, the Government moved quickly to set up the O'Reilly inquiry into this incident at the Orica plant at Kooragang Island on August 8.

That inquiry came up with nine recommendations to ensure that such incidents are handled properly in the future. All nine recommendations are being implemented by the Government.

Personally I do not see any need for this second inquiry. As I have said, the matter has been thoroughly examined by the independent inquiry headed by Brendan O'Reilly. However, I am happy to put those reservations aside, partly because this is the responsibility of the Upper House, it operates separately and secondly because I want to look at any measure which would protect the people of Stockton and indeed people living near any industrial and chemical area across the state.

I hope the Committee shares that goal and wants to come up with constructive solutions for the problems we saw at Orica rather than looking to use these proceedings as a way of taking cheap political pot shots.

Mr Chair, the Orica incident on 8 August is a classic example of the type of flawed legislation we inherited in coming into government. It seems incomprehensible that we had legislation that required companies like Orica to report spills and other incidents "as soon as practicable" after they happened.

As soon as practicable became a euphemism for when we feel like it; as we saw with the Orica incident.

It subsequently emerged that as soon as practicable could have meant a few days or under one interpretation, could have meant seven days. What a ridiculous situation.

It is no surprise therefore that Orica waited 16 hours before reporting the spill of ammonia nitrate to the local office of environment and heritage.

That is where the problem started and that is where it just got worse.

Clearly there were further communication delays, particularly with the Office of Environment and Heritage but we should be clear on one thing, Orica was too slow to report this incident. They did not give it the attention it deserved and worst of all, they did not warn local residents quickly enough about the potential risks.

I have door knocked streets across Stockton opposite the Kooragang Island plant and I can

assure you that the people there are not interested in inquiries or in the blame game. They simply want a safe environment for their family; perfectly responsible and understandable.

They want to be warned as soon as possible if an incident occurs so they can take appropriate action to protect their health and that is why we are adopting one of the key recommendations of the O'Reilly report, to establish an independent monitoring network for the lower Hunter area.

I can assure you, this is what the people of Stockton want and so would you if you lived in the shadow of an industrial chemical plant like that of Orica's at Kooragang Island.

We have also put in place new legislation to require companies to report incidents like this immediately. So no more will we have companies reporting spills when they feel like it or as the Labor Party legislation said, as soon as practicable.

If companies want to cover up these incidents, if they want to delay informing the public and the authorities, they can face penalties under the legislation now of up to \$2 million and the Government has demonstrated it will not stop there.

The Environmental Protection Agency has just shut down Kooragang Island's plant and it will remain closed until Orica can prove that it will be operated safely. So companies like Orica across New South Wales are on notice. We are not going to tolerate the blatant abuses of environmental laws that have occurred in the past.

We are giving the EPA new teeth with increased penalties. We are making companies report incidents immediately and the rogue operators who want to thumb their noses at us can expect to have their operations shut down.

Finally, in regard to my own involvement in this incident, I repeat the evidence which was presented at the O'Reilly inquiry. On August 10 at around 7 pm the office of the Environment Minister notified one of my press staff as to a possible media story about the Orica matter.

On August 11 my chief of staff was advised by Minister Parker's office about the actual incident. Shortly before question time on August 11 I agreed that Minister Parker should make a ministerial statement to the Parliament.

I subsequently moved to set up the O'Reilly inquiry and order a full environmental audit of the Kooragang Island plant.

In other words, this Government has taken the appropriate steps to review this incident and to do all we can to stop it happening again. Clearly a company like Orica can have further incidents like this. The difference is that there is now a government in place which will hold them to account and if necessary, shut down their facilities to ensure that the public, whether living nearby or across the state, understand that we are serious about enforcing environmental regulations.

The Hon. Luke FOLEY: Do you endorse the comments of your Environment Minister made in the House on 23 August that "people were informed when they needed to be informed"?

PREMIER: Well I cannot recall those comments in detail Mr Foley, but I do not believe that given the delays that were involved, both in notifying the relevant agencies by Orica, nor within Government, that people had appropriate notification. I spoke on ABC radio that week or the week after and followed the parent of a child at the childcare centre. That parent made clear that as of the Thursday night when they picked up their child they were still not notified of an incident that had occurred on the Monday.

I make it clear that it was absolutely unacceptable. We are all parents. We can all understand precisely what that father - because it was a man - and what his wife or partner would have felt when the next day or the day after they discovered that there had been this spill from Kooragang Island. We can all understand their concern for the welfare of their child.

Now as I understand the evidence from the Chief Medical Officer, Kerry Chant, the good

news is that the childcare facility was not in the path of the plume, but who was to know that then, and frankly as a parent myself, I believe that those people were entitled to know earlier.

That is my view about this Mr Foley, no one should be happy about the notification of the public and that is one of the reasons why we sought to change the legislation, so that it has to be immediate and so that the agencies can take immediate action, including notifying communities.

The Hon. Luke FOLEY: Indeed Premier and this morning with your Health Minister and the Chief Medical Officer, we learnt that at 14.25 on the Wednesday, New South Wales Health delivered a precautionary health message to be conveyed to Stockton residents, including a direction not to drink tank water or eat vegetables from yard gardens.

Surely it is unacceptable that it took until late on the Thursday for that precautionary health message to be conveyed to the people of Stockton, is it not?

PREMIER: I do not know what evidence was presented this by Dr Chant, nor Ms Skinner. I have been engaged this morning in events surrounding the visit of the Danish Crown Prince and Princess but I have full confidence in Dr Kerry Chant. I have absolute full confidence in her competence and the way in which she has handled this issue.

If there were any delays, and that is your suggestion, I presume they were for good reasons by her.

The Hon. Luke FOLEY: Given what you have said in your introduction, are you comfortable with the precautionary health message not being issued until late on Thursday?

PREMIER: I am confident that Dr Kerry Chant has handled the situation well. I am confident that Dr Kerry Chant handles it independently without direction from Government. That is how I want my agencies to operate and I say again, having not heard the evidence she presented here today, but having heard your recollection of it, forgive me for being slightly sceptical about whether or not any reasons were given by Dr Chant as to why that might have occurred.

The Hon. Luke FOLEY: But as a parent, Mr O'Farrell, Orica's 16 hour delay was unacceptable, I think we are agreed on that, but was not the state's 54 hour delay after that also unacceptable?

PREMIER: I made clear no bones about this, I have said this on radio time and time again, that the delay in notifying the Minister, the delay in notifying the Premier, who was the head of Government, was completely and utterly unacceptable but understand no government agency was responsible for the spill; understand as I think I read from India last week, the extraordinary situation that the first time those in control of the plant knew that there was a spill was when they saw yellow dots on helmets.

It just appeared to be a complete and utter breakdown or some cavalier attitude by the company involved into these sorts of spills and that is why more than a week later, when I was at COAG and got the message about another incident at Orica, I publicly expressed what was my view then, which is about systemic problems suggesting some cavalier attitude towards the way in which environmental laws will be applied.

The Hon. Luke FOLEY: You talk of the breakdown Premier, was there not also a breakdown in the whole of Government response for an agency of Government to be alerted by Orica belatedly at 10.30 on Tuesday, to take till 3.30 on Thursday, surely that was a breakdown of effective government in communicating with the people, was it not?

PREMIER: I have said time and time again that it was an unacceptable delay and time and time again I have said I certainly do not want to see it again.

The Hon. Luke FOLEY: The Minister for Environment we have learnt through her answers to questions in your House that she became aware late on Wednesday afternoon. Her statement at 3.30 on the Thursday, surely that was an unacceptable delay of 23 hours for the Environment Minister to

go and make a statement after she was officially notified, was it not?

PREMIER: Well firstly the statement was made when ministerial statements are usually made in our House. Secondly though, my recollection in conversation when I was interviewed by Mr O'Reilly and when I read the O'Reilly report, was that that original notification to her office was some part of some systemic or some system-wide notification which was not someone picking up the phone to the Minister saying: Minister, we have a major or serious issue here at Kooragang Island, you be alerted to this. As I understand, it was more general. As I understand, and I could be corrected on this, from my conversation with Mr O'Reilly, it was not even a specific personal email to the Minister; it was a broadcast email to a number of people.

The Hon. Luke FOLEY: Indeed, but she was notified; she had the discussion with Ms Corbyn that evening as the head of the Office of Environment and Heritage. She could have notified the public on the Wednesday night, could she not?

PREMIER: Just understand what the practice had been, as I understand, in Government for some time; that is that no notifications were made. I think Minister Parker has detailed to the House on a number of occasions similar serious spills in Sydney and elsewhere that were never subject to notification by ministers to the public. So what you have and what I think Mr O'Reilly has addressed, is the need to change a culture within the bureaucracy; the need to ensure that the public interest is put to the fore and that is what I say, what I am interested in, with all due respect Mr Foley, is not the political witch hunt that some seem to be trying to make their careers on, but ensuring that we have in place processes that offer the residents of Stockton and residents around the Port Botany facilities and other industrial facilities across the state, confidence that in future these situations will be better handled.

That is why legislation that has gone through the House creates a far more independent environmental protection agency than we have had in this state for almost a decade. That is why we have changed the notification rules. That is why you have made some amendments to the way in which that EPA will report to the Parliament, the way in which the head of that EPA will be appointed, because we want to get more rigour back into the process; rigour that was lost, with all due respect, over 16 years under the former administration.

The Hon. Luke FOLEY: But Premier, you speak of previous incidents, this is the first incident any of us can remember where hexavalent chromium was rained on a residential community. Surely you can agree that the Minister for Environment should have taken far, far less than 23 hours once she personally was notified of the incident? Cannot you agree with that?

PREMIER: The point I make time and time again is that the delays in notification were unacceptable but I noticed in the evidence Mr Liebelt gave in response to questions from the Hon. Matthew Mason-Cox, that there had been a series of incidents at this site - October 2010, March 2011, June 2011, two incidents in August 2011 and November 2011. Now three of those incidents - October 2010, March 2011 and June 2011 were a surprise to me until I read Mr Matthew Mason-Cox's question to Mr Liebelt and his answer.

So what I am saying to you is, what I said a moment ago, there clearly was a culture within the Department and I am happy to give the Labor Party the benefit of the doubt, whether because of political instructions or because of political training or because of a lack of understanding of the need to give the public a greater say, which clearly was unacceptable. I have said that time and time again. I stand by that.

The Hon. Adam SEARLE: Premier, WorkCover took more than 48 hours when it did have information that hexavalent chromium, a known carcinogen had been emitted onsite, to get inspectors onsite and it took Health over 24 hours from when you knew of that emission before you bothered to check whether WorkCover knew. Do you find that acceptable and what steps would you take as Premier to make sure that agencies get their act together?

PREMIER: Well, the step we took was to appoint Brendan O'Reilly to inquire into this matter. Mr O'Reilly has made recommendations to cover all agencies, which I am sure it is a process that will add greater (inaudible). Let us understand here that the failing - whilst shared by

agencies - was a failing of Orica's making. And so amongst the most remarkable evidence that I saw in India last week coming out of this enquiry was the claim by Mr Liebelt that he had not inquired of his own staff at Kooragang Island who had been told by the Office of Environment and Heritage to contact the Department of Health why there were delays in that contacting period.

I find that absolutely amazing that despite all - firstly, clearly the instructions of the Office of Environment and Heritage for staff at Kooragang Island and the Orica plant contacted the Department of Health were ignored/delayed. I find it even more incredible that the head of the company has not bothered to inquire, particularly his coming along to talk to you, as to why those delays occurred.

The Hon. Adam SEARLE: Just that point, Mr Premier, it was a New South Wales media unit that was notified by the Office of Environment and Heritage media unit according to the Health timeline as to the leak. If Environment and Heritage had told Orica to contact Health, why did they not do so directly themselves rather than--

PREMIER: Well, again, that is an issue that Mr O'Reilly has addressed. It goes to the issue of culture. There is an issue of culture that has arisen over the past 16 years. It is a culture that I cannot be clearer on that was one of the things I do want to change. It was simply unacceptable.

The Hon. Luke FOLEY: Premier, surely, as a parent as you say, letting the community know on Tuesday, after your own agency the OEHL had been advised that morning, letting the community know on Tuesday would have kept kids out of gardens, would it not?

PREMIER: Having an early warning system. Look, I door knocked part of Stockton. I have spoken to residents who saw emissions from the tower who then picked up the phone to Orica, so despite the evidence last week, we are actually ringing and telling me people what happened. I spoke to one resident who had two kids playing outside at that time, who immediately asked her children to come in; so, absolutely. This is completely and utterly unacceptable from the moment that that spill emissions plume was released. And my concern is the delays of Orica notifying the authorities, certainly the delays in the authorities notifying Government; but overall, on both sides notification of the public. Ultimately, we in Government are in pursuit of public need. Ultimately, it is about public interests, including public interest was failed here.

The Hon. Luke FOLEY: Well, it was failed by Orica. We can agree on that. You talked about a failure shared by agencies. We can agree on that. Can we go to your Cabinet? What about the failure of your Environment Minister in sitting on the information for 23 and a half hours before telling the community. Can you accept that there was a failure on the part of that Minister?

PREMIER: I have addressed that point. Presumably, the Minister was advised by her agency. The Offices of Environment and Heritage, presumably the Minister took that advice and the next day at appropriately when the Parliament did the ministerial statement, they say it was made. I noticed that Mr O'Reilly's report, probably the only part of the report I suspect all of us around this table will take some issue with, did not believe a Minister or statement in Parliament was, in fact, notification of the public. I have always thought that what we do in Parliament is public. I have noticed that the media operate on that basis as well. The delays that occurred, which were principally Orica to Government, the government agencies to the Minister, government agencies certainly to me were unacceptable, and Mr O'Reilly's report, a thorough report, by someone who has been supported and appointed positions on both sides of politics has addressed these issues in a way that I think can provide residents with confidence about the future. Strengthening the EPA; putting in fines and notifications ensuring all communications between the agencies and restoring an independence of the EPA that has been sorely lacking.

The Hon. Luke FOLEY: Surely, Premier, given the seriousness of a leak of a toxic chemical into a residential suburb with 4000 people in that isolated suburb, a Minister hiding behind when ministerial statements are made during the course of the day does not cut it. She should have got up on the Wednesday night, surely.

PREMIER: You talk about seriousness. It is a seriousness that I absolutely agree with. Chromium VI is a serious chemical, but the agencies involved did not regard it serious enough to pick up the phone to the Premier; did not regard it serious enough to pick up the phone to the Minister and

that is the culture after 16 years of Labor we need to fix; and it is the culture that I think the O'Reilly report addresses and the O'Reilly report has put down a blueprint that we're implementing to ensure this does not happen again.

The Hon. Adam SEARLE: Premier that does not explain why the Environment Minister waited 23 and a half hours before she made a ministerial statement. Leaving aside when ministerial statements are made, there would be nothing to stop her making a public announcement about these matters before that time.

PREMIER: Firstly, as I am told, including by the Chief Medical Officer, before people race off to create alarm, they need to be sure of their facts. I was not here this morning. I did not hear Dr Chant's evidence, but I suspect that she was being suitably cautious, as you would expect someone in that position to be, before she made her public statements, which I understand was on the Thursday afternoon. But the point here, I say again, the point that cannot be ignored, no matter how many times you ask the questions, the agencies that were delayed in being notified about this report did not regard it with sufficient seriousness to pick up the phone to the Premier or the Minister and the fact is that you know if some call comes into my office from any part of Government that is about seriousness, it is very easy to get a hold of me or my Chief of Staff and get that response.

The Hon. Luke FOLEY: Premier, why is it unacceptable for Orica to take 16 hours to advise but acceptable for a minister to take 23 and a half hours to advise?

PREMIER: Well, the question there you are missing is why is it acceptable for government agencies to equally delay notification of the Minister, to equally delay notification of the Premier and not be as concerned about it, as clearly we were notified, and clearly this inquiry in the O'Reilly report says we should have been.

The Hon. Luke FOLEY: Well, I will rephrase it then, Premier. Why is it unacceptable for Orica to take 16 hours; unacceptable for the Office of Environment and Heritage to take - I will do my maths on the run - 30 hours, but acceptable for your Minister for Environment to take 23 and a half?

PREMIER: Well, I think I have addressed that a number of times already. The fact is that there were unacceptable delays, notification of Orica to the agencies, agencies to Government, the elected Government, which I think relates to a cultural and administrative role that Mr O'Reilly addressed in the report; a culture that we are changing through changes to legislation and/or arrangements, particularly in relation to cross agency communication and co-operation if such event occur in the future.

The regret is that no Premier can sit before this inquiry and no Premier can stand up in Parliament and say that there will not be a chemical spill across this state. All we can do is put in place, as we are through the O'Reilly report recommendations, a system that seeks to minimise the potential fall-out for citizens, seeks to minimise the time delay in agencies swinging into action and seeks to minimise the time delays in notifying the public of these incident when they occur.

The Hon. Luke FOLEY: What do you say that the principal and staff at the Stockton Public School who made a formal submission to this Inquiry:

"We believe the Government did not take responsibility for the people of Stockton because they did not inform the community for 54 hours. This in our opinion is negligence and we believe the Ministers concerned did not take responsibility for their own portfolios."

PREMIER: I can understand their concern, just as I can understand the concern the parent who picked up their child from the childcare centre, but, of course, they use figures that Labor has been very quick to bandy around, but figures a moment ago you accepted included hours, tens of hours before either the Minister or in this case, in my case, the Premier were notified of the spill.

The Hon. Luke FOLEY: Now, when is a ministerial statement is ordinarily made in the Legislative Assembly?

PREMIER: After question time.

The Hon. Luke FOLEY: Before question time?

PREMIER: Before and after question time there are ministerial statements.

The Hon. Luke FOLEY: Why did your Minister not make her ministerial statement prior to question time?

PREMIER: I will have to check on that, but I am happy to check on that.

The Hon. Luke FOLEY: You advised the House in August under questioning that, "My press office was contacted the night before about the possibility a possible story." The night before, Wednesday night before the Minister made her statement, who was your press office contacted by?

PREMIER: A press officer in the Minister's office. As I recollect, it was around 7.30 in the evening. I think the press secretary in my office was contacted on his way home.

The Hon. Luke FOLEY: Mr Burden?

PREMIER: Mr Robertson's friend. He was advised of a potential issue that might arise the next day in the media, and that was extent of it; no particular attention to it. I have to say that such calls of potential media stories are reasonably common and possibly half of them do not eventuate into anything.

The Hon. Luke FOLEY: But this was advice from the Minister for Environment's personal staff to your press secretary that a chemical spill had happened at Orica and blown into Stockton, was it not?

PREMIER: This was advice, as I understand it, from one press secretary to another press secretary about a possible media story in Newcastle, maybe the next day about a chemical spill. There was no particular seriousness attached to it as I understand, and that is consistent in my view with the lack of seriousness with which the agencies had had been treating this matter.

The Hon. Luke FOLEY: Well, Premier, documents returned to the Legislative Council tell us, 5.00pm approximately on the Wednesday, Kelly - I think that is Kelly Stevens from Minister Parker's office - called Brad Burden, the Premier's media advisor, to inform him what had happened.

PREMIER: My understanding is that the call was made between 7.00 and 7.30. I have not known Mr Burden to leave the office before 7.00. He often leaves much later. He has a clear recollection that it was a phone conversation he had while he was driving in his car - I am certain hands free - with Minister Parker's press secretary.

The Hon. Luke Foley: The documents before us, Kelly called Brad Burden, the Premier's advisor and informed him what had happened. That is more than simple a tip-off that there might be a media story, is it not? Surely, this was notification to your right-hand man, the man who has been with you since Opposition, about what had happened. They are the words of an Environment Minister's office.

PREMIER: All I am telling you are the words of someone who has been on the Opposition, as he was driving home that night he was alerted to a potential media story in the next day's papers. No more waiting, no less waiting than that; and, of course, the next day my office was notified of the nature of the spill. I was notified at lunchtime before the House sat and, of course, I agreed that the Minister should make a ministerial statement.

The Hon. Luke FOLEY: Did you know that night about the phone call he had from the Environment Minister?

PREMIER: Mr Burden rang me every time he had a tip from either a media source or from a Minister's press secretary about potential stories in the next day's paper. I would never get any work done at night. My phone would never be able to be accessed by anyone, let alone bureaucrats who want to tell me about a serious incident somewhere, so the answer is no.

The Hon. Luke FOLEY: Mr Burden let you know the next day?

PREMIER: I was advised the next day after my Chief of Staff was briefed by Minister's Chief of Staff.

The Hon. Luke FOLEY: We also learnt this document from Ms Stevens has been very helpful. At 9 am on the Thursday Minister Parker and her Chief of Staff, Catherine O'Reagan briefed the Premier's Chief of Staff, Pete McConnell, is that your understanding?

PREMIER: Yes, I understand there was a meeting about another issue and certainly at that meeting this issue arose.

The Hon. Luke FOLEY: She goes on to tell us that the Premier's Chief of Staff, Pete McConnell and Communications Director, Peter Grimshaw, advised Catherine that the Minister should do a statement in the House after question time. Is that your understanding?

PREMIER: I do not quite know the timeframe of that statement but that decision was not taken until I made it and directed it, and that was not until after about one or 1.30 that day because I had a meeting in my office with a number of people. I was briefed after that meeting, which was lunch time and I directed that the statement be made.

The Hon. Luke FOLEY: Premier, we have it here in writing from the Environment Minister's office that your senior staff advised Robyn Parker's staff to not do a statement until after question time.

PREMIER: Well I am curious as to whether you are suggesting that was done at the nine o'clock meeting or whether you are suggesting it was done later, because I have to say that I find it far more efficient for one person in my office to ring someone as opposed to what has been suggested there, that two people are telling people to do things.

The Hon. Luke FOLEY: What we have here and I can only go on what is here, I do not have other information Premier, is that at 9 am the Minister and her Chief of Staff briefed your Chief of Staff and that your Chief of Staff and Communications Director advised that the Minister should do a statement in the House after question time.

PREMIER: That was not at nine o'clock, that decision was not made until after I was notified at lunch time that day.

The Hon. Luke FOLEY: Why was the decision taken to delay the ministerial statement until after question time?

PREMIER: The decision was made to make the ministerial statement at question time. That is the other mystery in that statement there, but I suspect what Ms Stevens may well have done is have a look at, in terms of trying to put together a timeframe, the Hansard and seen that on this day the statement was done after question time. Most of the ministerial statements are done after question time.

The Hon. Luke FOLEY: They are often done prior to question time, are they not?

PREMIER: Most ministerial statements are done after question time.

The Hon. Luke FOLEY: Was the decision to delay until after question time an exercise in protecting your minister from question time scrutiny?

PREMIER: Not at all, because think about this Mr Foley, the statement by the Minister was the first time that the public were notified. I do not believe that if there had been a statement at the start of question time, as I say, most statements are after question time, that would have provoked any questions from the Opposition because if--

The Hon. Luke FOLEY: You do not think we can think on the run?

PREMIER: Well, I will leave that to you. Certainly upstairs I believe the Opposition can but I am not sure about downstairs.

The Hon. Luke FOLEY: I put it to you Premier that this was a deliberate exercise in keeping this from the community until the Parliament was getting up for the week?

PREMIER: Mr Foley, you can imagine and have a wild imagination that suits your political needs, but if that was the case, there would have been no statement at all and that would have been entirely consistent with the approach that Labor took of 16 years in Government of never notifying the public of such spills.

The decision I took at lunch time was for there to be a public statement; to be a public statement at the usual time and that is what the Minister did and it was followed shortly thereafter as I recall by a statement by Dr Kerry Chant.

The Hon. Adam SEARLE: Premier, can you identify another previous incident where a toxic chemical was blown over a residential area?

PREMIER: Well I would have to go and check this but I am certain that in relation to an incident relayed to the House by the Minister for the Environment there was one. I seem to recollect it was in relation to the Maroubra electorate, which was equally as serious and frankly if one of my staff wants to go and refresh my recollection, I am happy to put that on the record again before I finish my evidence today.

The Hon. Luke FOLEY: Can I ask you Premier as Minister for Western Sydney, how much liquid waste was transported from Orica to the liquid treatment plant in western Sydney?

PREMIER: I do not have those details at my fingertips. What I am confident of is that it was done in accordance with the environmental regulations. It was done to a facility that was licensed, I understand by your government to receive such material and any concerns about the way in which it was treated at the time just reinforces the changes that we have made to the Environmental Protection Agency following the receipt of the O'Reilly report.

The Hon. Luke FOLEY: My interest Premier is why in her ministerial statement or in the days after the Minister did not tell the public that 1200 tonnes of toxic waste water were transported from Kooragang Island to Homebush Bay.

PREMIER: Are you now suggesting that there be a reporting of every movement of toxic waste across this city, because I suspect if you do, there will be endless statements because it is part and parcel of life. That is why your government has licence facilities across this city to receive toxic waste. Toxic waste is regrettably a part of the everyday activities of human kind in an industrial city like Sydney, Newcastle and Wollongong and there are facilities and there are rules about its movement.

The Hon. Luke FOLEY: Indeed Premier, but this was a matter of great public interest and has been for over 100 days now and people did not learn of the disposal of the toxic waste water from your Government, a government that repeatedly states it is committed to openness and transparency, it learnt from the Channel 9 news. That is unacceptable, is it not?

PREMIER: But I say again, are you now suggesting, because Mr O'Reilly has not suggested it, the Environmental Protection has not suggested it, I am not aware of any agency that has suggested it. I am not aware of any practice in any other cities in Australia where the movement of toxic waste is subject to press release.

Now it might suit your political aspirations to have this information out there to whip up fear, but when I was door knocking Stockton, the concern was to ensure that when and if these incidents occurred again, there was better notification to the public, that we had better monitoring going on, that the agencies would react more smoothly and quickly and co-operate better so as to try and minimise

the risk to health.

CHAIR: Before I hand over to Mr Buckingham, I will maybe put one question to you. You commented that you feel that part of the problem has been the development of a culture within departments, within bureaucracy that perhaps has not treated this the way it should have been treated. What sort of mechanisms do you think you will be using to make sure that that culture is disassembled?

PREMIER: One of the issues Mr Brown is that I have argued previously that giving clear goals and directions to Government, whether in this area or other areas, will help the state's public servants understand what Government expects of them.

I have made the point, and I do not want to get too political here, that if Government was unclear, as I think they have been for sometime in a number of agencies as to what was expected, or whether in environmental areas it was simply - with all due respect to Mr Buckingham - look after the Greens as opposed to public interest, I am not surprised that we got some of the outcomes that we did.

So we are determined to set some clear goals and to have our bureaucracy work to those goals, and of course, focus on outcomes. One of the issues that I think Mr O'Reilly correctly has elevated is one that has always concerned me, which is making sure that the public interest is front and centre of all they do.

Public interest to be front and centre; firstly we have changed the rules so that notification is much earlier by companies to Government and Mr O'Reilly set in place some rules and procedures around the way in which agencies will co-operate in order to protect public interest but also to notify public communities that are affected by such spills.

But culture change is probably the hardest thing anybody does, whether in their own organisation or whether across Government or when Government comprises 322 public servants, all of whom have signed up to provide public service; all of whom are well motivated to do so. It is clearly much harder to effect across the full board.

I think what we have seen, particularly since the O'Reilly report recommendations were made, accepted by Government, is a change of a culture in these agencies and that is a good thing, because as I tell my two boys, you make a mistake once, but do not make it a second time, because that shows you learnt nothing.

The Hon. Jeremy BUCKINGHAM: Where does the buck stop in your Government when it comes to the environment?

PREMIER: Well ultimately it stops with the Government but if your question is about the separation between the elected Government and the bureaucracy, it is clear, Ministers, Cabinet set a policy. We expect the regulators to undertake the operation of activities that are associated with the running of Government.

The Hon. Jeremy BUCKINGHAM: You have said previously and you have responded, and we in the Greens certainly welcome that response, that any delay in these sorts of incidents is unacceptable. So you would acknowledge that any delay is unacceptable and any action by anyone that furthered or exacerbated that delay, that would also be unacceptable.

It is true that the Environment Minister made her first public comment on this by way of ministerial statement and that was the notification.

As you have said in response to a question from the Hon. Luke Foley, that that was at the usual time.

PREMIER: Yes.

The Hon. Jeremy BUCKINGHAM: You also said previously that it was on your recommendation that the Minister do this. Why did you recommend the Minister notify the public by

way of ministerial statement?

PREMIER: Unlike Mr O'Reilly, who takes a different view about whether a ministerial statement is public notification, I have always believed that notifying the public through the Parliament is the appropriate step to take. So I thought it was - if I can use the expression - a no brainer, once I had been notified at the lunch time before question time that there should be a ministerial statement made on the issue.

The Hon. Jeremy BUCKINGHAM: You think that in all these incidents there should be a ministerial statement?

PREMIER: I thought in relation to this incident there should be. Mr O'Reilly has subsequently investigated the matter, made a report, made recommendations but frankly there are always going to be fine judgments here, but the culture does need change. A culture that in the past did not have public statements made about serious spills needs to be overturned.

The Hon. Jeremy BUCKINGHAM: If the suggestion is that the community should be notified as soon as possible, do you not think that your action in recommending that there be a ministerial statement made actually furthered the delay?

PREMIER: Well understand that I think there was about an hour or so between my decision and the statement being made, it might have been an hour and a half; so I do not think that is the issue. The issue here, Mr Buckingham, is that as Mr O'Reilly has indicated, the agencies themselves should have been in a situation that had clear focus on the needs of those who lived at Stockton, the needs of those who worked at the facility and worked around the facility and the system should be capable of ensuring that the public are notified, and that is what Mr O'Reilly's recommendations seek to do.

The Hon. Jeremy BUCKINGHAM: You acknowledge that any delay is unacceptable and any action by anyone to exacerbate that delay was unacceptable and that your actions in recommending that there be a ministerial statement did delay public notification. Do you accept that your actions were unacceptable?

PREMIER: I would have to check this, but I am not sure that at the time that I was notified the Lower House was actually sitting. We do occasionally break for meals. I never seem to get a meal but it does normally seem to break for meals so it may well have been, Mr Buckingham, and I am happy to check this and come back to you, although I am sure a check of Hansard could do it pretty quickly, but I do not accept your contention.

What I accept is that the unacceptable delays were Orica to the agencies; the agencies notifying Government and that is what Mr O'Reilly has investigated, that is what Mr O'Reilly has made recommendations on and ultimately those recommendations are going to provide to the people of Stockton, people I have spoken to personally, people that I have door knocked some of their homes, with the assurance that should this happen again it will be treated far differently; that there will be better notification to the public and of course, the action in closing down the Orica facility makes it clear - an action taken independently by the Environmental Protection Agency, not an action directed by Government to try and provide a media smokescreen and that surely was the way it would have happened over the past 16 years, the action taken to close down the Orica facility and not be open until it be safer sends a clear message to Orica and other chemical companies across the state that flouting rules, flouting environmental laws is simply unacceptable.

The Hon. Jeremy BUCKINGHAM: So despite the fact that your office was discussing this with the Minister for the Environment at nine o'clock in the morning and it took seven hours in effect before the public were aware, you do not accept any responsibility for exacerbating the delay in public notification because of the decision making processes in your office?

PREMIER: As I say, I was notified about one or one thirty. Question time starts at 2.15. The ministerial statement was made at the normal time. I understand it was followed shortly thereafter by the statement by the Chief Medical Officer.

The Hon. Jeremy BUCKINGHAM: I understand that was the process but do you accept

that those decision making processes, the failure of the Chief of Staff to send a text message or email you or say you really need to make a decision about this now, exacerbated the delay by another seven hours or so?

PREMIER: I do not accept your contention. I think what I do accept is that the delays occurred well before then. Can I just come back to a question that was asked of me: October 2009, the Huntsman Corporation had a massive leak into the atmosphere 685 kilograms of ethylene oxide, a toxic gas; that was certainly in concentration that could be ill-refute and claim ill-health. No notification was made to the public. Thank you for that question.

The Hon. Jeremy BUCKINGHAM: Premier, thank you for that. You have said earlier too that you want to provide a safe environment for families with an independent monitoring network. New South Wales has already made recommendations to Orica and its previous expansion that they have an early warning system. This morning Dr Chant could not actually indicate whether or not there were any early warning systems in place around the state for any facilities like this. Do you think that is something that the Government should undertake to ensure if it occurs, we have early warning, not just early notifications?

PREMIER: I think one of the benefits is increased monitoring. I notice that over the previous decade and a half, monitoring stations, including air quality monitoring stations across this city, were closed down. I think increased monitoring can be and should be associated with early warning.

I can tell you when I door knocked Stockton, the residents told me there was a high-pitched sound as the material was emitted. That led them to believe that there was a problem. And that led someone to conclude that there should be an early warning system that you are talking about. And certainly whilst I understand, not necessarily Dr Chant's favourably, but it is one of those situations where the Government should be consulting. I also suspect that as a result of putting in place a liaison committee, one of the recommendations will come out of there.

The Hon. Jeremy BUCKINGHAM: Thank you, Premier. Modifications to Orica's plans to expand its Kooragang Island facility at the cost of approximately \$700 million currently before the Planning Department, do you believe the company should be allowed to expand its operations given it apparently cannot conduct current operations safely?

PREMIER: Well, that was going to be my answer, Mr Buckingham, only if it can demonstrate a safe operation. We do need jobs in New South Wales. We do need industry in New South Wales to provide those jobs, but I am not in the business of opening up our state to industries that are either going to threaten safety or threaten major toxic pollution, and so unless Orica was able to satisfy the Government of its safe operation, that plant will not be reopened.

After the initial two spills at Orica, we announced the first major environmental audit of Orica's Kooragang Island facility that has ever been undertaken. There are powers there from the former Government and when we noticed the questions asked by the Hon. Matthew Mason-Cox, there were spills at the plant there under the former Government but there was a major audit put in place by this Government and that is before we get to the most recent spill that we sought for that facility to be closed down. But your question is (inaudible) politics, are you going to shut down industries the answer is no. Industry is welcome, but it is welcome as long as it is prepared to respect the environmental laws and regulations of this state.

The Hon. Jeremy BUCKINGHAM: Rather than bring (inaudible) political threshold that can sometimes be passed in terms of cumulative impacts, so, therefore, do you think that (a) an ammonia nitrate facility located 800 metres from a local community containing a childcare centre, aged-care facility, hundreds and thousands of people, is appropriate; and (b), what about two ammonia nitrate facilities, given Incitec Pivot plans to construct another one adjacent to Orica's positioning? Are they not critical thresholds whereby we put too much of a burden on one community in terms of environmental impact?

PREMIER: Two things. The critical threshold in my view is whether or not the facilities can operate safely. So do they meet the requirements set down by the environmental regulators for

safe operation in any area; and secondly, if not in this area, and I am not saying it should be in this area, what other area of Sydney or New South Wales are you nominating that second facility to go to? So if we are going to be a sophisticated society and economy as we are, clearly it comes with industry. If you are suggesting that industry should go somewhere else, I think the obligation is on you as to where it should go.

What I am interested in is ensuring that a freshly reinvigorated Environmental Protection Agency ensures the Government firstly of our regulations for safe operating of these facilities, and secondly, through its regulatory activities ensures that those standards are adhered to.

The Hon. Jeremy BUCKINGHAM: Thank you, Premier. Acknowledging your answer, but Orica has breached its licence every time there has been a modification at the ammonia plant, where it has been shut down and restarted in 2001, 2006 and 2011. Now, I acknowledge there is a requirement for industry, but we do not have a nuclear power generation industry in New South Wales because it is deemed unsafe and the risks too high. Are the risks too high with this particular operation and with the potential for two of these plants in what is a residential area?

PREMIER: I thought we did not have a nuclear power industry in New South Wales because we were not prepared to sacrifice part of the coastline that it is to be located on. And that is certainly something that I fully support. Look, ultimately, Mr Buckingham, there are environmental regulations to provide safe environments for people across New South Wales, whether in regard to this facility or other facilities. What I am interested in is that we step up the environmental safeguard with an independent regulator that is prepared to back those.

And your point about Orica's past transgressions, well, the date you gave, is a date that coincides with the former Government. There is a new Government in town. I sit in August. After a second incident at Kooragang Island I was concerned with a systemic failure by Orica to abide by regulations, and as I said, that is unacceptable.

Their facility has been closed down. And I cannot say this stronger if I want to, and that is, that it will not be reopened until they can demonstrate safe operation and should they be foolish enough to transgress those regulations again, they will be shut down, and they will find it much harder to ever reopen.

CHAIR: We are going well. Does the Government have any questions? No? I might ask one further question then, Premier. Would a lot of industries that have a role in regulating their industry go so far as to place compliance officers onsite, not necessarily 24 hours a day, but at critical times? Given the fact that Orica may come back, may demonstrate to the Government that they are capable of operating safely, do you think the Government could perhaps look at the issue or look at the idea of placing Government compliance officers, be that WorkCover or someone else technically qualified, into some of these facilities for a period of time at the cost, obviously, of the industry just to ensure that they are onsite, immediate technical capability to perhaps guide the industries as to when they should comment about mishaps.

PREMIER: So you are saying an initial start up period not permanently to encourage good behaviour?

CHAIR: Maybe a six or 12 month period, perhaps.

PREMIER: Look, I certainly think that is an idea worthy of consideration. That has not been put to me before. It is an idea; you at least tick one box, in terms of if that idea is going to occur that the cost should not be the taxpayers' of New South Wales. It should be to the industries involved. It is a sort of parole, if you like, to demonstrate that they are able to operate according to the rules, and it certainly is worthy of consideration.

CHAIR: In a previous witness, I think it might have been the Hon. Greg Pearce, he was going to come back to the Committee on a question of how many of these major hazard facilities are around the state.

The Hon. Trevor KHAN: He answered that. He answered the number, but he said he would come back in terms of identification, the actual facilities.

CHAIR: Yes, but, of course, Orica at Newcastle is only one of a number of what I call a very large plant. I understand there more than 40 plants that may be categorised as a major hazard facility. These, of course, vary in their size. You could have a very hazardous small plant. On the larger plants like Orica in Newcastle, Orica here in Botany, all are located in heavily populated areas. Perhaps some short term onsite surveillance over a period of time might be a good insurance policy, Premier.

PREMIER: That is a good point, Mr Brown, which is that whilst this is an inquiry into Orica's Kooragang Island operations, whilst it is an enquiry into the impact that spills of that operation had on the residents of Stockton; to go back to questions asked, we have industries across New South Wales, regional, rural, and inland, and that is why it is important and that is why I think Mr O'Reilly's report is so important. That is why it is important that we have a whole state approach to communities. It is about protecting the residents of Stockton, but it is also about giving assurances to other communities across New South Wales that as well with other similar or like facilities, that just as much as the residents of Stockton; that they will be thought of when and if, regrettably it probably will be if, another spill occurs.

CHAIR: Thank you, Premier. I think that concludes this session. Thank you very much in terms of effort of co-operation. I wish you luck with your cultural re-education program. Thank you, Premier. Ladies and gentlemen, we will reconvene this hearing at 4.30pm this afternoon. Thank you.

(The Witness withdrew)

(Short adjournment)

CHAIR: Thank you, I call this afternoon's session of the public hearing on Kooragang Island Orica chemical leak to order. The Minister hasn't arrived yet but just to save time I think I will proceed to swear the witnesses. Ms Roy, could I ask you to state your full name and job title please.

LINDA ROY, Manager (Information Centre) Office of Environment and Heritage, sworn and examined.

LISA CORBYN, Chief Executive of the Office of Environment and Heritage in the Department of Premier and Cabinet, affirmed and examined.

GREG SULLIVAN, Deputy Chief Executive, Environment Protection and Regulation Group, Office of Environment and Heritage, affirmed and examined.

CHAIR: Minister, you are already sworn, you do not need to be sworn.

Before we proceed to questions from the Committee, Minister would you like to make an open statement?

MINISTER: I would thank you Chair.

CHAIR: Please proceed.

MINISTER: As a Hunter local I share the concerns of all those who have been affected by the recent Orica spill. People living and working alongside such a plant should not be exposed to unacceptable risk.

Orica's chemical spill on the 8th of August highlighted the need to change inadequate laws, improve communication and give the regulator more bite. The people of Stockton and Newcastle should expect no less.

The Orica spill was a vivid demonstration of what's wrong with the way the law in New South Wales has operated in the past and importantly how it cannot continue to operate.

When I became aware of this serious pollution incident, I found it difficult to comprehend how a company like Orica, which manufactures explosives and handles toxic chemicals, can operate so close to residents without the proper safeguards and response plans in place to notify residents about a serious incident and protect their health and that of the environment. It is irresponsible and completely unacceptable.

Orica must not be allowed to continue with a business as usual approach. Especially as business as usual for Orica appears to be a series of incidents, with a notification system that relies on others to let its neighbours know about the potential impact from its activities.

We could all take weeks, and even months, analysing who said what to whom in relation to the Orica incident but this is not what the community wants. The community wants action, they want industry to operate in a way that keeps them safe, protects workers and behaves like a good neighbour.

Orica has admitted, and the O'Reilly Report confirmed, that Orica failed the community and breached the community's trust. Orica's failure to inform the authorities until some sixteen and a half hours after the incident let the people of Stockton down. Again this is totally unacceptable.

After I was informed of the incident some thirty hours after it occurred, I took steps to ensure I had clear and constant information about Orica. I talked and indeed I continue to talk with Orica all of the time, but I do so through the correct channels, through the Office of Environment and Heritage, the EPA and my ministerial office and through them with other authorities when the need arises.

As Minister overseeing a regulator that prosecutes environmental offenders in carrying out my responsibilities, the advice given to me by the Office of Environment and Heritage was that it is essential to remain at arm's length from potential defendants in order to avoid any perception that prosecutions are or can be influenced by political considerations, avoid being accused of

discriminating in favour of or against particular persons, and avoid becoming involved in attempts a potential defendants may make to avoid being prosecuted.

From my point of view a phone call with Orica's CEO Mr Graeme Liebelt after the spill was not worth the risk of compromising a prosecution. Mr Liebelt said he wanted to assure me of the company's good standards. There is nothing Mr Liebelt could have said at that time which would convince me the company had good standards.

The EPA has recently commenced prosecution actions against Orica at Kooragang Island for the August 8th incident. These are in addition to three other criminal prosecutions and investigations which were already underway. These are not trivial failures, they are serious breaches by Orica of their operating licence and they are serious breaches of the trust to the community.

They are serious breaches with serious criminal consequences, the type of consequences that I was not prepared to put at risk by taking a phone call from the Orica CEO, a belated phone call at that which was made over a week after the incident.

It begs the question of whether Mr Liebelt had made the same courtesy call each time Orica breached its environmental licence.

In that one week alone I had already taken key actions, including asking the Office of Environment and Heritage to redirect resources to immediately put more front line staff on the ground, issue a prevention notice to Orica to shut the ammonia plant immediately, brief me of advice from the Chief Health Officer regarding any health risks, brief Newcastle Council on the incident, contact major hazardous facilities across New South Wales outlining the regulatory expectation that serious incidents were to be reported immediately and review the regulatory policy settings.

I had also informed the Parliament, announced a review into the environmental legislation which this incident proved was inadequate and I met with the Lord Mayor of Newcastle.

Unfortunately there has been a great deal of misinformation in the public arena since the incident and I would like to take the opportunity to set the record straight. Orica's decision to delay alerting authorities and failure to adequately notify the community, as was and continues to be their responsibility, meant a delayed response by authorities in the hours and days after the leak.

But the community wants action, not scare mongering, which is why I promptly introduced legislation to ensure industry notifies immediately, improves community notification and increases penalties for industry, strengthens and modernises an independent Environmental Protection Authority with increased accountability and transparency. This has now passed through both houses of Parliament.

There is an audit of forty two major hazardous facilities underway.

What is clear from the Orica incident alone is that the previous Labor Government was complacent in the way it directed and resourced the environmental regulator. The O'Farrell government is correcting these mistakes.

To those who want to know what I knew when, my answer is that at all times I acted to protect the community, not to scare it. When I made the statement in Parliament as the first environment minister to do so, it was to inform the Parliament of what was clearly an appalling situation.

This was not the first notification to the public. After all at that point there had already been an article in the Newcastle Herald, I had been told Orica were out door knocking and public health were the lead agency and had already commenced providing public information.

The easy thing to do would have been to walk away and do nothing. However, that would never be a choice I would make. The legislative reforms and non-legislative initiatives I have introduced have set a clear and responsible way forward for industry and provide more safeguards for communities in New South Wales.

Lastly, as I have said to the people of Stockton already, I have heard their concerns, they are the motivation behind these changes I have put in place. As a Government we have listened, as the Minister for the Environment I have taken action and I will continue to take action. Action to ensure that industry is absolutely clear about its responsibilities to its neighbours and that the environmental regulator has the power to hold them to account.

I look forward to the Committee's report and recommendations to build on the work that the New South Wales Government has already commenced.

Thank you Chair.

CHAIR: Thank you Minister. Before I proceed to questions I will remind all members, all witnesses and all persons in the public gallery that your mobile phones must be switched off. We rely on recording equipment here to verify Hansard's record and unfortunately your mobile phones interfere with that. So please turn your mobile phones off. If you wish to use them, go outside the room, thank you.

I will now proceed to the Opposition.

The Hon. Luke FOLEY: Thank you Mr Chairman. Good afternoon Minister, thank you for that opening statement. Could I just check one thing you said in it? Did you say "when I was informed some thirty hours after it occurred", it being the chemical leak?

MINISTER: Yes, that is correct.

The Hon. Luke FOLEY: So that would mean that you were informed at midnight on the Tuesday, is that right, thirty hours after the incident?

MINISTER: I have certainly put on record a number of times and I will reiterate when I was informed at my home. The incident occurred on Monday the 8th. At 6.51 on the Wednesday I was first advised of the pollution incident at Orica by a telephone call from my chief of staff.

Based on the early alert, that information provided to me in that call was that there had been a pollution incident involving chemicals at Orica on Kooragang Island on the Monday night. The plant had been shut down and everything was under control.

Orica had indicated at first that the chemical spill was contained on the site and the regulator was in the process of testing samples from a wider area to determine what the chemical was. The Office of Environment and Heritage were coordinating the environmental response.

The Hon. Luke FOLEY: So you were informed at 6.51 pm on the Wednesday, were you Minister?

MINISTER: Yes, my chief of staff called me.

The Hon. Luke FOLEY: Why did you just tell us in your opening statement that you were informed some thirty hours after it occurred?

MINISTER: Well, thirty hours after the Office of Environment and Heritage were notified.

The Hon. Luke FOLEY: That is not what you said Minister. Your opening statement, unprompted, that you delivered voluntarily, you just advised us that you were informed thirty hours after the incident occurred. Was that wrong?

MINISTER: Well it was thirty hours after the Office of Environment and Heritage was notified. I have put on the record a number of times that I was notified --

The Hon. Luke FOLEY: So your opening statement was wrong?

MINISTER: And Mr Foley, you have seen numerous papers in a call for papers, I have spoken in parliament on numerous occasions about when I was informed, you clearly have that information, at 6.51 pm on Wednesday.

The Hon. Luke FOLEY: So we shouldn't believe a word of your opening statement?

The Hon. Trevor KHAN: Point of order Mr Chair. .

CHAIR: Point of order has been raised.

The Hon. Trevor KHAN: The Hon. Luke Foley is engaging in the exercise of interrupting the Minister as she answers the question. She is entitled to finish answering the question before the Hon. Luke Foley embarks upon another question.

CHAIR: Thank you. I will uphold the point of order. Please allow the witness to finish her answer prior to asking the next part of your question.

The Hon. Luke FOLEY: Well Minister, how can we believe anything you tell us when your opening statement is so demonstrably false?

MINISTER: I will go over again when I was first informed, and clearly let us just get this correct, the failure to inform was Orica, Orica failed in their information. It took them sixteen and a half hours, sixteen and a half hours before they picked up the phone, sixteen and a half hours before they notified authorities. Sixteen and a half hours meaning that those authorities were late in responding, not through their fault but through Orica's fault.

That is where the failure is and that was following procedures allowed under your government. Remember, as soon as practicable. Since I have been aware of this issue, we have changed the legislation. We have changed the legislation so that a company like Orica cannot do that and they will be fined.

They must pick up the phone immediately, they must inform authorities immediately. That is where the failure is. The failure was they were following procedures allowed under legislation, allowed under laws that your government had in place, that your government was comfortable with.

Your government was comfortable through seventy six other incidents. They failed to pick up the phone and notify authorities. They did not do that, therefore there was not an emergency response, there was a recovery response from authorities. We know that, we know that that is their failure and first of all, let us face it, the failure was in the systems that they had in place. You understand I am sure that the failure in the first instance was Orica's chemical leak.

The Hon. Luke FOLEY: Thank you Minister. Can I ask you again, was the information you voluntarily provided us with in your opening statement, "I was informed some thirty hours after it occurred" wrong? It was, wasn't it?

MINISTER: It's very clear Orica --

The Hon. Luke FOLEY: Eighteen hours wrong.

MINISTER: Orica are the ones that have failed, failed to provide information.

The Hon. Luke FOLEY: That is not my question.

The Hon. Trevor KHAN: Point of order Chair.

CHAIR: Order, point of order has been raised.

The Hon. Trevor KHAN: Again I raise the point, the Hon. Luke Foley is, as soon as he asks the question, embarking upon a second question before the Minister has the chance to organise it. The Minister is entitled to.

The Hon. Luke FOLEY: I am trying to get her to answer the question.

CHAIR: Order, order.

The Hon. Trevor KHAN: The Minister is entitled to answer and she is entitled to answer without being harassed by the Hon. Luke Foley.

The Hon. Luke FOLEY: You're going to be busy over the next two hours.

CHAIR: Order, order. Thank you Mr Khan. I will just repeat my previous ruling. The Minister should be allowed to complete her answer prior to the next question being asked. Mr Foley?

The Hon. Luke FOLEY: Minister, how many times have you visited Stockton in your capacity as a Minister since the 8th of August?

MINISTER: I have the adjoining electorates to Stockton and what is important to people in Stockton is that they do not have the rules and regulations that were in place under the previous government. They want the Minister for the Environment that takes action, that is the action that I have taken.

I have outlined in the last week, in the first week after the incident, the action I took and you know because you have heard from Kate Johnson, for example, in evidence to your committee, who is Chair of the Stockton advisory committee and also on my community advisory committee, that I have been talking to people in Stockton.

I understand how it is to live alongside industry but I understand more importantly than that that they want changes. They do not want the same as they had under your government. They do not want industry taking sixteen and a half hours to let them know, they want their community to be safe. They want to feel safe and trusted in the industry that they live and work alongside.

So what they want from me is what I have provided.
Changes to legislation so that industry --

The Hon. Luke FOLEY: How many times have you visited Stockton?

MINISTER: I am here for three hours and I am going to answer the question.

The Hon. Luke FOLEY: You are making no attempt to answer my questions. How many times have you visited Stockton in your capacity as a Minister?

The Hon. Melinda PAVEY: Point of order.

CHAIR: Point of order has been raised.

The Hon. Melinda PAVEY: Could the Minister please be able to answer her question without badgering?

The Hon. Luke FOLEY: She is making no attempt to answer it. She is treating the Committee with contempt.

CHAIR: Order, order. Interjections are unordered at all times in these committees, as they are in the House. Minister, please complete the answer to your question.

MINISTER: What the people in Stockton want is a government that is responsible. What they wanted from an environment Minister who takes steps -- -

The Hon. Adam SEARLE: Order.

CHAIR: Point of order has been raised.

The Hon. Adam SEARLE: The Minister is not even attempting to be generally relevant to the question. The very precise question was how many times since the incident has the Minister been to Stockton as environment Minister.

CHAIR: Thank you for the point of order. Generally speaking witnesses are able to answer the question to the best of their ability. I would urge all witnesses to answer the question as directly as possible without ambiguity. Please proceed Minister.

MINISTER: Certainly. I do not keep count of how many times I visit an electorate that is a neighbouring electorate to mine but what I know is that the people in Stockton, and I talked to the people in Stockton because I have established a community consultative committee. A community consultative committee that could have been established under your government and was not, a community consultative committee that has representatives from Newcastle, from Stockton.

We advertised and called for that committee so that we can sit with them and with industry and work out what they need in terms of security and trust in the industry and what they need in terms of going forward so that they can feel confident in their homes, so that they can feel as though the right legislation is in place, so the right laws are in place. So that in the future an industry like Orica cannot wait sixteen and a half hours to pick up the phone to authorities, that they will be penalised for doing so. So that industries like Orica must inform the community on a timely basis. So that they have information available on a website, this is all in the legislation that you purported --

The Hon. Luke FOLEY: With respect, that is no attempt to answer my questions. How many times have you visited Stockton since the 8th of August incident?

MINISTER: I have already said to you I do not count how many times I go to the electorate which got drawn into mine.

The Hon. Luke FOLEY: It is once, isn't it?

MINISTER: Absolutely not but the important thing is that I do what the people of Stockton want and that is listen to what they need. These are the things that could have been in place in your government so I will go through them again. I have not even finished what I have put in place.

A community consultative committee --

The Hon. Luke FOLEY: Point of order Mr Chair.

CHAIR: Order. A point of order has been raised.

The Hon. Luke FOLEY: The Minister is making no attempt whatsoever to answer my question which I have asked three times directly and she is playing for time to run down the clock. I would ask you to direct her to answer the question or allow me to ask a further question.

CHAIR: Members will note that this session is a three hour session. I think there is ample time here to ask the Minister as many questions as members will want. The Minister has made some attempt to answer the question, whether it is to the satisfaction of the member asking the question or not I cannot say but I would ask the Minister once you have concluded your answer, it is probably best to just then stop and allow further questions to be asked. Thank you.

Minister, you may proceed.

MINISTER: Thank you Chair, although I do not seem to be able to get this information to the Hon. Luke Foley so that he would understand because the people in Stockton understand. Do not forget that the ALP branch said that they had been calling on issues in relation to Kooragang Island and they had fallen on deaf ears. Well they have not fallen on deaf ears with this Minister because I have put in place a consultative committee that listens to the people in Stockton, they understand what they need.

The Hon. Luke FOLEY: How many times have you been there?

MINISTER: We have advertised for that committee and importantly got --

The Hon. Luke FOLEY: You have been there once, have not you?

The Hon. Trevor KHAN: Point of order Chair.

CHAIR: Yes, I understand the point of order you are about to make. I have previously ruled on this. Minister, I think you have done the best to answer the question that you could. Could I ask the member to move on to the next question please?

The Hon. Luke FOLEY: Have you visited Orica's Kooragang Island plant since August 8 Minister?

MINISTER: As I explained in my opening statement, advice to me, and do not forget that Orica was under prosecution investigation leading to criminal prosecutions at the time of the August 8th incident, under advice to me it is important to keep at arm's length from procedures. To keep at arm's length from investigations.

If you want to compare my role as Minister, and I am very clear about my role as Minister, as opposed to the role of the organisation.

The Hon. Luke FOLEY: I am just asking if you visited.

The Hon. Trevor KHAN: Point of order Chair.

MINISTER: Well you're not going to let me answer any questions clearly .

CHAIR: Order. Point of order has been raised. Is it the same point of order?

The Hon. Trevor KHAN: The same point. This is not Sussex Street Chair, you have to get some control.

CHAIR: Thank you Mr Khan, I understand your point of order.

The Hon. Luke FOLEY: It is a direct question that she is making no attempt to answer.

CHAIR: Order Mr Foley. The point of order, do you wish to add to the point of order?

The Hon. Luke FOLEY: Yes, on the point of order once again the Minister is playing for time and making no attempt whatsoever to answer a direct question, have you visited somewhere? It is a direct question.

CHAIR: I think the Minister is attempting to answer. So Minister, would you please continue if you have anything further to add? If not, then we will on to the next question.

MINISTER: It would be totally improper for me to visit a site that is under criminal investigation. If you can compare me with the police Minister and the chief regulator with the Police Commissioner, would you expect the Police Commissioner to go to a scene where there is a criminal investigation in place? No, you would not. No, you should not expect that then of the environment Minister.

I am very clear about the role of the Minister as opposed to the role of the regulator and that is what you are trying to confuse, that is what you have been trying to confuse for a long time and that is what my responsibility is. I have legal advice in terms of what my responsibility is and let us face it. The flip side of that, if I do what you suggest, then I could be accused, perhaps at some point of interfering.

It is the role of the regulator and the information comes back to me through the regulator. We have a start up committee in place, I am constantly informed about what is going on and in order to get Orica safe again, Orica operating safely and Orica up and running safely. If they cannot then they will not be allowed to open again. That is how I should be provided with information about what is going on at any facility as the Minister.

The Hon. Luke FOLEY: Thank you Minister. Minister, have you visited the Stockton early childhood centre since August 8th?

MINISTER: What is important here is what I have gone through --

The Hon. Luke FOLEY: Have you visited it?

MINISTER: What is important here is going through what is important to the people of Stockton. The people of Stockton do not want --

The Hon. Adam SEARLE: Order.

CHAIR: Point of order has been raised.

The Hon. Adam SEARLE: Mr Chairman, the Hon. Minister is not even attempting to answer a direct question which emits a yes or a no answer.

The Hon. Trevor KHAN: Which she doesn't have to answer that way.

CHAIR: Order. Are you speaking a point of order?

The Hon. Trevor KHAN: I will in due course.

CHAIR: Would you like to do so now?

The Hon. Trevor KHAN: Yes, I will. What the Hon. Adam Searle, and perhaps the Hon. Luke Foley want is for answers to be given in the way they seek. The Minister is not obliged to do that. She is --

The Hon. Luke FOLEY: We would just like the truth.

The Hon. Trevor KHAN: Well, that sort of injection doesn't help.

CHAIR: Order. Make your point of order and we will proceed.

The Hon. Trevor KHAN: She is entitled to answer in a generally relevant way. She is not obliged to answer as these characters think she must.

The Hon. Adam SEARLE: A point of order Mr Chair. The way the Minister is answering the question gives rise to the implication that she does not know the answer.

CHAIR: Thank you.

The Hon. Adam SEARLE: That should be discouraged.

The Hon. Trevor KHAN: That is rubbish.

CHAIR: Order. We have had enough argy bargy. I think I have now enough information to rule on this. Minister, you do have a generally broad ability to answer the question as you may best so I would ask you to proceed and try to answer the question as you think fit and members will understand that witnesses must be allowed to answer the question as they see fit. If the minister's answers bring an impression, then that is down to the Minister to decide.

Please proceed Minister.

MINISTER: Parents of children at the childcare centre at Stockton were not informed in a timely manner because Orica took sixteen and a half hours to inform authorities. Orica did not do the right thing. So should we just walk away from that and accept that that is okay because certainly that was the procedure and in policies in place under the last government.

No, what we needed to do and what I have done as environment Minister is ensure that industry is not able to do that again. That industry is not able to take so long to inform authorities. So that parents who go and pick up their children from child care do not know that there has been a chemical spill. Parents of children from schools who are playing in a neighbouring playground do not know.

I have put in place protections through legislation that make sure that industry must inform, that industry must inform immediately and that industry must inform the community and there are appropriate penalties in place, \$2 million for failure to notify immediately and penalties in place in terms of making sure that they tell the community.

It was certainly, and still continues to be, industry's responsibility to notify the community. They did not do that in a timely fashion, they did not inform authorities and they certainly did not protect those children in a child care centre.

Fortunately the results from the public health officer tell us that there is no health risk and that the child care centre, and you heard that evidence today, the child care centre did not return a risk. But Orica were ordered to clean that site up and they have, they have to pay for that.

Those are the things that a responsible Minister puts in place and that is what I do as a responsible Minister. Not operate in a way which is irresponsible. That is the right thing, that is what Stockton wants from me, that is what communities across New South Wales who live alongside these sorts of industries have from this Minister, this is what we have put in place since this incident.

I feel very comfortable that those changes will make a huge difference to child care centres, to preschools, to schools in the future.

Ms CORBYN: Could I comment as well from an agency perspective?

The Hon. Luke FOLEY: No, Ms Corbyn, I might come to you later but my question was whether the Minister had visited somewhere. So if you do not mind, I will ask you some questions later.

Minister, I take that as a no that you have not visited the child care centre and can I put it to you that it is the case, is it not, that you have not visited Orica's Kooragang Island plant, you have not visited the early childhood centre, you have not visited the Stockton public school that made a submission to us registering their anger, you have not attended any of the community meetings in Stockton that have been held in Stockton since August 8th and you have not door knocked any homes in the hot zone. You have not done any of those things, have you, since August 8?

MINISTER: I have put in place legislation, a strengthened EPA, a strengthened regulator, a community consultative committee, held a industry and community round table with community members so that they have a channel directly through to the regulator and through to the Minister about what they want and need in their community.

What they want and need in their community to feel safe and that is important. That is important to them, it is important to us to make sure that people who live alongside industry such as Orica have that in a place. That consultative committee is perhaps a template we will roll out further.

We are going to have more air quality monitoring, we are talking to them about what the future might be for Kooragang Island.

The Hon. Luke FOLEY: Talking to who?

MINISTER: People on the consultative committee who are parents from Stockton. Who are parents from Stockton.

The Hon. Luke FOLEY: So Minister in the 105 days since the leak of hexavalent chromium into Stockton, you have spent twenty minutes there holding a press conference, is that right?

MINISTER: No, that is not correct.

The Hon. Luke FOLEY: Tell us when else you have been to Stockton other than that twenty minute press conference on August 13 Minister, tell us one other occasion please?

MINISTER: On numerous occasions but unlike you I --

The Hon. Luke FOLEY: Name one please.

MINISTER: Unlike you I do not turn up just to create some sort of media interest and confuse people about the role of the Minister.

The Hon. Adam SEARLE: Minister, just give us one of example of your visit to Stockton since, just one other than that press conference.

MINISTER: I do not know, I go to Stockton reasonably often. I live in the next door neighbourhood. I live in the next electorate, I live in the Hunter Valley. I do not shoot up there for grand standing.

The Hon. Luke FOLEY: At all.

MINISTER: I do not shoot up there for grand standing. I live in the neighbouring electorate. A number of times. Do you know, well if you had an electorate would you be able to tell me how many times you visited the next door electorate?

The Hon. Luke FOLEY: Come off it Minister, there has been a leak that has been on the front pages for 105 days of hexavalent chromium into Stockton. I invite you, the floor is yours, tell us once when you have been there since August 8th other than the twenty minutes you blew in for a press conference on August 13?

CHAIR: Order.

The Hon. Luke FOLEY: Tell us one occasion please.

CHAIR: Order. I will ask members not to raise their voice please.

The Hon. Luke FOLEY: I beg your pardon Mr Chair.

CHAIR: You may answer.

MINISTER: I do not know. A number of occasions, I go to Stockton. I go to Stockton--

The Hon. Luke FOLEY: Here we go.

The Hon. Trevor KHAN: I take a point of order Chair.

CHAIR: Order.

The Hon. Trevor KHAN: I take a point of order. The point of order is he asks a questions. The Hon. Luke Foley asks questions and then when an answer is being given, he interjects essentially with quips. It is unreasonable, it is unnecessary, it is harassing of the witness and should stop.

CHAIR: Thank you. I will take a point of order. Interjections are disorderly at all times particularly when the witness is in the middle of an answer. We need to allow Hansard to be able to

clearly hear the minister's answer so we get it correctly on to the record. Please proceed Minister.

MINISTER: Well look, I have been to Stockton as Minister on a range of occasions. As locals we go to Stockton often. As Minister I have been to Stockton on a range of occasions and probably the most recent time was when I went on World Pass Day to Stockton Bite and I have been there to help clean up the beach and been there, you know, a number of occasions since I have been Minister. But I do not keep count.

The important thing, the really important thing is that I have made sure that people in Stockton have the sorts of protections in place there they need. So that parents do not turn up to a child care centre and do not know about a leak. So that authorities are informed in a timely fashion. That is my responsibility as environment Minister. And I know you have heard evidence from people on the Stockton action committee in terms of phone calls they have had with me, conversations they have had with me and in terms of what we are doing in the future. That is important to them.

The Hon. Luke FOLEY: Minister, why did you say last Thursday week, "I am in touch with Orica all of the time"?

MINISTER: I think I mentioned that in my opening statement. The way in which with a Minister should be in touch with an organisation that is under investigation is through the correct channels, through the environmental regulator, through the EPA, through the Office of Environment and Heritage and through my ministry.

I do not get involved in operational matters, that is for the regulator, that is their role. My role is to get the correct information from them, from the Office of Environment and Heritage, from my ministerial office and from other authorities when it is needed. That is a constant stream of information and advice to me in terms of what goes on at Orica. That is the channel of communication and that is happening all the time. Failure because of Orica's record too often.

The Hon. Luke FOLEY: Well you just lied when you said last Thursday week that: "I am in touch with Orica all the time", didn't you?

The Hon. Matthew MASON-COX: Point of order.

CHAIR: Point of order has been raised.

The Hon. Matthew MASON-COX: That language is unparliamentary and I ask that you correct (inaudible).

CHAIR: Well referring to the standing orders that normally apply in our house, the member did not call the Minister a liar. However, having said that, I think members should be careful to temper their language. I think members should be careful to temper their exuberance so that we have an orderly hearing. This is a public hearing today so I will ask all members just to be very careful about the language they use.

The Hon. Luke FOLEY: Thank you Mr Chairman and in deference to your ruling I will withdraw and ask, it was not the truth when you said: "I am in touch with Orica all of the time" last Thursday week, was it?

MINISTER: I talk and indeed I continue to talk with Orica all of the time but I do so through the correct channels. Through OEH, through the EPA, through my ministerial office and with other authorities when the need arises. And that means at the moment I am hearing and getting information from Orica and from the EPA and from the Office of Environment and Heritage about the audit that is taking place. Remember an audit that we have instituted from front to back with Orica, from front gate to back gate, information about the start up and from the start up committee about what is going on. Information about the most recent incident on the 9th of November.

That is where I am talking to Orica. Finding out what is going on, talking to the correct operations, talking to the correct authorities as Minister. That is my role as Minister, my role is not to get involved in the organisational matters that the regulator gets involved in. That is very clear to me,

much as you would like to confuse that role, that is the role of the Minister.

The Hon. Luke FOLEY: Well Minister, have you, not your agency, have you personally had any contact with Orica since August 8?

MINISTER: I talk to Orica through my agency. Now I have not spoken with Graeme Liebelt and I have made that clear in my opening statement.

The Hon. Luke FOLEY: Well I put it to you that you personally have had no discussions with Orica since August 8 and if I am incorrect I invite you to correct the record here and now Minister.

MINISTER: Well I have been through and I will just go through it again.

The Hon. Luke FOLEY: You directly, not through your agency, your bureaucrats, you personally giving your statement of last Thursday week where you said "I am in touch with Orica all of the time".

MINISTER: I talk and continue to talk through the EPA. Greg Sullivan may give you some information about how that communication occurs.

The Hon. Luke FOLEY: No, I am asking you. Mr Sullivan, I will come to you later.

The Hon. Trevor KHAN: Perhaps a point of order.

CHAIR: Point of order has been taken.

The Hon. Trevor KHAN: The point of order point is the Minister is entitled to answer as she sees fit. She is entitled to rely on the public servants that are available. She referred the question to the public servant, he should be entitled to answer.

The Hon. Luke FOLEY: On the point of order Mr Chairman, there is no possible way that a question about what the Minister has done personally, where I made it very specifically clear I was not referring to the work of her agency, there is no possible way that could be answered by one of her bureaucrats, it can only be answered by her.

The Hon. Trevor KHAN: Further to the point of order Chair, this is an inquiry that is seeking to gain information. Not to provide an opportunity for one of the members to simply, in a sense, bully the witness. We are here to find out information. The Minister is seeking to provide us with information.

The Hon. Luke FOLEY: That is right.

The Hon. Trevor KHAN: And there is an opportunity of information being provided by one of the public servants. He should be entitled to answer and provide the committee as a whole --

CHAIR: Thank you Mr Khan, thank you Mr Foley, I understand the point of order. The Minister is a Minister of the crown and is quite capable of answering questions in any way that she sees fit. If the Minister feels that one of her public servants can add to the answer, then Minister please do so. But I notice that we are probably getting close to the point where the Opposition are out of time so I guess that point of order is largely irrelevant.

What I will do is I will move on to Ms Faehrmann.

The Hon. Luke FOLEY: Play for time for the next two and a half hours.

CHAIR: We do have another two and a half hours.

The Hon. Cate FAEHRMANN: How many incidents were reported or how many phone calls came through on the environment line after August the 8th? I am particularly interested in

perhaps the first forty eight hours or at least until as it is reported in the media.

Ms ROY: We had twenty six calls all up between the 9th and the 26th of August. Three of those came from anonymous callers who may have been Orica employees. One of them came from a self identified Orica employee. Eighteen came from residents, three came from schools and one came from a local company that had concerns about impact on their workers.

We received a first call at environment line at 12.28 on the 9th.

The Hon. Cate FAEHRMANN: Am, pm?

Ms ROY: 12.28 pm on the 9th of August and on that same day we received three more calls, four calls in total on that day. Three of which were, well three which were anonymous and one was from the self identified Orica employee.

The Hon. Cate FAEHRMANN: And what did those calls report?

Ms ROY: They reported what we believe were people on site reporting that there had been a spill at Orica on the evening before. That there was some sort of clean up underway and they were not happy basically with the situation as Orica had handled it.

The Hon. Cate FAEHRMANN: Did you receive any calls from anyone in relation to the incident saying that they had experienced any adverse health impacts?

Ms ROY: About eight of the residents who called described a various range of health impacts.

The Hon. Cate FAEHRMANN: Minister, why then, if calls came through on the environment line, are eight calls suggesting that that they may have suffered adverse health impacts, why then do you and your government continue to say that there were no health impacts from the Orica incident?

MINISTER: Well it's probably a question you need to ask of Dr Kerry Chant, she is the public health officer and responsible for public health. Remember that this Orica incident, by the time the authorities were notified, became a public health issue and so you really need to ask that question of Dr Kerry Chant in her role. She was the one that was responsible for assessing the public health response and the toxicology report and interpretation of those.

The Hon. Cate FAEHRMANN: I will go back, you managed the environment line?

Ms ROY: That is correct, yes.

The Hon. Cate FAEHRMANN: So that the eight residents or members of the community who phoned through with adverse health impacts, what did they say?

Ms ROY: There were reports of rashes, respiratory problems. I would have to actually look again at the calls to determine exactly what they described but that general type of complaint.

The Hon. Cate FAEHRMANN: What did you do with that information when you received it?

Ms ROY: We abide by the role of the EPA which is that we do not provide any comment on health issues but we do advise people who report health issues to see their GP. In some of the cases of those residents they had already seen their GP. Where they had not we advised that they should and by the time we actually received those calls we did actually have the first release or information on the Ministry of Health website which we used as a way to provide advice for them on how to proceed.

Ms CORBYN: If I could add there, one of the things that we worked very hard was make sure that we have very close coordination with health so that health does provide the health information and hence the reason we were having the teleconferences and the expert panel that health

did convene, so we had actually very useful information based on the samples that we had done to be able to provide to people. So there is quite a strong effort to make sure that any information that we might provide, either through enviroline to our regional people who then may actually link at a regional level, to make sure that they got the advice from health and from the regional health people specifically.

The Hon. Cate FAEHRMANN: So if I am correct, is this the first time that we have become aware that there were eight residents, or twenty six calls all up but eight of those callers were talking about adverse health impacts as a result of the incident?

Ms ROY: I do not think I could comment on that. I would have thought it was in the standing orders.

The Hon. Cate FAEHRMANN: Minister? The question is Minister, is this the first time that we have heard that there have there were eight calls to the environment line from people who were suffering adverse health impacts as a result of the Orica incident? Is that the first time that we have heard that?

MINISTER: I have no idea what information you have heard or not heard.

The Hon. Cate FAEHRMANN: The question was what information has been made public, not what I have heard it or not but what information has been made public? I believe I have not heard that, I am not sure whether that information has been made public.

Ms CORBYN: All of the information that we had would have been provided through the standing order 52.

Ms ROY: It was.

Ms CORBYN: So any of the logged calls, the info lines all of that would have been --

The Hon. Cate FAEHRMANN: So it was through a call for papers, standing order 52 through a call for papers, I believe it was mine actually, that released all of the information. So not to the media, not to in fact as a submission to this inquiry, not in any of your public statements since the incident, not when I think you made have been standing with the Minister for Health or Dr Kerry Chant, at no time was the public informed or the Parliament or the Members or the media informed that in fact there were adverse health impacts, or at least there were phone calls to the environment line by residents suggesting that there were adverse health impacts from this incident.

MINISTER: The health response and the public health response, the responsibility for that was Dr Kerry Chant. Now you need to ask those questions of Dr Kerry Chant. I have never had this question asked of me before but I certainly can find that out.

The public health response is not the environmental response and so it is important that you go back to ask Kerry Chant. Dr Kerry Chant is the public health officer who was managing the public health response. The Office of Environment and Heritage and the EPA the regulator handles the environmental response.

That is important that you understand that and perhaps you could put that question to Dr Kerry Chant because she manages and was managing through this process.

CHAIR: Order. Before we proceed, sorry for interrupting you Ms Faehrmann, I will ask once again could all people in this room please turn off your mobile phones. Even the vibration tone is being picked up so please turn off your mobiles. Thank you Ms Faehrmann.

The Hon. Cate FAEHRMANN: Whose responsibility is it to notify the Department of Health and the Minister of Health then and Dr Kerry Chant, of those eight calls from residents who experienced adverse health impacts as a result of the hexavalent chromium spill? Whose responsibility in the department is it?

Mr SULLIVAN: Perhaps I could take that question. The responsibility to advise other authorities, in this case health, was the EPAs. The way that occurred in this incident was that on the 9th, the officers who attended the Orica site requested that Orica advise the health authorities about the incident and regrettably Orica did not actually go through and carry out that request. They were prompted the next day on the 10th and about an hour after that they actually contacted health.

Now as a result of that lesson that we have learnt, I have issued a directive to EPA staff that in future if there is a circumstance where they see fit to advise a licensee in this case to contact another agency, like health, that they should also make contact themselves with health. So that is a lesson that we have learnt from this incident and it is one that I have reinforced with the directive to the EPA.

The Hon. Cate FAEHRMANN: To get to the bottom though of my question which is what happened to that information from the eight residents who suffered adverse health impacts? Did that get communicated to the Department of Health?

Ms CORBYN: What we normally do is provide the information to --

The Hon. Cate FAEHRMANN: Rather than normally Ms Corbyn, what happened?

Ms CORBYN: I can't answer for each individual case but the standard procedure is that we provide the information to the regional officers who are actually on site and then we actually ask the people to make sure they contact their GPs and it is health that actually is having the discussions with the GPs. So they may present for different reasons and the GP can provide the better advice to the Ministry for Health at a regional level.

So we do try to actually make the connections between the information that we get, get it to the regional level through our people, but also so the individual community members can actually get accurate information from their GPs and then we do try to reconnect with health.

What we were doing at this time was actually trying to understand, particularly we were focused on getting our sampling information to the Department of Health so that they could actually provide that technical information to their air expert panel which was convened, so that we could make sure health had the appropriate information to develop up the health messages to provide to the community.

So broadly speaking, yes, we would be trying to make sure that we do close those loops.

Ms ROY: We also were referring people to the Hunter public health unit so we had that number quite early on as well.

The Hon. Cate FAEHRMANN: So your submission, the department's submission to this inquiry says that the Ministry of Health and its experts concluded that there were no health impacts on the local residents at Stockton. But what does the OEH conclude, given that you received eight phone calls from people who experienced adverse health impacts?

Ms CORBYN: We actually do to not give advice on health. We provide information to health but we are not health experts.

The Hon. Cate FAEHRMANN: With respect you received information from residents saying that there were adverse health impacts as a result of a spill of a chemical that you issued licences, from a company that you issued licence to pollute, so this there is some responsibility there.

Ms CORBYN: Our provision, we are very clear that we do not provide health advice and we are very clear about that because we are not health professionals. That is why we have actually got the linkage with health. So in fact it would be remiss of us to try to provide health information to individuals and so we are very clear about that and we do provide the information as best we can to both the individual who can present to their GP or to the regional officers who also then provide the information to health.

The Hon. Cate FAEHRMANN: Surely there has to be some acceptance of responsibility here? You have an environment pollution line and you had a spill of hexavalent chromium, you had people phoning your environment pollution line telling you about impacts, then you have the Chief Health Officer two days later, and I think perhaps Minister Parker as well and others time and time again since that time, said there were no health impacts. There were no health impacts. Repeated ad nauseam, in fact in the Minister's opening statement.

So when does your department accept responsibility to convey that situation, to convey those phone calls, to convey that evidence? You held the evidence, didn't you? Your department held the evidence that there were adverse health impacts as a result of this spill and did nothing about it.

Ms CORBYN: That is not true to say we did nothing.

Mr SULLIVAN: It was not correct because there was no link established between the complaints that were being made and the incident and that was the subject of the expert health panel.

The Hon. Cate FAEHRMANN: But how did you know that?

Mr SULLIVAN: Our task was to provide sampling results and information to the expert health panel who considered all of that information. They were also aware of the information coming in via their public health units so they were aware they there were complaints and they were aware that people were expressing concerns about various types of ailments.

But having considered all of the evidence and all the toxicology evidence, they concluded there was no health impact. So the EPA did discharge its responsibility in terms of referring both people ringing up to the appropriate health authorities, as well as making information known to health authorities as we could.

The Hon. Cate FAEHRMANN: Minister, what is your response to this? What is your response to your department's handling of this, given the intense media interest, given the pressure you have been under, given the pressure the Government's been under those situation, given your opening statement that there were no health impacts? You have just found out, I believe for the first time, that there were apparently, according to eight resident that phoned up, they did experience rashes and respiratory problems, can I suggest that that is what hexavalent chromium causes when you look at the material safety data sheet, what short term exposure can cause, what is your response to your department's handling of this?

MINISTER: Clearly the department was following the processes and procedures that were in place at the time. The processes and procedures that are in place in terms of passing information on. It is up to the health experts, the public health experts to determine that.

Now those people called the environment line with information, that information was passed on, the experts assessed what happened. It is up to the public health officer to take all of that information and to manage the public health response.

That is a clear procedure that they were following at the time. Now certainly there have been some procedures and I am not saying this is one of them, there have been some procedures that needed to be fixed up. That was clear in the O' Reilly report, that there are some procedures and if we did nothing about those procedures in terms of information to various people, certainly information from the Office of Environment and Heritage, to the Minister for example, if we did not do something about those procedures we would be not learning from this.

But clearly they were following a standard procedure. Now this is a procedure that is in place for other incidents as well, to make sure that the authorities have the right information that they need. Now that has been passed on, it's up to other people to make --

The Hon. Cate FAEHRMANN: If I can interrupt, just to check who was it passed on to? In this instance those calls were passed on to?

Ms ROY: The regional office of the EPA.

The Hon. Cate FAEHRMANN: Internally you have passed them on?

Ms ROY: Yes.

The Hon. Cate FAEHRMANN: And advised the residents to see their GPs?

Ms ROY: Yes, or to refer to the public health unit in Hunter.

The Hon. Cate FAEHRMANN: And what was regional office of the EPA supposed to do with that information?

Mr SULLIVAN: Well the regional office of the EPA was in constant contact with all the relevant agencies, health, police, Fire and Rescue, WorkCover, they were constantly in contact and particularly health. I might just note for the record that Mr O' Reilly actually confirmed in his report that both health and OEH staff worked very closely together and in fact followed the procedures laid down in the HAZMAT plan, albeit that there wasn't actually a HAZMAT situation declared. So it was not activated, the plan, but Mr O'Reilly's assessment was that all the essential components were followed by OEH and health staff and all the staff did a very good job.

The Hon. Cate FAEHRMANN: Would you be able to take on notice whether the regional office of the EPA passed that information on to health, or whether once it left the environment line and went to the regional office, whether it stayed there, that information?

Mr SULLIVAN: I am happy to take that on notice.

The Hon. Cate FAEHRMANN: Thank you. Minister, do you think really, given the community's concern about, for example, children playing in the childcare centre, there was a walkathon the next date after the spill, and this committee has heard from a lot of residents and their concerns about the health impact, that the Government coming out and saying there were no health impacts when they in fact had received evidence that there were, do you think that is evidence of a cover up on behalf of the departments in relation to the health impacts?

MINISTER: Well it is very clear that the response was from Dr Kerry Chant, taking all of that information into account, now you need to ask her whether those calls to the environment line, whether those people who felt they had impacts, had any relationship to the chemical spill. That is not for me as Minister for Environment to comment on. That is certainly Dr Kerry Chant's responsibility.

Perhaps if you could put a question on notice to her for some more information on that but that is not for me to comment on really. Those procedures were in place and certainly that is how it operated.

Mr SULLIVAN: Just for the record, the decision in terms of the conclusion regarding health effect was reached by an expert panel which consisted of independent experts, world renowned experts, who assessed all of the data available.

The Hon. Cate FAEHRMANN: Did that data include those eight phone calls?

The Hon. Trevor KHAN: Point of order.

Mr SULLIVAN: It assessed all the toxicology data available, the survey data available, and concluded that there were no health impactation. Now these are eminent experts.

The Hon. Cate FAEHRMANN: And can you perhaps take on notice again, and sorry for interrupting before, whether that committee had evidence of what appears to be adverse health impacts suffered by residents as a result of the spill?

Ms CORBYN: These are reports from individuals that then need to be assessed by medical people.

The Hon. Cate FAEHRMANN: Yes.

Ms CORBYN: So we did not actually have written tests from those people. But certainly from the health perspective, they were very clear to us that the important role for us was to actually make sure that we got samples and additional samples so that they had better information. That is certainly what our people at a regional level were doing as a priority.

They were also very clear that they were working to take a precautionary approach in the way they actually assessed the information and they were very clear and in the teleconferences that we were having continually as we were trying to gain this information, I once again say because Orica had not actually provided us the information at the time of the incident so we were actually trying to gather additional information to actually understand what had happened with the health people.

But they were very clear that they needed to get the samples, understand what's in the samples and they were also very clear to focus on who might have had exposures, whether it was child care centres or schools or other people, to make sure that they had enough information to do the assessments, to draw the health conclusions.

But we are not health professionals so it is very important that they actually draw those conclusions.

Mr SULLIVAN: And it is an extremely complex area. That is why such highly qualified experts were involved. You cannot start from a report of a symptom and work back and establish a causal link to the actual incident. They had to start from the evidence that had been provided in terms of the sampling, what was known of the substance, so it is a very complex matter. That is why the experts were involved and their advice was definitive.

Ms CORBYN: And we were seeking further information from Orica, because they did not provide that information in the first instance, to try to understand what the exact chemical composition was, to understand the amount, how it was made, to get all the sampling information that we had and to collect additional samples and to undertake air model and to get all of that information together. To look at rainfall and precipitation because that actually does affect what actually happens in the degradation process of chromium. I am not a chromium expert but they were all very concerned to make sure that we got all of that information in so that the expert panel could draw the health conclusions.

The Hon. Cate FAEHRMANN: Question to Mr Sullivan. Mr Sullivan, on the department's website where you have the POEI public register, why isn't the annual return for Orica's Matraville operations available on the department's website? Yet it says that the annual return was received by your department on the 15th of September 2011, pretty much around the same time of the year as all the other annual returns are being received. Yet it seems not available, Orica's Matraville annual return. Is there a reason for that?

Mr SULLIVAN: I will have to take a question at that level of detail on notice but what I can say generally is that we are conscious that the public register needs to be enhanced and part of the process that we have already embarked upon at the instruction of the Government is to upgrade the public register.

It is difficult to use, as you may have experienced yourself. It needs to be made far more user friendly, to have an increased amount of information placed on it which has been required under the legislative amendments. But it is our intent, in fact we have already commissioned a project team to start work to looking at how that public register can be made easier to use, more informative and certainly much more helpful in terms of satisfying the community right to know.

The Hon. Cate FAEHRMANN: Do you agree though that the community's right to know at the moment in relation to living around any of Orica's plant is very important and the fact that it's not up there more than two months after it was submitted, is that usual practice?

Mr SULLIVAN: I am happy to look into the specifics of that particular situation you have

described. The community's right to know is of course very important. It is a concept which is met in a variety of ways in the environmental regulation that we have in this state.

We have of course the public register that you have mentioned but it is also delivered by, for example, notifications, requirements for incidents to be notified, requirements for senior executives from licensees to have to sign off to say that their returns are accurate. It is reinforced by other legislation, for example, the GIPA legislation.

We have a range of different aspects that support the community's right to know and some of those have been enhance even further with, for example, the establishment of the Newcastle community consultative committee on the environment which has amongst its terms of reference the aim of strengthening information provision to the community, of strengthening the dialogue between industry and the community.

The legislative amendments actually will require the publication of monitoring data which is obtained by licensees on their websites and so that is a further element to the community right to know. So it is a concept which has a series of elements and all of them are important but they act in concert to deliver an overall result.

CHAIR: Order. Mr Sullivan could I just ask you to spell the acronym you used, GIPA?

Mr SULLIVAN: Yes, that is the Government Information (Public Access) Act 2009.

CHAIR: Thank you.

The Hon. Cate FAEHRMANN: Mr Sullivan, will you give a commitment to ensure that that annual return is --

The Hon. Trevor KHAN: I will take a point of order at this stage. The point of order relates to the terms of reference. What is now being asked of Mr Sullivan goes, in my view, well and truly beyond the terms of reference for the inquiry.

The Hon. Adam SEARLE: Further to the point of order Mr Chair, the question flowed directly from what Mr Sullivan said.

The Hon. Trevor KHAN: That may well be.

The Hon. Adam SEARLE: And therefore Ms Faehrmann's question is completely in order. The last term of reference does refer to "and any other matter", which I know is referable to the above matters, but given Mr Sullivan's evidence flows straight out of those other matters, it is a fair question that was asked to him and he should be permitted to answer.

The Hon. Trevor KHAN: To the point of order Chair, what the Hon. Adam Searle says is, with the greatest respect to him, incorrect. Some questions have been allowed with some latitude, there is no doubt, but what she is now seeking is a commitment on a matter which falls outside the terms of reference. It is appropriate that it be brought up at some stage.

CHAIR: Thank you. I understand your point of order. In fact looking at the terms of reference I will uphold the point of order. Ms Faehrmann, will you move on to something else?

The Hon. Cate FAEHRMANN: I suppose what the line of questioning is around the EPA, its strength as the environmental regulatory body over the last decade or whatever and how we have got to this point with Orica. Mr Sullivan, do you consider that ten and a half thousand dollar fine issued to Orica in 2005 for a reasonably similar licence breach at Kooragang Island to have been sufficient enough to deter the company from committing similar breaches?

Mr SULLIVAN: Well of course the penalties imposed in prosecutions are matters for the Court. It would be inappropriate for me to comment on the quantum of any penalty imposed by a Court. What I would say is that in a broad sense, if you were to look at the regulatory performance of the EPA over the last say five years, it demonstrates a great deal of rigour in terms of consistent

activity across a whole range of different variables. To give you just some examples, in the last five years, there have been more than 840 pollution reduction programs with a total value of \$824 million.

The Hon. Cate FAEHRMANN: Maybe we should stick to Kooragang Island considering Mr Trevor Khan's last point of order.

The Hon. Trevor KHAN: I did not take a point of order.

Ms CORBYN: Could I comment there also that I think the Parliament actually did pass legislation after that prosecution which actually did increase the penalties. And in fact the Minister's most recent proposals have actually increased again the penalties that have actually brought forward for duty to notify. So in fact since that prosecution actually occurred, there have been significant increases in the penalty structures that the Courts can, I think Greg's correct, we should not be commenting on the Court's application of penalties per se, that is their domain, but as the Parliament has actually increased the penalties, that does provide an opportunity to make sure that there is a higher order of penalty that can be applied.

CHAIR: Thank you. We are just about out of time. I will now move to the Government to ask a question. Just as a note, I will foreshadow that at the conclusion of the Government's question we will take a five minute comfort break.

The Hon. Melinda PAVEY: Thank you. My question of the Chief Executive Officer Lisa Corbyn. Following on from your answer to the Hon. Cate Faehrmann, how many of these serious pollution incidents have happened before and can you run us through how the community was notified of these incidents?

Ms CORBYN: There is a judgment that needs to be made about environmental health versus pollution incidents where it might just be environment, but we would have and probably will have periodic incidents at major industrial facilities, that actually have the potential to have health impacts.

From a brief scan of prosecutions that we would have brought over the last ten years, there would be a huge number of prosecutions but probably about ten that particularly focuses on health impacts, the real potential health impacts that could have affected communities.

Each circumstance is very different. They ranged from some facilities that are not regulated by the state but rather local councils, through to major industrial facilities that we actually licence. Whether it be Caltex refineries at Kurnell or some of the Illawarra coke and Shoalhaven starches. So there are a very wide range of potential incidents that actually could affect people's health.

We bring numerous prosecutions. I think in this last year we completed 106 prosecutions and commenced another 145 prosecutions. Not all of those would have the potential to affect people's health.

What we would normally try to do is adapt the response to the circumstances that might actually be faced in a particular circumstance. So if I take a case that happened that was particularly challenging for us, one called Unomedical. This in fact was not a facility that was licensed by the EPA but was controlled in the first instance by local councils and when we understood that there would be--

The Hon. MELINDA PAVEY: Where was this?

Ms CORBYN: This was in Pittwater in the northern suburbs, when we understood that there might actually be the potential for a health impact, we contacted the Health Department, obtained their advice as to the potential health impact. They did actually convene, as in this Orica case, an expert panel to actually assess the information.

We particularly worked with local councils and within a two day period actually shut the plant down, it was a medical sterilisation facility. The community was advised by media, by the regulator, which is an appropriate step to be taken, and there was a press conference that was actually

held by the regulator and health. I believe in fact Kerry Chant, although she was not the Chief Health Officer at the time, was actually at that media conference.

We also can organise letterbox drops. We do not do that in all circumstances. We have had other experiences, for example Caltex at Kurnell where we actually knew that most of the staff lived in the area and we had the relationships with the people in the community so we actually did individual discussions with communities. You really have to design the actual strategy to communicate with the residents according to the circumstances that you are surrounded with at the time.

I think in the case of Unomedical, actually health does define what the immediate area is, that is one of the big challenges when you have had a pollution incident, is to know who actually might be affected and make sure that you have got the right kind of sampling information.

As I said, health set up an independent expert panel. We in that case again also referred people to the local area health and we used local media to actually communicate with them.

From that it was quite clear that legislation did need to be changed so subsequently there was ministerial involvement from a legislative change perspective so that the EPA became responsible for actually licensing that facility because it was a significant incident. But as I said, it actually could vary quite substantially.

We had an incident at Caltex at Kurnell which was hydrogen sulphide, like rotten egg gas smell which was quite concerning, it was released. We actually tailored the response to the specifics of that circumstance.

I think the other thing I would comment on broadly is, again I come back to the fact that Orica did not notify any government agency. Often if there is a significant incident it would be notified to Fire and Rescue and we have very good and established relationships with Fire and Rescue who would then convene an emergency response.

In this case with Orica, because that did not happen and the plant had been shut down, our staff did not believe that it was actually an emergency circumstance because the plant was not operating and there was not continuing emissions. So we try to tailor the response that we do according to those circumstances.

The Hon. Melinda PAVEY: It had not been operating this week, had it?

Ms CORBYN: It had been. Greg will know more than I on this but it had been in maintenance mode and was moving through start up, I understand, yes. Greg, do you want to comment further?

Mr SULLIVAN: No, the Chief Executive is correct. It had been in a planned maintenance phase and upgrade and was going through the start up procedure when the incident occurred.

The Hon. Melinda PAVEY: And there had been similarly a leak of chromium 6 in 2006 during the last start up phase, hadn't there?

Mr SULLIVAN: That is right, although the circumstances were somewhat different. In that case the leak was a discharge to water which initially went via a discharge into a detention basin. A quantity of that liquid was then taken by Transpacific Industries to their facility at Homebush and the remaining liquid was then discharged to the Hunter River but when tested was found to still exceed the threshold that was set for chromium 6.

The Hon. Melinda PAVEY: There was no ministerial announcement about that leak, was there?

Mr SULLIVAN: I was in Queensland at the time.

Ms CORBYN: No, my understanding is that there was not. But I can say too the first phase

is actually to understand what has happened and try to get information out to the community and working particularly with the emergency services, whether it is health or Fire and Rescue or others, and then our people really do also go into investigation mode, as the Minister said.

All parties that I have ever been involved with have been quite clear that there should not be political intervention in the EPA investigations and prosecutions and hence the reason the legislation has been set up the way it has. We move into investigative mode very quickly because the collection of information associated with whatever's happening in an incident is also very important to us.

So in the case of Orica, but also in those other cases that I have mentioned, we have actually prosecuted those companies and also worked to make sure that we had systems in place, pollution reduction systems in place to assist so that these sorts of incident do not happen again.

In the case of Orica, clearly there are significant procedures that they need to correct and I think the mandatory environment audit that has actually been required of them is a very important step because it is very important to understand how industrial facilities such as this both operate but also must improve their operation as well as their staff's performance.

Mr SULLIVAN: Can I just add there that the mandatory environment audit has essentially commenced and the head auditor will actually be on the site later this week, on Friday I understand. We have already spoken to the head auditor and the official work will commence on Friday.

The Hon. Matthew MASON-COX: If I could just ask a bit more about that Mr Sullivan. In relation to an incident like occurred on the 8th of August, can you just run through the role of the EPA as regulator in that context?

Mr SULLIVAN: Certainly. The responsibility for managing pollution incidents is clearly the EPA's, it is not the Minister's. The EPA, as you will know, is an independent statutory authority with the responsibility functions and powers in law to deal with pollution including incidents.

As a statutory authority it is Parliament's role through the Minister to hold the EPA to account to ensure that it exercises its functions properly.

The Minister's role is to make sure the EPA is aware of the views of the community, regulatees and other stakeholders, and to ensure that the EPA is actually administering efficiently and effectively within its own budget.

The EPA's responsibility of course is the operational responsibility which is to implement the laws. Generally the EPA is not a combat agency, it is the first response agency under our emergency management arrangements. In the situation where we have an incident which is, for example, a hazardous material incident, the combat agency is usually Fire and Rescue and the EPA is a support agency.

Now there are other support agencies. The Ministry of Health for example is a support agency for providing health advice and assessment and information to the public. So when we are in an incident and we had a number of examples recently involving hazardous materials, in fact there was one on the weekend just past, the responsibility for control of the scene and for communication to the public is the combat agency. So in that case it was Fire and Rescue.

The support agencies provide advice to the combat agency.

Now once the incident has progressed past a response and it is actually under control, if you like, we then proceed into either a recovery phase or an investigative phase, depending on which particular agency is involved.

In the case of the EPA, if you look for example at the incident involving Orica, we proceeded into an investigative phase. Our responsibility then is to conduct a detailed criminal investigation to establish whether or not the legislation applied to the licensee and to that particular incident has been complied with, and of course if it has not been complied with, to then determine what the appropriate regulatory action should be.

The EPA whilst in that mode will also provide advice to the public about its investigations. It provides advice to combat agencies and other support agencies about the environmental impacts that might have resulted.

There is a range of different activities the EPA undertakes during this role. It provides technical support. It can provide advice regarding the identification of hazardous materials as we did last week. It provides analyses and advice about environmental impacts through sampling and we have our own NATA accredited labs. We undertake investigations and take of course regulatory action and we advise on clean up and then importantly the lawful disposal of waste.

So all of those steps essentially were followed during the response to the Orica incident and indeed the incidents. That is very much the responsibility of the regulator and our operational staff and, as I said at the outset, they are not matters that would involve the Minister.

The Hon. Trevor KHAN: Thank you Chair. Mr Sullivan, I will continue on seeing we are in essence talking about the August 8 incident.

In the context of that, what are the responsibilities of industry once a serious pollution incident has occurred and what have been the changes with regards to those responsibilities as a result of the recent bill that passed through the Parliament?

Mr SULLIVAN: Well the protection of the Environment Operations Act deals specifically with industries' responsibilities and particular responsibility to notified. So part 5.7 of the act provides the industry must notify the EPA and other relevant authorities. Specifically section 147 says that where an incident causes or threatens to cause material harm to the environment, the polluter must report the incident.

Now this is the section where the particular phrase 'as soon as practicable' is involved and as you would be aware, it has recently, been amended and will shortly be replaced by the word 'immediately'.

So the responsibility on industry is to report the incident to the appropriate regulatory authority, which will either be the EPA in the case of Orica, or it might be local council in the case of unlicensed premises. This is required even if the material is contained on site.

The environment protection licence holders also have some other requirements. They are required by standard conditions to ensure that they notify the EPA via the environment line. They must provide information about the timing, the nature, the duration, the location of the incident, the nature and quantity of the volumes of pollutants involved, the circumstances or cause of the incident and any action that they have taken in response to it.

In addition the act also requires that an annual report is furnished which must include reference to incidents and it its duty to notify, and indeed the senior executive, potentially the CEO of the licensee, needs to sign off to say that the report is in fact accurate.

Now the most recent legislative amendments that have been passed by Parliament introduce a number of changes. Firstly, they require the notification by the licensee of not just the EPA but the relevant authorities, whether they be EPA, health, Fire and Rescue, WorkCover, and indeed the local council, and they require it immediately as opposed to what has been in the legislation the phrase 'as soon as practicable'.

In addition the legislation anticipates the scenario that the initial report may be made whilst not all the information is available. So what it requires is that if further information becomes available, then that must also be reported immediately it is available.

There are some other features of the legislation which are important in this context. Perhaps the most significant of those is the requirement by licensees to they have a pollution incident management response plan that is in place. It must be tested, it must be retained on the site and it must be enacted in the event of a pollution incident.

The content of those pollution incident management response plans is yet to be finalised but it will be finalised via regulation and in fact there are project teams in place now to negotiate and to consult with both industry and communities about what the content of those plans should be.

Now the plans are intended to be customised and site specific so that it is not a one size fits all arrangement. Each individual licensee is expected to have a plan, they must have a plan but that plan needs to be tailored to their own circumstances. So you need to take into account the particular community and the needs of that community that are around their site.

There is a significant penalty involved for failure to either have a plan or indeed if a plan is in place to not follow it.

Certainly the plans will require a community notification protocol.

The legislation also increases penalties for failing to notify and to comply with the notification requirements, so the maximum of \$2 million for a company and \$500,000 for an individual, and as a consequence there is a very significant incentive, or rather perhaps disincentive to encourage licensees to ensure that they do make their notifications immediately.

Ms CORBYN: Could I comment as well? One of the things about the duty to notify the significant step forward that has been taken in this legislation, most of the other states in Australia actually have 'as soon as practicable'. So New South Wales will really be a step ahead of all the other jurisdictions in Australia as these legislative provisions are commenced.

The Hon. Matthew MASON-COX: Leading the way.

Ms CORBYN: Leading the way, yes, and the penalties are really quite substantial.

The Hon. Trevor KHAN: If I could just return to Mr Sullivan for a second, in earlier evidence Mr Sullivan you indicated that an OEH officer who attended the site on, by recollection, about midday on the 9th of August had advised or told Orica to report the matter to health, and that some twenty four hours or thereabouts later again reinforced the issue that health was to be advised. Do you know whether that officer received any explanation as to why Orica had not followed through the advice given on the 9th of August to refer the matter to health?

Mr SULLIVAN: No, there was no satisfactory explanation provided and indeed on the second occasion the officer was there, there was actually a suggestion they did not have the phone number. They were able to make contact some thirty to sixty minutes later after the officer had prompted them a second time.

The Hon. Trevor KHAN: You referred to no satisfactory explanation. Was the only explanation given could not find the telephone number or was there something more than that?

Mr SULLIVAN: My understanding was they simply overlooked the request that had been made of them.

Ms CORBYN: And it was in the fact the staff following up and going back and asking did they actually contact health that elicited the response no, they had not yet and they needed to go find a contact.

The Hon. Trevor KHAN: There is nothing more you want to say?

Ms CORBYN: I would only say that one of the changes in procedures that has been instituted is that it is very important that our staff actually contact health as well. So that we do not actually just rely on industry and one of the things that we did make in our submission, a comment that we did make in our submission is that we are changing the procedures to make sure that our staff know that it is also their responsibility to contact health. It is a standard practice that we would have.

We work so well with health that we should also have contacted health when an incident like

this occurs. At a regional level that did not happen in the first instance. Our people were going out to collect the samples to find out what was happening but we have changed that procedure.

Mr SULLIVAN: I have actually issued that in the form after directive and made sure the email went to every EPA officer.

The Hon. Trevor KHAN: In earlier evidence there was reference made to the mandatory environment audits. In what I think is the little time that is left, are you able to give us an explanation as to what those mandatory environment audits will entail and whether they have been done in the past?

Mr SULLIVAN: Yes. My understanding is that this is I think the tenth mandatory environmental audit that has been issued. This particular mandatory environment audit will involve, as the Minister said, essentially starting at the front gate and going to the back gate of that Orica Kooragang Island complex.

There are in fact six separate plants across that site. They will work through each of them sequentially starting with the ammonia plant.

The mandatory environment audit is a very significant undertaking. It involves a team of auditors, it has a head auditor and then about seven or eight other auditors that support that lead auditor and they will assess every single process that is involved in the operation of the plant. Those are both the physical assessment of plant and its structures, but also the procedures and the software involved in operating the plant, discussions with the staff who operate the plant and effectively a walk and all assessment of the entire operation of each of those six plants.

So because it is such a large undertaking and rather than be waiting for almost two years essentially to complete the entire task, given its detail, what we have done is break it up into components. The first component will be the ammonia plant. That part of the environmental audit will be completed by the 1st of March 2012. Then move on to the nitric acid plants and then after that the ammonium nitrate plants and so there will be a series of deadlines that Orica are required to meet throughout the year.

The second stage is due in 1 July 2012. The bulk of the third stage by the end of 2012 and then finally a concluding report with recommendations by 1 May 2013. So this is going to be a very, very substantial undertaking that Orica are going to have to meet and my expectation is it will deliver at the end a far safer and better understood plant. I think that is important because it seems to us that Orica have not got a full grasp on that plant.

The Hon. Trevor KHAN: Who appoints the people who undertake the audit and who pays for it?

Mr SULLIVAN: Well the approval of the audit team lies with the EPA, with myself, and I have approved the audit team to be put forward based on analysis of the CVs, the experience of the audit team and in fact we required some additional members to be added to make sure that the team had the full mix of experience required for such a complex plant. There are only a few of these plants in Australia and there are only a few individuals who are actually sufficiently qualified to conduct an audit of this nature.

The payment or the cost of the audit is met entirely by Orica.

Ms CORBYN: There are two other steps Greg that have also been brought into place to bring in expert engineers to actually deal with the current circumstances, not just the long term mandatory environment audit. Is that not correct?

Mr SULLIVAN: Absolutely. So we have a number of independent engineers who have provided advice on a range of aspects of this case. We have the independent engineer who has sourced from the UK who did the initial causal analysis on the ammonia plant incident. We have the engineer who was engaged to make an assessment of all of the evidentiary material that we had collected during that investigation and will ultimately be the expert witness in the Court proceedings.

Another independent engineer was engaged to look at the 9 November incident, the most recent incident, and we have an engineer who is also providing advice to our start up committee so that we can interpret appropriately the vast body of documentation being provided by Orica in response to the directives of the start up committee.

CHAIR: Just a point of clarification, could I ask, you could perhaps take it on notice, could you provide the Committee with a list, if you have not already done so, of the personnel who are involved in that audit team?

Mr SULLIVAN: Yes, absolutely Mr Chair.

CHAIR: Thank you.

The Hon. Trevor KHAN: In the Orica submission they made reference to the fact that OEH had established an inter agency ammonia plant restart committee to develop and oversee plans for the start up of the ammonia plant and it then indicates in the submission who is on that. I wonder if whoever it seems appropriate could tell us where the start up of the ammonia plant or the proceedings of the committee are up to?

Mr SULLIVAN: Yes, certainly I am happy to be able to assist with that question. I established a start up committee in order to achieve a couple of key goals. The first one was to promote rebuilding of community confidence in Orica's ability to operate the ammonia plant in a safe and environmentally satisfactory manner.

It was also to provide advice to the agencies represented on the committee regarding Orica's preparedness to be able to operate the plant because each of the agencies, I will outline them in a moment, has a particular interest in that plant and its operation.

Thirdly, it was to set and oversee and review the progress on the restart work plant.

The committee consists of all of the agencies involved, it is chaired by myself representing the EPA, it has the NSW Police, Fire and Rescue New South Wales, WorkCover, the Department of Health, Department of Planning and Infrastructure. It has representatives from the Newcastle City Council and representatives from Port Stephens Council.

The committee has met six times. The first two meetings were essentially spent establishing what we now refer to as our verification matrix and that is a document which guides the work of both the committee and that we required of Orica. So within the verification matrix we have four key components and those components are firstly the technical verification which is proving to be the largest body of work.

The clean up and the cleanup has a couple of distinct parts. One was the cleanup of the Stockton community, of course the priority, and I can report to the Committee that that component of the work program has been completed. The second part of the clean up though is the cleaning of the internal and external surfaces of the plant. We have required Orica to engage the services of an independent auditor to audit the clean process. That auditor has provided their report to the committee. Essentially, they are indicating that they have followed best practice in terms of the cleaning of industrial equipment and industrial plant.

We have the independent engineer speaking with that auditor to check a couple of aspects, particularly around how can we be certain that the internal surfaces have been cleaned such that there will be no hexavalent chromium deposits remaining and the committee will be examining that question in some detail when it next meets next Wednesday.

The third part of the work of the verification matrix and verification plan is engagement and communication with the community. This is not work that the start up committee is undertaking per se, although it has held its own public information session. It is actually work that is required of Orica and the task of the start up committee is just to check to make sure Orica is in fact following the various elements that they have indicated they will in terms of communicating with the local

community.

The fourth and final part of the verification plan is the emergency management plan. Now the emergency management plan has been substantially rewritten. It is a document which is ultimately approved and authorised by WorkCover. The work of the start up committee has been led in this respect by both WorkCover and Fire and Rescue. They have exhaustively been through that document with Orica. They have required Orica to undertake testing where in fact they did the testing, created the scenario and tested Orica, happened on two occasions.

My advice is that the emergency plan as rewritten has now reached the appropriate standard. There is some final work to be done in terms of making sure that the emergency management training manual picks up all the relevant aspects of the revised plan.

Essentially that then leaves with us the technical section and there are actually about twelve different steps involved in the technical start up. Where we are at the moment is that the physical changes have been made to the plant and we have an engineer now who is verifying that has been done to the plant in fact accords with the design and the recommendations of the independent engineer from the UK.

They are also going through all of what is called the hazard and operability document supplied by Orica which are detailed documents about procedures and assessments of hazards.

I would draw the Committee's attention particularly to the fact that one of the key changes that has been required as a result of this incident is that the catalyst will be heated by nitrogen rather than by steam as it was in the original incident. This is a significant change and should overcome the event which was too much condensate was created and as a result there was the expunging to the atmosphere of the chromium 6. So this is a very important step but what is required by the committee is to make sure that in changing the procedure they in fact do not create another hazard and so that is particularly what the focus of the committee is.

The Hon. Melinda PAVEY: So the last two start ups have been a disaster, have they not?

Mr SULLIVAN: The last two start ups have not followed the procedure that ought to have been.

CHAIR: Order. I will now call a recess to this session of the hearing and I will ask the witnesses and the Committee to be back in their chairs by 6.18 pm and we will then have roughly twenty two minutes of questions in the free categories. Thank you.

(Short adjournment)

CHAIR: Order. Thank you Minister. I will open this next session, twenty four minutes each, the Opposition.

The Hon. Adam SEARLE: Thank you Mr Chair. Minister, your agency was notified on the 9th of August about 10.30 in the morning about the incident. At that time Orica advised there had been a discharge of hexavalent chromium 6.

Ms CORBYN: My understanding is that they said it was sodium chromate. So we actually did not know at the time whether it would be hexavalent chromium, hence the reason to do the sampling that we had to do.

The Hon. Adam SEARLE: I just direct your attention to page 5 of your submission. It says "Orica advised there had been a discharge to atmosphere containing hexavalent chromium, chromium 4", I think that is a typo, it should say chromium 6.

Ms CORBYN: Could be.

Mr SULLIVAN: My understanding it was only suspected at that stage, there was no definitive confirmation from Orica.

The Hon. Adam SEARLE: That is not what your submission says. It says "Orica advised", that is what it says, isn't it Ms Corbyn?

Ms CORBYN: We will need to check that, I am sorry, if that is the case. We will have to check that.

The Hon. Adam SEARLE: A pretty definite statement.

Ms CORBYN: My understanding certainly from the information I had was that it was sodium chromate and that we surmised that there might be some. So I will have to check that.

CHAIR: Can I just remind the witnesses to swing the microphone to whoever is speaking. Thank you.

The Hon. Adam SEARLE: At the front of the submission is a letter from yourself submitting the submission to the Committee. You reviewed it before you signed it?

Ms CORBYN: I did.

The Hon. Adam SEARLE: You satisfied yourself the contents were accurate as far as you knew?

Ms CORBYN: As far as I knew although I obviously missed the typo of the chromium 4 to chromium 6. And yes, I suppose because there had been so much time passed that I was certainly acknowledging that hexavalent chromium was in our early alert on the Wednesday. So we had suspected that it would be there. I obviously did not pick that up. I will have to go check. I was not actually at the regional level so I will to find out exactly what Orica had advised us in terms of whether it was sodium chromate or hexavalent chromium.

Mr SULLIVAN: The only way they could have been certain was to have done laboratory tests and that is what the EPA organised to do, laboratory tests. At that stage it could only be a suspicion based on what they knew to have been in the process, i.e. in the plant itself at the time of the incident. So they were surmising, as it turned out correctly, that in fact there had been hexavalent chromium released.

That was the same hypothesis that the EPA officers who attended the scene were operating on. What they did then was to obtain samples both from the site, and then subsequently from Stockton, and get those samples tested and the samples did confirm ultimately that there had been hexavalent chromium released in those deposits.

Ms CORBYN: And the challenge I think from our perspective, around certainly the thing that I had been concentrating on, was that our people had been advised that the fallout was actually contained on site. So when they went out at 12.15 on the Tuesday they were expecting to have seen it contained on site. So it was not until they had actually arrived on site and realised that it might have gotten offsite that it actually activated a different course of events.

The Hon. Adam SEARLE: But as you are sitting here today giving evidence, what you are saying is that you do not any longer know or you do not know whether this part of your own submission is actually correct. You do not know what they told you.

Ms CORBYN: I may have made a mistake, yes.

The Hon. Adam SEARLE: We will come back to that. Shortly after notification OEH sent people onto site that same day I think about an hour and 35 minutes later, and OEH officers directed Orica to notify the Department of Health?

Mr SULLIVAN: I should clarify there, did not direct, they advised.

The Hon. Adam SEARLE: Verbally directed is what your report says.

Ms CORBYN: Verbally directed.

Mr SULLIVAN: The difficulty that was revealed by the incident was they did not have a legislative power to actually give a direction. So they had made their wishes very clear to Orica. Unfortunately Orica did not comply.

MINISTER: And that is what we have changed in the legislation.

Ms CORBYN: But they would have thought they were directing them.

The Hon. Adam SEARLE: But nevertheless OEH officers indicated to Orica they should notify the Department of Health and Mr Sullivan, I think you indicated that it was OEH's own responsibility to notify health and OEH officers who were present at the site took no steps themselves to notify health, did they?

Mr SULLIVAN: Historically the position had been that the great deal of emphasis was placed on licensees being responsible for their site, their processes, and them ensuring that they complied with both their licence and the legislation.

Now what this incident has revealed was that that level of reliance on the licensee in this case proved to be misplaced because they did not actually follow the request and the direction, if you like, of the officers on the scene and it is for that reason that I have now issued a direction to EPA officers that if they feel the need to advise a licensee to contact another agency, then they must also contact that other agency and let them know they have done that.

The Hon. Adam SEARLE: Just as a matter of common sense, the officers of OEH were site, they knew there had been a spillage of a chemical, suspected at that time to be chromium 6. They learned when they were on site that it had gone offsite and they thought that this was serious enough to attempt to direct the company to notify health. But it didn't occur to these officers to notify health themselves, is that what you are saying?

Mr SULLIVAN: I think it is very important to have an understanding of the way these officers approached the particular incident. They were experienced officers, highly trained, they had been to hundreds, if not thousands, of pollution incidents throughout their careers.

Their initial assessment, and ultimately proved to be correct by the health assessment, was that this was a serious incident in the sense that a substance, a hazardous substance had escaped from the site, but their initial assessment was that on the basis of what they knew of what might be in that release, the hexavalent chromium, that it was quite likely that the low concentrations because it was diluted in the steam.

Secondly, that the exposure would have been short because it was estimated to be about a twenty minute incident, and that the pathway by which the hexavalent chromium has been found to have been carcinogenic was either by inhalation or ingestion.

Now in the inhalation sense they had already formed the view, basing what they could see on the plant, that the substance had come down in the form of deposits which had adhered particularly to hard surfaces and had gone hard so it was unlikely to have been ingested in significant quantities.

From the inhalation perspective they had formed the view that because it was substances which were essentially heavier than air and falling, that they were not likely to have been inhaled and perhaps could not have been inhaled because of their particular nature.

So although they were not and did not pretend at any stage to be health experts, based on their experience and the knowledge of the substance, their assessment was that they were dealing with a serious pollution incident which they ought to have been told about many hours earlier but which by the time they identified was in fact in the recovery phase. They launched into what amounted to be an investigation, a criminal investigation.

Their initial assessment was that the threat to the health of the community was likely to be low. Out of a matter of being prudent, they had asked Orica to make the incident known to the health ministry, Orica did not do that. When they followed up the next day and established that in fact Orica had not followed the request, they then themselves not only asked Orica to do it but then made the call themselves to make sure that health were aware.

Now we have learned from that exercise and we have learned from placing too much reliance on the licensee, and so that is why I have issued a directive to say in future we will make the call ourselves if we feel the necessity to direct another agency. But it is very important I think to understand the context that these experienced officers encountered when they first arrived because that then informs their decision making.

The Hon. Adam SEARLE: Already but when they arrived on site they knew there had been an exposure on site, that is correct?

Mr SULLIVAN: Yes.

The Hon. Adam SEARLE: And they knew potentially that people in the workforce had been exposed?

Mr SULLIVAN: Yes they did.

The Hon. Adam SEARLE: And they did not then notify WorkCover, did they?

Mr SULLIVAN: Although WorkCover had already been advised to my understanding.

Ms CORBYN: By the time they actually got to the site, yes.

The Hon. Adam SEARLE: Did they know that at the time?

Mr SULLIVAN: I will have to check with the officers.

The Hon. Adam SEARLE: Your submission says at page 6 that at this time the situation was not considered an emergency. I think Mr Sullivan you said that was because that plant was in a start up phase, is that correct?

Ms CORBYN: It was shut down.

Mr SULLIVAN: No, the reason it wasn't considered an emergency was because at the time the officers arrived at the scene, they could not see and they could not determine that there was an imminent threat to life or safety of any individual. There was no immediate threat to the environment based on their knowledge of the substance involved because of the time that had elapsed.

Now had they been called between 5.30 and 6 pm the previous night, they may well have formed the view that there was an emergency incident but it was not an emergency by the time they arrived sixteen and a half hours later. They were essentially in a recovery phase and they launched into an investigation.

The Hon. Adam SEARLE: Just on that point though, maybe it had moved into a recovery phase but at the time their knowledge was that this dangerous substance had not only been exposed at the work site but had gone offsite. That is correct?

Mr SULLIVAN: Yes.

The Hon. Adam SEARLE: And potentially that members of the general public may have been exposed to the substance?

Mr SULLIVAN: Yes. Their initial assessment was that as the material had migrated offsite, there was the potential for exposure, albeit their initial assessment later proved to be correct was that the threat would have been very low and that is why they then not only advised Orica to contact the

health authorities but then commenced taking samples to try and establish where in fact the material had got to.

The Hon. Adam SEARLE: Leaving aside their assessment which you say later turned out later to the correct, nevertheless at that stage they did not know what exposure members of the general community may have had. And notwithstanding the fact that they knew there had been that potential exposure, your agency still says that it was not considered an emergency at this stage when you simply did not know.

Ms CORBYN: The plant was actually shut down though so I think our people did, and I think Brendan O'Reilly's report actually confirmed that the staff took the right steps. So I think that our people used their assessment. When they got there they saw what was happening at the plant. They saw something different when they got into the community, hence the reason they took the samples to actually make sure that they actually got tested.

My understanding from talking to the staff is that what they found in the community was sort of reddish spots which is very different than the sort of yellowy green hexavalent chromium that they would have seen on site. So their judgment was that they needed to actually investigate this, they needed to get the samples, but they did not have sufficient information and the plant was shut down so it was not a continuing emission that would be continuing to or affecting the community at that point.

Mr SULLIVAN: Just to go back to the point you made earlier about what their judgment was in terms of the likely material, as the chief executive said, what they were seeing at the plant was subtly different to what they were finding in the environment and they were initially concerned as to whether or not there might be subtle differences between the materials in those contaminants that were, for example, located at Stockton at opposed to what they were seeing on the plant itself. It is for that reason that they were not making snap judgments about what the particular material might have been and instead took the samples to get them tested to establish for certain whether their hypothesis was correct. So they approached it as scientists essentially.

The Hon. Adam SEARLE: You say they weren't certain what the substance was. That is because we still do not know, neither of you know in fact what Orica informed your agency of.

Ms CORBYN: The original early report that we had called it ferric chromate and I am not a chrome expert but my understanding is that chrome changes quite substantially and it could have been something else. Hence the reason our staff actually took the samples that they did.

The Hon. Adam SEARLE: You made a number of references, Mr Sullivan, to the assessment made by the OEH officers that went on site. Were those assessments reduced to writing?

Mr SULLIVAN: The officers have completed inspection reports based on their initial observations and at this stage I think they would have also completed affidavits regarding all their involvement as there is now, as you are aware, a prosecution afoot in relation to that incident.

The Hon. Adam SEARLE: I do not want to get into evidence they might have given in any prosecution but are you able to provide to the Committee the assessment they did as a result of being on the site?

Mr SULLIVAN: I am very happy to provide whatever notes they made at the time.

The Hon. Adam SEARLE: If you could do that, that would be good.

Subsequent to this, on the 10th of August Orica determined to convey precautionary health messages to Stockton residents and asked health to make some comments on the messages they were going to provide to the community.

Ms CORBYN: I do not believe that Orica did that. I certainly got advice that Orica's public relations people provided to our people and immediately sent that information to the Ministry for Health, to the Chief Health Officer, because I was unclear whether those messages would have been accurate messages from a health perspective. So I do not believe that Orica provided those directly to

health.

The Hon. Adam SEARLE: But at 7.31 you sent an email to Kerry Chant with information on advice being provided by the Orica staff to residents?

Ms CORBYN: Yes.

The Hon. Adam SEARLE: And part of that information was the script, wasn't it?

Ms CORBYN: Yes.

The Hon. Adam SEARLE: That Orica's employees were going to use when speaking to residents?

Ms CORBYN: It was.

The Hon. Adam SEARLE: And you had an opportunity of reading that script?

Ms CORBYN: I did but I am not an expert in those areas. Hence the reason I sent it to the Chief Health Officer to determine whether she would have been concerned that that information was accurate from a health perspective because certainly from the discussions that I had had when I had the initial discussion with the Chief Health Officer, which was about 5.40 or so on that night, as soon as I had seen the early alert, was to make sure that this was clear that it was health information that needed to be provided to the community.

I was concerned to make sure that - I knew that from having had the discussion that our regional staff, as well as the regional health staff, were actually developing up information for the local community and I wanted to make sure from a health perspective that the information was accurate.

The Hon. Adam SEARLE: You understand it was very important if you were going to put information out to the community that it be as accurate as possible?

Ms CORBYN: Absolutely, and hence the reason we actually had the discussion that we needed to have, an urgent teleconference with the experts and have sample information available so that they could actually draw a judgment from a health perspective as to whether those conclusions could actually be drawn.

The Hon. Adam SEARLE: And did you provide a copy of this document or those documents to your own Minister's office?

Ms CORBYN: No, I did not. I called the Minister's office. The early alert, the sequence of events from my perspective was that the early alert was actually provided to the Minister's office at the same time that it was provided to me. It was by email. When it was drawn to my attention I called Greg, I called our regional person to find out what was happening from his perspective specifically and I immediately called the Chief Health Officer first and then our Minister's office.

I provided the information to the Chief Health Officer when I received it on the script because I felt that we needed to have very clear advice about whether the health messaging to the community was accurate and at that time we discussed the need to have both staff available to be on the ground but also to have an urgent teleconference with the expert panel that the Chief Health Officer was convening to provide that advice.

We had originally expected that we would be able to have that convened I think around 8 or 8.30 in the morning but there was a health expert in Perth and they worked hard to make sure that he was available because he is a renowned expert on that. So yes.

The Hon. Adam SEARLE: Just to be very clear, the script for Orica employees when speaking to residents, you did not communicate the content of that script?

Ms CORBYN: I did not send that to our Minister's office.

The Hon. Adam SEARLE: And you did not turn your own mind whether or not the information was accurate?

Ms CORBYN: I turned my mind to determining whether as I would not know from a health perspective, because I am not a health official, and I turned my mind to sending it to the Chief Health Officer so we could get accurate health advice.

The Hon. Adam SEARLE: Thank you.

The Hon. Luke FOLEY: Ms Corbyn, who is the prosecutor of Orica in the legal proceedings, is it OEH?

Ms CORBYN: I signed the prosecutions. Well it is the EPA, we have a statutory EPA at this point in time and I have signed it as having the delegated authority to sign that prosecution.

The Hon. Luke FOLEY: Thank you. You phoned the chief executive officer of Orica on the 15th of August, didn't you?

Ms CORBYN: I did, on the Friday night, yes. I will have to get my dates right, actually I phoned him --

The Hon. Luke FOLEY: Monday?

Ms CORBYN: I phoned him on the 12th, on the Friday.

The Hon. Luke FOLEY: The 12th?

Ms CORBYN: Yes.

The Hon. Luke FOLEY: Well Minister, why is it appropriate for the chief executive of the Office of Environment and Heritage to speak to the Orica CEO by phone but inappropriate, as far as you are concerned, for you to do so?

MINISTER: Because it is important to keep these proceedings at arm's length, so that there is no perception and could never be any perception of political interference. That is the advice that has been given to me as the Minister to make sure that there are no political implications in terms of any prosecution, whether that be an issue of illegal dumping, any issue in relation to the portfolio.

Certainly that advice I think is critical for a Minister to take and that is the advice that I follow.

The flip side of that is if I did get involved, if I did speak and the prosecution changed in any way, I could be accused of politically getting involved in a prosecution.

So that advice to me as Minister overseeing a regulator that prosecutes environmental offenders in carrying out my responsibility is that it is essential to keep at arm's length from potential defendants so that there is no perception of prosecutions, that there is no perception that they could be influenced by political consideration. So that I could not be accused of discriminating in favour of or against particular persons. So that I could not be involved in any attempt a potential defendant may make to avoid being prosecuted.

Remember the things that Mr Liebelt said he wanted to talk to me about certainly were not worth the risk of compromising a prosecution.

The Hon. Luke FOLEY: Minister, have you discussed the option of resigning from Cabinet with the Premier or any of his senior staff since August 8th?

MINISTER: Absolutely not. What the people of Stockton needed was a Minister that was

prepared to take action. Action that could have been taken in the last sixteen years with your government because let us face it, Orica were operating under a system using procedures that your government put in place and did nothing about.

As the ALP branch of Stockton said, they had been raising concerns about Kooragang Island, about Stockton and they had fallen on deaf ears. So I have taken action, action that I have begun and action that I have got to complete, and that action includes establishing an independent EPA, having the regulator have more bite, having a community consultative committee, talking about and introducing more equal monitoring, making industries such as Orica responsible, changing the law so that they must inform immediately.

Making sure that as part of that they also have to have a pollution response plan. Making sure that there is mandatory capability of auditing. Understanding and working with the EPA to make sure that there is an audit from front to back of Orica, an audit of forty two sites.

These are all things that could have been done by the last seven environment ministers and were not.

The Hon. Luke FOLEY: Thank you. That was a direct question.

MINISTER: These are the things that a responsible environment Minister does and I have done.

The Hon. Luke FOLEY: Are you going to appoint Mr Sullivan to the office of the chairperson of the EPA?

MINISTER: That is not my responsibility. Clearly though he is in that role, he has been taking that role. He has the role of chief environmental regulator.

Now the chair, sorry, I misunderstood what you said, the chair is a position that will be advertised, it will be an advertised position. We are looking for someone with particular skills, someone who has the capacity to understand the regulation, understand industry, but also communicate with the community. They are the community's champion, they will be the community's champion, they will be independent and that is a really important thing that we have brought back.

This is an EPA that has strength, has bite, an EPA brought back that under your government was folded back into the Office of Environment and Heritage, starved of resources. Certainly what we have done is brought back a strong EPA, an EPA that a coalition government introduced in the first place.

CHAIR: Thank you Minister, we are just about out of time, only a few seconds remaining. Before I pass to Ms Faehrmann I might just a question myself to you.

In evidence earlier today, which you may or may not have heard, the Premier gave some very direct and very unambiguous answers to questions. One of the things he did say was that he accepted that in this particular case the industry and government, the performance was less than satisfactory, which was good that he said that.

He also then referred to the government's role in our changing, the term he used was the culture of departments such that a more appropriate and timely response to these sorts of incidents could be expected in the future.

Do you agree with the Premier's evaluation of that Orica situation that I have just described?

MINISTER: Well certainly the Brendan O'Reilly report evaluated a number of things that had gone well, considering that everyone was working on the policies and procedures that were in place from the previous government. Brendan O'Reilly acknowledged that authorities were doing what they could, given that it was sixteen and a half hours after an incident that they were notified.

He did also identify a number of things that needed to be changed and I think you might

have heard Lisa Corbyn before saying that we have already taken action, or at least the Office of Environment and Heritage have already taken action to advise staff of ways in which they can act more appropriately.

Greg Sullivan has talked about how he sent out directives to all of his staff to make sure that they are more responsible.

What we have done in terms of changing the legislation will bring back a culture that is strong, that is a strong regulator. So we have taken on Mr O'Reilly's recommendations and gone further.

I think that there are opportunities and there were opportunities in the past to do something. This is a new government, we have taken action. We have not sat back and let all this go on and the community should be very confident about that. We have certainly undertaken, for example, the forty two hazardous site audit. That is the largest in the state that has ever been undertaken.

I think in fact the staff at the Office of Environment and Heritage, the staff that are working in the EPRG, which is the EPA, will be energised by these changes and they will certainly be focused on their responsibilities. As Minister we will be watching that very closely and ensuring that that happens.

CHAIR: Thank you, good answer. Ms Faehrmann, over to you.

The Hon. Cate FAEHRMANN: Thank you Chair. Mr Sullivan, hexavalent chromium bio accumulates in marine life, is that correct?

Mr SULLIVAN: I do not have a scientific background but that is what I have been informed.

The Hon. Cate FAEHRMANN: What testing has been undertaken after this incident of either oyster leases or marine life?

Mr SULLIVAN: My understanding was that the question of oyster leases was referred to the Department of Primary Industries. The advice was that there were no active oyster leases in the area and our advice from our environmental scientists was that given the quantity and dilution and the scale, for example, of the Hunter River, that no environmental impact would be likely to result.

The Hon. Cate FAEHRMANN: I have an email here from your chief investigator of your SIU, Specialist Investigation Unit, Jason Bentley, a priority request. This is on Wednesday the 17th of August. They wanted assistance from the Department of Fisheries to assess the potential impact of hexavalent chromium on marine life, including fishery industries in the Hunter River estuarine, e.g., oyster farms, prawn farms. He states that hexavalent chromium bio accumulates in marine life.

So your SIU, chief investigator of the SIU suggested that. Was that forthcoming from the Department of Fisheries?

Mr SULLIVAN: Yes, it was to my understanding. They did seek that advice, they spoke with DPI and they received advice about those oyster fisheries.

The Hon. Cate FAEHRMANN: So to your knowledge they sought advice but no testing of marine life was undertaken?

Mr SULLIVAN: I do not recall them testing actual marine life. They did an assessment of whether there were oyster leases nearby and what the likely impact would be which was informed by our environmental scientists, concluded that the risk to the environment were very low.

The Hon. Cate FAEHRMANN: Ultimately is it EAP's responsibility, OEH's responsibility or Fisheries responsibility to test in similar incidents to test whether chemicals have indeed bio accumulated?

Mr SULLIVAN: The EPA and DPI work very closely together when incidents of this nature eventuate. There are circumstances where the EPA would lead the sampling regime, the testing regime, and there are other circumstances where we support DPI. In either case we work closely together.

The Hon. Cate FAEHRMANN: Some of the correspondence that we have seen as a result of the call for papers indicated, I think Mr Sullivan, that there was a resident who was concerned about his dead budgerigars. Can you tell the committee what that incident was about?

Mr SULLIVAN: Yes. Whilst the EPA officers were in the field they came into contact with one of the residents of Stockton who had located a number of dead birds and the officers agreed to have the deceased animal tested to allay the fears that that resident may have had. They did that testing and the testing was negative.

The Hon. Cate FAEHRMANN: Let us be clear, you said located a number of dead birds. Were they the man's pet budgerigars that died?

Mr SULLIVAN: I am not certain of whether they were his or whether they were birds that the individual had located, but they were provided by that particular individual and they were tested at his request and the tests were negative.

The Hon. Cate FAEHRMANN: To your knowledge, did those birds die say immediately after the incident?

Mr SULLIVAN: The cause of death is unknown.

The Hon. Cate FAEHRMANN: When did they die?

Mr SULLIVAN: The cause of death is unknown.

The Hon. Cate FAEHRMANN: The question is not the cause Mr Sullivan. The question is when did the resident discover that his pet budgies were dead?

Mr SULLIVAN: I do not know but he asked the EPA officers whether they would test the birds and they did and the test that came back from the lab showed that they had died of some unknown cause, but it was not hexavalent chromium.

The Hon. Cate FAEHRMANN: Do you have a report regarding that incident, for example, when the gentleman phoned and what he told you at the time?

Mr SULLIVAN: I would have to make enquiries of the individual officers. I suspect this would have made records in these field notebooks when they were conducting their survey at the community and the discussions they would have had. There are certainly sampling results from the NATA accredited labs which confirm that there was no link to hexavalent chromium.

The Hon. Cate FAEHRMANN: The sampling came from the dead budgerigars, is that what you are saying?

Mr SULLIVAN: They were sampled and to establish a cause of death, they could not establish a cause of death and they could not detect any hexavalent chromium either.

The Hon. Cate FAEHRMANN: Are you happy to take that on notice and we can find out? I mean you can understand for the first time today we heard about eight residents with adverse health impacts and I am now talking about a couple of birds that were found dead as well and I do not think that was reported too widely either. .

CHAIR: Could the Member just clarify the question as to what she wants on notice?

The Hon. Cate FAEHRMANN: The notes from your officers in relation to this incident on file.

Mr SULLIVAN: Yes, I am happy to take that on notice.

The Hon. Cate FAEHRMANN: Minister, when you made the ministerial statement to the Parliament, you said in your ministerial statement that fortunately there was no health risks associated with the release of hexavalent chromium from the Orica plant. The expert advice on this was unequivocal.

Do you think that you were provided with all the advice that you needed to be provided with to make that ministerial statement, given that you found out I think for the first time tonight that indeed there were adverse health impacts by at least eight residents of Stockton on the environment line?

The Hon. Trevor KHAN: Point of order, you cannot say that.

CHAIR: Point of order has been taken.

The Hon. Trevor KHAN: What is being put is a proposition which is not supported by anything that has been said. There had been eight reports.

CHAIR: So what is your point of order?

The Hon. Trevor KHAN: That is she is misleading the witness.

CHAIR: Perhaps we can solve this just by asking the Member to clarify the question. Ask the question again perhaps.

The Hon. Cate FAEHRMANN: I am referring the Minister to her ministerial statement that she gave to the House on Wednesday, I think it was, when she says, "fortunately there was no health risks associated with the release of hexavalent chromium from the Orica plant. The expert advice on this was unequivocal."

So my question is given that perhaps tonight was the first time that she has heard that indeed eight residents of Stockton phoned the environment line saying that they may have experienced adverse health impacts from the Orica incident, does she still stand by the expert advice that there were no health risks associated with this spill?

MINISTER: Certainly that was the advice provided to me. Now I am not a health expert but that was the advice that was given to me and I think we discussed before that the Chief health officer was the agency responsible for health and public health.

I think we have gone through residents' claims that they had health impacts, which were passed on and those residents' claims would have been assessed. But certainly the advice given to me at the time was what I made the comments on and clearly that is the only way I can make comment, on the advice provided to me.

Now I am not the Minister for Health, I am the Minister for the Environment and so I commented on the advice that was provided to me at that time. We have discussed the residents' claims that went through the environment line and were passed on to the appropriate place which is public health.

At the time I made that ministerial statement Dr Kerry Chant had already commenced a public press conference. She was leading the health impact; she was the appropriate person to be dealing with that. I have absolutely every confidence that Dr Kerry Chant understands that role, performs that role in an expert way, so far be it from me to come across what she was doing in her role.

I made the ministerial statement after Dr Kerry Chant, who was the lead agency, at the time the lead agency and the lead responsibility for public health, had already informed the public. It was important and it is important, much as other people would like to confuse the roles, it is important that

clear and concise information goes to people at this time. In any of these incidents it is important that the community is informed in a clear way that there is not confusion and role crossover.

The disappointing thing since this Orica incident has been the repeated attempts, constant and repeated attempts to confuse the role of the Minister for the Environment in the public's mind and certainly there has been an on-going and intense campaign.

I have not been confused about my role. I have gone on and made incredible changes to the way we respond to these incidents, the way in which communities can be involved. I look forward to continuing to work with the community in Stockton. I am not confused about what my role is, much as some people would like to confuse people for their own political agendas.

The Hon. Cate FAEHRMANN: Mr Sullivan, did you know about the calls to the environment line that have been referred to tonight?

Mr SULLIVAN: Yes, I was generally aware there had been calls made to the environment line by members of the public.

The Hon. Cate FAEHRMANN: Were you informed that, surely you knew before tonight that eight of those calls were from residents who said that they had experienced rashes and respiratory problems post incident?

Mr SULLIVAN: I had not turned my mind to specific numbers but I was aware there were residents who were reporting concerns, but as those concerns at the time were being assessed by renown experts on the health expert panel that we convened by the Chief Health Officer, I had every confidence that that panel would make a full and thorough assessment which they did and concluded that there was no link back to the Orica incident and no health impact.

The Hon. Cate FAEHRMANN: So you have just said, if I am correct in interpreting what you just said, that those residents' concerns were addressed by, what is the panel you called it, sorry?

Mr SULLIVAN: The independent expert health panel that was convened by the Chief Health Officer was provided with all of the information that the EPA had available, as well as the information that they had gleaned from their own public health officers and then conducted a thorough assessment of that information before reaching the conclusion that was announced by the Chief Health Officer that there were no health impacts from the incident.

Ms CORBYN: I am aware as well that I think the regional health people were actually contacting GPs. So that they would be trying to have the communication with the GPs, hence the reason that we provide advice to communities who have called into pollution line, their symptoms may be about one thing or another, that they need to actually go to their GPs. I am aware that the regional health people were actually contacting GPs as well.

Mr SULLIVAN: It is very understandable that people would have been concerned and we fully accept and understand that, but the difficulty is that the health experts have to look at the evidence and establish whether there is a link and what they concluded on all the evidence that was provided to them was that there was no health impact from this particular incident.

The Hon. Cate FAEHRMANN: So the independent health expert panel was provided with all of the information the EPA had available which included, I would therefore suggest or hoping to get clarification, which clearly would have included the residents that phoned up who had suffered those adverse health impacts?

Mr SULLIVAN: Well, I was not a member of the expert advisory panel. I was aware that they were themselves aware that there were residents reporting symptoms which they were claiming were linked to the incident, but the critical evidence that was provided to the expert panel was the evidence from both the sampling and the sampling methodology, as well as the results from the EPA laboratories. That was the basis upon which the assessments were made, coupled with their own information to hand regarding the substance itself and its known propensities.

Ms CORBYN: And whether people had actually presented to their own GPs.

The Hon. Cate FAEHRMANN: I just find it extraordinary to think that you had --

The Hon. Trevor KHAN: Point of order, point of order, what the member is now putting is a proposition or making a statement, not asking a question.

The Hon. Adam SEARLE: Except she was not allowed to put it.

The Hon. Trevor KHAN: She begins with 'I find it extraordinary'.

CHAIR: Order.

The Hon. Adam SEARLE: But she had not actually asked a question.

CHAIR: Order, please. Finished with the entertainment, have we? I will uphold the order. If you have another question, please ask it.

The Hon. Cate FAEHRMANN: Are you suggesting that the sampling, I understand the OEH worked quite closely with the Department of Health, is more important than the residents who phoned up with adverse health impacts?

Mr SULLIVAN: I am not suggesting that at all. All of the information that the expert panel had to hand was assessed and they ultimately made the decision and the conclusion was that there was no health impact and they did that using all of the information they had at their disposal. How they weighted that information is a matter for the expert panel.

The Hon. Cate FAEHRMANN: You did suggest though that you did know about those eight residents who phoned the environment line, so you did know that people were phoning the environment line with adverse health impacts?

Mr SULLIVAN: No, what I suggested was that I was aware that residents were complaining that they had symptoms as a result of the incident. I was also aware that the health expert panel was aware of the very same information.

The Hon. Cate FAEHRMANN: So did anyone from OEH, that you are aware of, make contact with those residents after they phoned the pollution line?

Mr SULLIVAN: Well that was referred to the Ministry for Health to make contact if that was necessary. But the individuals were given advice about contacting either the public health service or their GP and they were provided the information which the Ministry of Health had already published at that time.

The Hon. Cate FAEHRMANN: Again I am getting conflicting responses here as to what happened with these residents that phoned.

Mr SULLIVAN: I do not think there is any conflict.

The Hon. Cate FAEHRMANN: You said before that it went to your regional office actually and now you have just told me that they went to health?

Mr SULLIVAN: No, the information you provided at the outset --

The Hon. Cate FAEHRMANN: Correct me if I am wrong?

Mr SULLIVAN: When people phoned they were provided with information to either go to their GP or, if they had already done that, they were then provided with the details of the relevant public health unit in the Hunter. They were also provided with information that had already been made publicly available by the Ministry for Health.

Now where any of the regional officers came across similar situations, they provided the same advice, either go to your GP or go to the public health unit.

Ms CORBYN: The most important thing really is for the health advice to come from health officials. So we would not expect our regional people to give health advice to individuals. Hence the reason we provide the information to contact the health contacts, that is the most important thing for people to do from a health perspective.

Mr SULLIVAN: That is absolutely right. No operational officers would have been giving health advice, under no circumstances would they give health advice.

The Hon. Cate FAEHRMANN: So in terms of them providing advice to the Minister or providing advice upstream within the department, to get to the point that media briefs for ministers are issued that are not for publication, but of course these things come out in calls for papers, where it says so that you are advising the Minister that there have been no reports of acute health effects in residents, that is not correct though.

Ms CORBYN: That was the advice that health had given us when we had our initial teleconference, that there had been no reports of acute health effects from health, from their health service in the region. That was clearly reported to us from health, from the regional people in the public health unit in Newcastle.

The Hon. Cate FAEHRMANN: So maybe in terms of moving on on this, it is clear that pity the residents who thought they were wanting some kind of action or response there, knowing that ultimately the statement that came out publicly from everyone actually were no acute health effects. From everyone, including the Minister and the department and the Environment Minister and the Health Minister and the Chief Health Officer. What then could you advise, is there anything that needs to be done differently perhaps to calls that come through to the environment pollution line from here on in for people that are suffering adverse health effects, can I suggest from an environmental incident?

Ms CORBYN: They should contact the public health unit or their GP. That is absolutely the first point that people should contact. They should not get health advice from the environment.

The Hon. Cate FAEHRMANN: Not health advice.

Ms CORBYN: That is right. I have two perspectives, one is that I believe that we should have provided information to the Minister sooner than we did, from my perspective. And we should have contacted health at a regional level sooner than we did, as soon as we knew about the incident rather than waiting for Orica to do that and directing Orica to do that.

But absolutely we have worked, and Brendan O'Reilly's report says this, hugely cooperatively with health. We have actually provided the right information from health based on information that we could provide to them and to the community. But health advice must come from the health officials and the best thing that people can do, when there is any kind of an incident that might affect public health, is to contact either their GP as advised by the health officials in this case, or the public health unit.

The one thing we would definitely not want to do is actually have health advice coming from two different places, it needs to come from the health officials.

Mr SULLIVAN: Can I just add to that? We have taken other steps to strengthen the response of the EPA in these circumstances. In particular we have had a couple of incidents in recent times which have highlighted this. I have emphasised to not just the staff group but specifically to the regional managers and the unit heads that where there is a situation where there may be a concern about public health, that they should make sure that their colleagues in the regional health unit are advised and there have been a number of incidents in the last couple of months where that capacity for information has been both swift and effective.

So the message has sunk in and I think that is going to be one of the significant positives that

emerges from the Orica incident, the more rapid passage of information between agencies.

CHAIR: Thank you Minister. Thank you Ms Faehrmann. I will now move on to the Government. Do the Government have any questions?

The Hon. Matthew MASON-COX: The Government waive our questions.

CHAIR: Thank you, that looks like it is stumps so I would like to thank you and your officers for attending today. It has been a very long day, thank you very much for your time and your answers.

Minister, the Committee may have further questions that they would like to put to you on notice, are you happy to receive those?

MINISTER: Absolutely. I am looking forward to the report.

CHAIR: Thank you and could we ask that any responses come back to the Committee within 21 days of you receiving them?

MINISTER: Thank you. I am looking forward to positive outcomes from the report that we can take forward and do something with, as all Upper House Inquiry reports should.

CHAIR: Thank you Minister. If the Committee Members could just remain for a few minutes, we will have a brief delivery. Could I ask the public gallery now to leave the room?

(The witnesses withdrew)

(The Committee adjourned at 7.15 pm)