

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE NO. 4

**INQUIRY INTO ASPECTS OF THE TRANSPORT
LEGISLATION AMENDMENT (SAFETY AND RELIABILITY)
BILL**

At Sydney on Thursday 6 November 2003

The Committee met at 9.00 a.m.

PRESENT

The Hon. J. A. Gardiner (Chair)

The Hon. J. C. Burnswoods

The Hon. D. Clarke

The Hon. K. F. Griffin

The Hon. D. E. Oldfield

The Hon. P. T. Primrose

Ms L. Rhiannon

CHAIR: I welcome the media and members of the public to this hearing of General Purpose Standing Committee No. 4, which is inquiring into aspects of the Transport Legislation Amendment (Safety and Reliability) Bill. I ask that all mobile phones be turned off. The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of guidelines governing broadcast of the proceedings are available on the table at the door. In accordance with Legislative Council guidelines for broadcast of proceedings, a member of the Committee and witnesses may be filmed or recorded. People in the public gallery 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.

Witnesses, members and their staff are advised that any messages should be delivered through the attendant on duty, or through the Committee clerks. I advise that under Standing Order No. 224 of the Legislative Council, evidence taken by the Committee other than evidence of proceedings that are open to the public, and any documents presented to the Committee that have not yet been reported to the House may not, unless authorised by the House or the Committee, be disclosed to any person other than a member or officer of the Committee.

In respect to this inquiry, the Committee is looking at aspects of the Transport Legislation Amendment (Safety and Reliability) Bill, which is a bill for an Act to amend the Transport Administration Act 1988 to constitute the Independent Transport Safety and Reliability Regulator and to establish the Independent Transport Safety and Reliability Advisory Board, to amend other Acts with respect to their functions and to make other provision with respect to the safety and reliability of public transport services and the investigation of public transport accidents, and for other purposes.

I advise that the Hon. Peter Primrose is representing the Hon. Tony Catanzariti and Miss Lee Rhiannon is representing Ms Sylvia Hale at this hearing. The Hon. David Oldfield will be here shortly.

KENT VICTOR DONALDSON, Executive Director, Transport Safety and Rail Safety Regulator, 227 Elizabeth Street, Sydney, sworn and examined:

CHAIR: Do you wish to make a brief opening statement?

Mr DONALDSON: No, I do not think so.

CHAIR: Witnesses to this Committee may present in-camera evidence. If you should consider at any stage during your evidence that certain evidence or documents you may wish to present should be heard or seen in private by the Committee, the Committee will consider your request. However, it should be noted that the Committee or the Legislative Council may subsequently publish that evidence if they decide that it is in the public interest to do so. Could you indicate your current position and what it entails? Could you then outline your role as it would be under the new legislation?

Mr DONALDSON: I was employed by the then Department of Transport some 18 months ago, through a selection criteria. I report to the director-general, Department of Transport. My role at present is to look at all aspects of public transport safety, including security and incident management. My powers come via the director-general, as his delegate. The vast majority of my work is entailed in rail safety. I take my guidance—and my charter is—through the Rail Safety Act. That entails approving through delegation through the director-general, accreditation, investigation into incidents, and proposing changes where we feel that there is a safety deficiency in any aspect of transport.

CHAIR: Under the new legislation, what would be your role? How would that differ from your existing role that you have just outlined?

Mr DONALDSON: The new organisational structure will involve having an advisory board, a chair of that advisory board and it will be called the Independent Transport Safety Regulator. Reporting through to the board and chair will be a chief executive officer and then I would report through to that chief executive officer. Also incorporated into the new independent regulator will be a corporate governance, a corporate council, and my role will be as a delegate of the chief executive officer. There will also be an area called an Office of Chief Investigator which will report directly through to the chair. It will have powers to investigate incidents but it will share data and other audit compliance issues with the transport safety regulator, and all the other associated functions. I do not have powers under the Act, if that is what you were leading to. Mine are delegated powers through presently the director-general and, in the new structure, through the chief executive officer.

CHAIR: Can you tell us who will be filling the key positions, such as the chair of the board and the chief executive officer?

Mr DONALDSON: Mr Ron Christie presently is an adviser to the Minister for Transport Services, and Ms Carolyn Walsh has been seconded from the Office of the Co-ordinator-General, which is proposed to be abolished under this new bill, and she is acting in the position of acting chief executive officer.

CHAIR: It is proposed that she will become the CEO?

Mr DONALDSON: I understand the job has been advertised. I do not know the status of that position, I am afraid to say.

CHAIR: In relation to the position of chair of the new advisory board, as you have just said that is to be filled by our next witness, Mr Christie. Is it fair to say that the chairperson will oversight the whole of the new Independent Transport Safety and Reliability Regulator [ITSRR]?

Mr DONALDSON: Well, it will be an authority, as I understand the bill—and I am not a lawyer so I make no apologies for not coming up with legal terms here. Mr Christie will oversee an advisory board and three other members will be appointed. That board will also include a chief executive officer. It will be an advisory board as opposed to a normal company corporate board. He will have powers to instruct and to initiate investigations, and the Office of the Chief Investigator,

which has been advertised, would report through to the chair and not through the chief executive officer.

CHAIR: Does that strike you as a bit strange, to go through that line of command?

Mr DONALDSON: No. I take the view, on every public safety issue, that everybody has got to be accountable. What I guess is that he will be accountable to an advisory board and I would hope that I would be able to give advice where I feel that there are pending safety issues through my role in safety audit and regulation through the Rail Safety Act, and where we are predicting possible safety issues, that will be alerted through the chief executive officer [CEO] through to the chair to alert the chief investigator of trends. If you are saying it is different to a normal company board, yes, but it is an advisory board and it does not in the main look after financial interests. It is more safety issues that it is trying to change.

CHAIR: To the best of your knowledge, do you know if the chair will take up the role as a full-time position or a part-time position?

Mr DONALDSON: I am not aware of whether it is going to be a full time or a part time position. Mr Christie—and I will let him speak for himself—is presently working two to three days a week on a part-time basis.

The Hon. DAVID CLARKE: Mr Donaldson, do you think it should be a full-time position or a part-time position?

Mr DONALDSON: I think that, probably with the additional work, it could be perceived as a full-time position. I know I am working long hours at the moment. I think that if it is not full time, he needs to have a number of people around supporting him, such as the chief executive officer and the advisory board and obviously the Office of the Chief Investigator and obviously, where applicable, myself as well. It is a big role. We are going through massive reform and change in safety regulation. As you know, we have had a number of inquiries and a number is presently under way. What we are trying to do is get—what I am trying to do, and I do not want to speak for anybody else—is get accountability at the agency and the accredited operator's level. This new regulator, I might just add for the Standing Committee's recognition, also has now a power over investigations through waterways and buses and ferries as well. It is fairly broad and a very busy area, considering if you take the Sydney rail network. It is probably the third or fourth busiest network in major OECD countries in the world.

The Hon. DAVID CLARKE: I take it from what you say that you think, ideally, the chair should be a full-time position because of the responsibilities involved?

Mr DONALDSON: Yes, but that really is a Government position and a Government policy issue whether they want to appoint a full-time chair. That is not really for me to decide that.

The Hon. DAVID CLARKE: I am just asking you from the point of view of your obvious expertise in this area of public transport safety. Do you think it is the ideal that there should be, from that point of view, a full-time position?

Mr DONALDSON: Certainly in the early days, yes, while we are getting the major reforms in place. It probably would warrant a full-time position. Once we get all the cogs in the wheel running properly, possibly it could go back to have part-time role. But, as I say, that is really not for me. That is a policy issue of constructing the new organisation, and I am not in a position to dictate that, as you can appreciate.

The Hon. DAVID CLARKE: Thank you. There is just one thing I want to clarify, Mr Donaldson. You deal with public transport safety. I take it that includes public transport conducted by private companies?

Mr DONALDSON: Yes. Under the Rail Safety Act, we have approximately 91 accredited bodies, both private and public, from heritage voluntary-type railways up to the larger State rail authorities through to infrastructure bodies, so that is very vast. In the case of buses, the powers for

private companies to have safety management systems in place—we have no powers at the moment under the regulation, under the old Act. What we are trying to do is put in place an investigative power, should we find that there is deficiency in public or private bus companies. In the case of waterways, the Waterways will still be the regulator, but in the case of ferries and chartered vessels at the moment, the only body that can really be regulated in the true sense of the word is the State Transit Authority's ferries.

We have been advocating—or I have been advocating—that there are large chartered vessels on the harbour which are carrying hundreds of people, and they should have to comply with safety management systems and have all the regulatory and marine safety issues in place, as has a normal Sydney Harbour ferry. Now that also applies to the small Stockton ferries and other small public commuter services in other waterways within the New South Wales territorial waters.

The Hon. DAVID CLARKE: So who at the moment does regulate private charter ferries?

Mr DONALDSON: They do not have regulation, other than they have a certificate of worthiness—of seaworthiness—but they do not have a certificate of accreditation, per se. The difference is that we want to know in those issues that they have a safety management system, that they have adequately trained people on board that ferry, including ferry masters. We want to be able, as we can under the new Rail Safety Act, to apply drug and alcohol random testing. We want to make sure that things such as fatigue issues with ferries' masters are not exceeded. There has been a tendency in the past that people tend to moonlight in jobs and, you know, when you have got 1,000 people on a Manly ferry, we cannot afford to take that risk, that somebody is fatigued or under the influence of any alcohol or drugs.

The Hon. DAVID CLARKE: Taking all that information together, are you saying that, at the moment, we have a situation where charter ferries, private charter ferries, are not controlled as far as safety standards are concerned, to the same extent as public ferries?

Mr DONALDSON: That is correct, albeit—let me just qualify it. If an incident occurs with a charter vessel on the harbour, they are subject to a police breathalyser. But what we would like to see is tighter controls on those issues in terms of a tried and true safety management system where we can analyse and look at the maintenance of those ferries and the standard of training of the people on those ferries, and see how it all comes together to deliver a safe public service.

The Hon. DAVID CLARKE: You are hoping that this deficiency in regard to safety regulations with private charter vessels will be overcome in this bill?

Mr DONALDSON: Yes, and we are working closely with the Waterways Authority, who is the regulator, but we will have the powers under the proposed bill to step in, through Mr Christie's chief investigator, and to examine any deficiencies that we see fit, that perhaps Waterways may have missed in any incident or possible incident.

The Hon. DAVID CLARKE: What has been the safety record of privately operated charter ferries?

Mr DONALDSON: Fairly good. The concerns that I had, though, going back some six or nine months, is that we discovered some ferry masters were working shifts in one company and then going and being ferry masters on a dinner cruise and that sort of thing, and that concerned us in the fatigue process.

The Hon. DAVID CLARKE: There is no control over this? There is no way of remedying that, and that is still the current position?

Mr DONALDSON: That is current, although I have personally taken that up with Sydney Ferries. As a result of a number, or one incident with the *Collaroy*—I think it was just before my time, about 18 months ago or two years ago—which alerted us that there could be a systemic problem there. I might add that we have similar problems at times in the rail industry with drivers as well.

The Hon. DAVID CLARKE: Just coming back to the position of chair, did you indicate whether this was going to be full time or part time?

Mr DONALDSON: As I understand it at the moment, it is part time.

The Hon. DAVID CLARKE: Part time, but your view is that, in the initial stages, it should certainly be full time.

The Hon. Peter Primrose: Point of order: The witness has already indicated that that is a policy matter and I think it is inappropriate, given the longstanding precedents of General Purpose Standing Committees, to be asking public servants to give comments on policy matters which are appropriately held by Ministers.

The Hon. DAVID CLARKE: Look, I will not ask you your view from a policy point of view, but from a safety point of view. Do you believe from a safety point of view that it is appropriate that we have a full-time chairman?

The Hon. Peter Primrose: Point of order: I have not had my point of order ruled on yet. I believe that asking a public servant to comment on a policy matter, regardless of how you try to dress it up, is not in accord with the traditions and practices of General Purpose Standing Committees.

CHAIR: I think Mr Donaldson has given his view on that in answer to the question before. Perhaps the Hon. David Clarke might go to the next question.

The Hon. DAVID CLARKE: Can I take it that as the executive director of transport safety and rail safety regulation under the Ministry of Transport you were involved in developing the model that ITS is set up under, and the drafting of the legislation?

Mr DONALDSON: No. I had nothing to do with the drafting of the legislation. I was consulted on the legislation but there was a project team put together to put the bill together.

The Hon. DAVID CLARKE: Who put that project team together?

Mr DONALDSON: Ms Walsh, the acting chief executive, was leading a team. She had a number of people that were drafting the bill—legal representation, a legal adviser. Mr Christie obviously offered advice. I was consulted on it during the process.

The Hon. DAVID CLARKE: Were you consulted or was it substantial involvement in developing the model?

Mr DONALDSON: I was consulted when we had a skeletal frame of the legislation, yes, and I was informed on the intent of the bill.

The Hon. DAVID CLARKE: Do you know who drafted the legislation?

Mr DONALDSON: I think probably Mr Russell Noakes, in collaboration with Ms Walsh's project team. We have a legal adviser at the moment, Miss Vanessa Chapman, who was also part of that project team. There was consultation through Waterways and State Rail and RIC and Buses and Ferries.

The Hon. DAVID CLARKE: What position does Mr Russell Noakes hold?

Mr DONALDSON: I am not sure of his exact title but I understand that he is a project manager for setting up the new regulatory authority.

The Hon. DAVID CLARKE: To the best of your knowledge was Justice McInerney involved in any way in the drafting of the legislation?

Mr DONALDSON: Not to my knowledge.

The Hon. DAVID CLARKE: Not to your knowledge. In your experience, from a technical point of view, would you expect that Justice McInerney would have been consulted? Do you think that he would have had a valuable contribution to make in drafting this legislation?

Mr DONALDSON: Possibly. But I guess at the end of the day it is a government policy issue of the way they want to go. As I understand it, from instructions from the Waterfall commission the other day, which I am working fairly closely with at the moment, Ms Walsh is briefing the commission in the next three or four days on the legislation.

Mr DONALDSON: Although it is a policy matter, do you feel that Justice McInerney would have had some substantial contribution to make to the drafting of this—

The Hon. JAN BURNSWOODS: Point of order: I know there is some fishing going on here but, really, to be asking Mr Donaldson as a public servant not only about government policy, as he has made clear, but now about an ongoing royal commission and whether or not Justice McInerney, who is in charge of that, might or might not or should or should not have spoken to somebody is quite inappropriate. In relation to the ongoing work of Justice McInerney it is probably out of order because it is sub judice as well. We are going into ground that is not appropriate for this Committee at this stage.

CHAIR: The witness has just told us that the commission is to be briefed on the bill in the next few days. But the Minister has already given notice of the bill in the House.

The Hon. JAN BURNSWOODS: The bill is a public document. We know that because we will have a copy of it.

CHAIR: I think it is a legitimate question to ask. The ongoing commission of inquiry was due to report originally before the end of this year but has now been delayed. Obviously, one of the questions the Committee needs to consider is why the bill is going through the House now when Justice McInerney—

The Hon. JAN BURNSWOODS: But that is not an appropriate question for Mr Donaldson. In no way can any such question be regarded as appropriate for a public servant coming before a parliamentary committee, being asked questions on a bill that has already been introduced into the House. To now get into a debate on Justice McInerney's timing is wildly inappropriate. The path that Mr Clarke is heading down now is totally outside our terms of reference.

CHAIR: I think Mr Clarke is trying to get to the point of how this Bill came to be the way it is given Mr Donaldson's particular experience and expertise.

The Hon. JAN BURNSWOODS: But that is not within our terms of reference.

Mr DONALDSON: I could put it this way to answer the question: Justice McInerney has taken an interest in a huge number of issues over the last nine months. I am sure he would take an interest in it, but he has taken an interest in a whole range of topics going back many years from the Glenbrook inquiry. I think that is the best way I can answer it. As I said, Ms Walsh will be briefing counsel assisting and Justice McInerney, or the commissioner as he is now known, over the next couple of days.

The Hon. DAVID CLARKE: I guess Justice McInerney, as a result of these inquiries, has acquired a great deal of expertise and knowledge with regard to safety issues?

Mr DONALDSON: Just to put it in perspective for the benefit of the Committee, the Hon. Carl Scully, the then Minister, appointed a separate rail investigation through the then director-general and I was instructed and I had delegation to work very closely with the commission. There will be two reports coming out of the commission: one from the rail safety regulator and from the director-general and one from the commissioner's inquiry. We have worked very closely in all aspects of supplying evidence, expert advice and also advising the commission from time to time. In fact, they were the specific instructions that we were given. I think both reports will be pretty substantial.

The Hon. DAVID CLARKE: From a technical and safety point of view, can you suggest any additions or improvements to the model that is proposed? Were all of your suggestions taken on board?

Mr DONALDSON: I did not construct the bill so I cannot answer that question. I was concerned that there was a lack of technical ability within the regulator and it was underresourced in terms of field inspection. We have addressed the technical expertise in such things as rolling stock, electrical, communications, civil engineering. We have put a technical panel together which will have a dual reporting role to both the chief investigator and through to the audit and compliance section. In reference to field inspections, where quite often you do significant desktop audits, as a rail safety or an executive team going out and examining field situations we want proof that what you say you are doing on a standard is being applied in the field. I was concerned that I needed more officers to go and look under rocks and in the cupboards. So we have got an additional 5 to 13 it has gone from.

The Hon. DAVID CLARKE: And that fully satisfies your concerns?

Mr DONALDSON: As an investigator and a safety person I would always like to have more. We are talking about a vast network. We are talking about the loss of a great deal of expertise in the rail industry, particularly over the last number of years, because of the ageing workforce. We are talking about an amalgamation of two big authorities—State Rail and RIC—and the possible takeover of the rural track by the Australian Rail Track Corporation. So there are a huge number of complex issues in the form of standards of civil engineering and signalling engineering right through to rolling stock standards. To answer your question, when I came into the job, no, I was not happy with it. I am still not happy with it. We still have a long way to go. One of the suggestions in the new structure that I made is that when a recommendation comes out of incidents or compliance audits we have a safety project team to roll out and implement things such as communication changes, civil engineering standards. For example, out of the Hexham train accident there are a number of issues that I am driving forward. What I do not want to happen is that we have a whole lot of recommendations out of any incident that are not acted on which are safety critical. I think I have the experience through our teams to recommend what is safety critical and not safety critical.

Ms LEE RHIANNON: I want to go back to the structure of the board, Mr Donaldson. I note that the first word of the official title of the board is "Independent". How do you see the board is independent? Who is it independent of?

Mr DONALDSON: I think you could go through three models of independence: totally reporting through to a Minister; totally independent and reporting through to Parliament; or to break of the investigating role and have an independence with a chair or a chief executive or administrator that can initiate investigations separate from a Minister. This is breaking off the chair of the chief investigator where they will have the ability to ask people to join that investigation panel and possibly from time to time people from my area to investigate any incidents. If you take the Glenbrook model, Justice McInerney recommended that there be a separate statutory investigation panel that should report through to Parliament. The issue there is: do you get the flow of information from the regulator and through to the investigator, and conversely from the investigator back to the regulator. What I am trying to move to in this State, and I am very determined to do it, is predictive accident prevention rather than plugging holes after an incident. I think we would all endorse that. This model enables this independence and the advisory board through the chair to appoint independent people. At the moment I—this will continue—have to do an industry report to Parliament once a year. I imagine that that industry report will have to include the trend analysis and the data that we are establishing on particular items of concern in safety in all transport modes. Have I answered your question? I do not want to circumvent the question but if you want a more specific answer I could perhaps—

Ms LEE RHIANNON: Yes, I did want to take it a little further. Can the board itself be independent when four of the five nominees are appointed by the Government?

Mr DONALDSON: As I understand it those nominees have to be endorsed by the chair.

Ms LEE RHIANNON: So you are saying that the chair can overruled the Government?

Mr DONALDSON: On an investigation panel.

The Hon. DAVID CLARKE: Who appoints the chair?

Mr DONALDSON: I think that is a government appointment.

Ms LEE RHIANNON: Why is there no provision for other appointees outside the small circle such as representatives from unions or other political parties?

Mr DONALDSON: That is a Government position. Certainly at present on any safety issue or any pending changes to legislation—and I did this extensively to the Rail Safety Act—I consulted the union movement. At times they did not like some of the things I had to say but I should not have to apologise. The consultative process with all stakeholders is absolutely critical and, more importantly, in the accredited bodies, that people in those accredited bodies are held accountable for those safety issues. For far too long I believe people have not been held accountable in the accreditation process.

Ms LEE RHIANNON: I was not aware of this from the Act but you might be able to elaborate for us, if there is a change of government does the Act give an incoming Minister the power to dissolve the board and appoint his or her own nominees to these positions?

Mr DONALDSON: I would understand that would be the case. I would have to refer to the bill but I think both the chief executive and the chair cannot be dismissed unless for negligence in their duty. I will not refer to it now but I think that is the way it reads in the bill. I think there is a maximum term of the chief executive of 10 years.

CHAIR: You said a while ago that you were consulted when the bill was in a skeletal stage. Were you consulted beyond that? What about when the bill was finally formulated?

Mr DONALDSON: Yes, I have been consulted on weekly meetings before it went to the first reading and the second reading. I did not get involved in part of the drafting like I did in the Rail Safety Act though, if that is the aim of your question. I was not on a project team but I was consulted through the process of the powers, the repealing of certain parts of different Acts and the intent.

The Hon. DAVID CLARKE: You were involved in the drafting of the Rail Safety Act?

Mr DONALDSON: Yes, particularly some of the guidelines pertaining to competency, drug and alcohol, and the new Rail Safety Act for those members who may not be aware that intent is a risk base. In fact yesterday I attended a regulators' meeting in Australia of all regulators where all of the States are moving to this risk-based approach that we have endeavoured to put in place.

The Hon. DAVID CLARKE: So you are involved in that drafting but you have not been involved in the drafting process in the same way with this bill?

Mr DONALDSON: No. I was getting on with what I had to do. As you are probably aware, I have had Menangle bridge, I have got an accreditation for the Australian Rail Track Corporation [ARTC], I am on a validation board for the merger of the Rail Infrastructure Corporation [RIC] and the State Rail Authority [SRA], and I have also been very much tied up with the Waterfall inquiry, plus my normal day-to-day issues pertaining to accreditation and audit functions.

The Hon. DAVID CLARKE: Do you know anybody else with the same detail of expertise as yourself who was involved in the drafting of this bill in the same way that you were involved in the drafting of the Rail Safety Act?

Mr DONALDSON: I think that is a question you would have to put to the project team. I think there were a lot of people consulted on it but I think that might be a question you may like to put to Mr Christie or Ms Walsh.

CHAIR: You mentioned the different models that you are familiar with and the varying degrees of independence. Given that this is a critical question on the independence of the regulator, is

the model that we are now presented with in the House one that best fits the need for independence in relation to safety issues?

Mr DONALDSON: Yes. I think it certainly upgrades the safety issues. I think what is important is the issue of accountability of individuals right down to the accredited bodies and I think that is very important. Whether it be in the regulatory or the accredited bodies, managers cannot say, "That is not my problem". If you take good safety cultures in perhaps aviation or other models around, it is a cannonball right at the grassroots. There is no way that you can get a good safety culture in with good technical standards unless you have people accountable.

CHAIR: So how does the accountability work under this model?

Mr DONALDSON: The chief executive officer is answerable under the legislation. That person, as I understand the bill, will report to an advisory board and a chair, and—correct me if I am wrong here—three other people other than the chief executive and the chair will constitute that advisory board.

The Hon. DAVID CLARKE: Could you think of any suggestions to improve that accountability of individuals from a safety point of view and a technical point of view?

Mr DONALDSON: One thing that perhaps is always advisable on any board is to have a rotating board so people do not get into comfort zones.

The Hon. DAVID CLARKE: Is this a rotating board?

Mr DONALDSON: I think it probably is. I do not know what the tenure is of the advisory board members. I am sorry, I cannot answer that question. It is only because technology and issues change in the environment you operate in that you probably need to bring in the relevant people on that board. I think that is just good corporate governance, whether it be a statutory board or an advisory board.

CHAIR: In terms of good accountability for your position, under the new regime how will that operate?

Mr DONALDSON: That accountability will be delegated from either the chair or the chief executive.

CHAIR: And then those officers are directly accountable to the Minister, is that right?

Mr DONALDSON: That is correct.

CHAIR: Under this legislation will you still be accountable to the Minister?

Mr DONALDSON: No. Under the present legislation my present reporting line is through the director-general. He delegates powers. For instance, with Waterfall I have been totally delegated those powers to work with a rail safety investigation panel that I chair as a delegated authority from the director-general.

CHAIR: Will you be able to do that under the new model?

Mr DONALDSON: Yes, I think so. Provided the powers are delegated, yes.

CHAIR: So it is reliant upon those powers to be delegated?

Mr DONALDSON: Yes.

CHAIR: It is not necessarily a given?

Mr DONALDSON: No. But it is not a given now either.

CHAIR: As the transport safety regulator can you currently initiate your own investigations into rail safety issues?

Mr DONALDSON: I can recommend to the director-general, calling up sections of the Rail Safety Act, that an investigation should be implemented, which I do, and we have different levels: level one, level two and level three. Level three could be, "I need a report from the accredited body by a certain date and these are the terms of reference". Level two could be a combination of the accredited body and officers of the department. Level one, of which Waterfall is a good example, is that we conduct the total investigation on our own but we bring in people such as the State Rail Authority and the Rail Infrastructure Corporation to supply information. They are on that panel but in most investigations we usually appoint independent bodies such as the Australian Transport Safety Bureau [ATSB].

I might add, just for the reference of the standing committee, there is new Federal legislation that overrides any investigation on the defined interstate network. I think it passed through the Federal Parliament about two or three months ago. So if the chair wanted to do an investigation into a major incident, the Federal legislation could override that and they would do an investigation as well. Rather than have people falling over each other, what I tried to do some months ago was to put out a memorandum of understanding, which I developed with all the other regulators in the other States, so that we have a protocol where if we have a major incident we can all share factual evidentiary information rather than conflicting information. So if we have a major accident on the defined interstate network we have a protocol that we will work together.

The Hon. DAVID CLARKE: Have your recommendations to the director-general always been implemented?

Mr DONALDSON: Yes.

CHAIR: In terms of initiating the investigations as you just described them, will that change under the new bill?

Mr DONALDSON: No, only that there will be an office of chief investigator and he or she will be responsible totally for that investigation under the instructions of the chair.

The Hon. DAVID CLARKE: Do you believe you have the independence necessary for you to properly carry out your job under this proposed legislation?

Mr DONALDSON: Independence in what sense? Would you be more specific?

The Hon. DAVID CLARKE: To be able to advise and to ensure proper safety standards and necessary investigation?

Mr DONALDSON: Under the Rail Safety Act or the Transport Administration Act I do.

The Hon. DAVID CLARKE: Under this proposed legislation?

Mr DONALDSON: Yes, providing my recommendations are taken on board. It is like anything. I would recommend to the board and to the chief executive officer, "I think we have got a problem here. I want to investigate it". We would then draw up terms of reference. It is really a function of my delegated powers. So I would recommend it to the chief executive officer and with the reasons behind that, why I want to conduct a certain investigation. We are doing a lot more random audits now and I have to draw it legally under the Act so that we do not just appear on people's doorsteps. But it comes back to I want to be held accountable. Any good regulator or accredited body should be held accountable under a public authority.

CHAIR: Can you describe to the Committee how decisions will be made regarding rail safety when rail safety issues are identified by the regulator? How will that flow?

Mr DONALDSON: What would happen, we would do an audit; we would identify a deficiency; we would then take it to a managerial meeting where I would recommend that we need to

investigate a certain aspect of safety deficiency; I would draw up where I see those deficiencies and then that would be handed over to the chief investigator to draw up a terms of reference with desirable timeframes involved; that would then come back, as I understand it—and it might be a better question for Mr Christie to answer—and the findings of that would go back to the chair and the advisory board and the recommendations we put in place for rectification of any safety deficiency.

CHAIR: So there are various layers it goes through?

Mr DONALDSON: Yes.

CHAIR: Do you see any possibility of continuing communications problems within that framework?

Mr DONALDSON: It is very important, and I guess I am very strong on this point, it is very important we are talking out of the same sources of data, we have access to the same information, and there is totally collaborative sharing of information in any investigation. It is equally applicable to me when I am doing accreditation audits. If I identify trends, I share the information with the chief investigator because, as I said, we want to identify any systemic problems before they become tangible issues.

CHAIR: You mentioned the dramatic rearrangement of the various public transport bodies at the moment. Do you agree that it is therefore very important to try to put the sharing of data and collaborative operation in place very quickly at the commencement of the new legislation?

Mr DONALDSON: It is absolutely critical. Some 95 per cent of my time is tied up with that at the moment, as well as running the accreditation. We have to change the culture in the accredited bodies and across public transport, and say, "Do not be afraid of sharing a problem. We will not hit you on the back of the head with a hammer if you do not share a problem". We will get more upset if we cannot identify issues that may spread wider. With Hexham, for example, we identified some issues regarding training. When you introduce new turn-outs into the rail network the training of civil engineers in their maintenance is an issue. We have identified interfaces with signal boxes and the importance of communications in those interfaces. I am talking about communications in the data down an optic fibre or a portable radio.

Out of that we have now formulated a way forward in developing an all-of-government approach to building a new communications network for transport. We are working with other States on that network to ensure that State Emergency does not go one way, Waterways goes another and the rail industry goes another. We want a platform from which we can continually develop. Out of the accidents we are trying to build a better infrastructure that can move with the times and with the technology. To answer your question specifically, that is why communications and sharing are absolutely critical. The process is only as strong as the weakest link in the chain.

CHAIR: Where is that culture change up to? How much work is still to be done?

Mr DONALDSON: I am on a three-year contract and I am only part way through. I have had my work interrupted by a couple of major issues. When I pull up stumps and do whatever I do in the future I hope that I will be finished. I think it is probably only 20 per cent or 25 per cent of the way there at this stage.

CHAIR: Does that surprise you? Do you think that is a fair state of play or should there have been much greater progress to this point?

Mr DONALDSON: I was speaking about this to one of my colleagues the other day. We have been good in this State at identifying problems but the project management in delivering them to the nth degree has not been good. That is what I was brought in to do and that is what I am trying to do. In other words, we must take a very disciplined project approach. If we identify something, we must go to the relevant authority and ask, "What are you going to do about it?" We will instruct them under the Acts that we will act under that we require them to fix the problem because we believe it might lead to another major catastrophe or whatever. That is why I was very keen to have a project-

driven group in the new regulator's office—a very small team of two or three people driving those to the end.

We have not done it well in the past. We have had many years of breaking up and recombining railways. Legislation was introduced in 1994 and I do not think the authorities knew what their responsibilities were under that legislation. It is now time to deliver—especially as we have a lot of very old infrastructure. It is very important to know the configuration and the stage that the infrastructure is at. Because we were concerned about that some 17 months ago we issued what we call safety milestones to the big operators. In other words, we put have up some hurdles that they must achieve and verify under their accreditation. We are attaching special conditions to their accreditation. I know that I am not very popular in those authorities for doing that, but I think we are starting to see the ship turning in terms of people's accountability. That goes from technical and training issues to document control, management issues, emergency co-ordination, fault identification, asset management—I could go on and on. That also constitutes part of my industry report.

For far too long I think we have looked at risk in terms of, "We have just had an accident at Waterfall; that's the risk", instead of saying, "We could have identified that risk many years before if we had had proper due diligence and a project plan". I do not want to expand on that point because I do not want to prejudice any findings of Justice McInerney or any findings that we will come up with.

The Hon. DAVID CLARKE: As to the 75 per cent of the problem that has not been fixed—I think you were confident about 25 per cent—do you feel confident that you will be able to bring it under control?

Mr DONALDSON: Yes. It is not easy. If I get the support of the people around me and of the Government I think I can bring it under control and I think we will see a vast improvement in the next couple of years. But we cannot have people outside the tent. If anybody in any of the accredited bodies does not want to play it will not work. That is where we must get tough through legislation.

The Hon. DAVID CLARKE: Are they all in the tent at the moment?

Mr DONALDSON: They are coming into the tent.

CHAIR: Could you spell out for the Committee the process under the new legislation by which the regulator will commence an investigation? From whom must the regulator seek approval or whom must the regulator inform before getting an investigation under way?

Mr DONALDSON: Under the new investigation process, I will be notified that an event has taken place but I will not have any powers over implementing an investigation. That will come totally through the chair and the office of chief investigator. I might be asked, or our group might be asked, to be part of that investigation or to offer some opinions about previous audits. But the office of chief investigator, through the chair, will instigate any investigation.

CHAIR: Do those layers derogate from the idea of independence?

Mr DONALDSON: It separates the transparency of the investigation from the audit and compliance and corporate governance role. I think I will be required to get involved in a lot of issues, but it will be at the request of the chief investigator and the chair.

CHAIR: Under the new structure will all recommendations for actions or sanctions go through a chain of command? What officers will be involved in that chain and how do each of those relate to safety matters?

Mr DONALDSON: Are you talking about an accident or about audit and compliance? Are you referring to the investigative function?

CHAIR: You can answer with regard to both functions. Start with an accident.

Mr DONALDSON: With regard to the investigative role, as I understand it, when recommendations arise from a particular incident, they will come back through the chief executive

and the chair. Those recommendations will have to be put in place—under the new Rail Safety Act, they could be things like fines, prohibition notices, recommendations of changes to technical or infrastructure issues. They would be brought to our management committee, which would decide what action should be taken. In the case of audit and compliance, I am required to do an audit on all accredited bodies once a year. Those audit findings are brought to a management committee. A number of compliance issues or observations arise from the audit and I am very clear in our recommendations to the management committee what I need to be done to fit in with the accreditation. For example, I might instruct an operator in a particular area of the State to fix a defective radio. I might want to put that accredited body on a provisional status or remove its accreditation if we find that its safety management systems or its management is not adequate under the Act. I would refer that back to the chief executive, the chair and the advisory board in a monthly board meeting, and hopefully my recommendations would be adopted.

The Hon. DAVID CLARKE: On a point of clarification, you said that the issues you get involved in will depend on the chair.

Mr DONALDSON: On the investigations, yes.

The Hon. DAVID CLARKE: Do you think that is an ideal situation? Do you think you should have some leeway or some independence to pursue investigations when you think it is necessary or do you think you should be dependent on the call of the chair?

Mr DONALDSON: There is no doubt that there is an interdependency there. We will find out things from audits or inspections. There could have been negligence on our part—we are a publicly accountable office—and I will want to know about that as well. A huge number of issues that come from inspections and audits will start to ring alarm bells—the amber lights will start to flash. I will refer those issues across through the technical panel to the chair. So when he or she goes to investigate those issues, he or she will be aware that we have had the organisation on notice over a period of time.

The Hon. DAVID CLARKE: But you cannot initiate investigations yourself?

Mr DONALDSON: No.

The Hon. DAVID CLARKE: They can be initiated only at the direction of the chair?

Mr DONALDSON: That is how I understand it.

The Hon. DAVID CLARKE: Could it assist you in your role if you had some greater independence in that area?

Mr DONALDSON: It possibly could, but I would be putting recommendations through the chief executive that I think they are missing this part of the investigation.

The Hon. DAVID CLARKE: If those recommendations are not acted upon where do we go from there?

Mr DONALDSON: I will not be backward in coming forward; I will ring alarm bells. If we have an audit finding that has identified an issue over a number of months and then an incident occurs, I hope that will be shared in the management consultative process.

CHAIR: Who would you ring the alarm bells with?

Mr DONALDSON: On investigations, it would be through the chair. On an audit safety issue, it would be through the chief executive.

CHAIR: What happens if there is no satisfactory response?

Mr DONALDSON: I would probably pursue it as an audit and safety compliance issue rather than as an incident issue. I would have those powers under the chief executive.

CHAIR: What happens then?

Mr DONALDSON: I would recommend either that the accreditation be withdrawn or the defective vehicles or whatever be taken out of service, or we would put provisional status on their licence to operate under the Rail Safety Act. In other words, I would have those powers delegated from the chief executive.

CHAIR: But not automatically?

Mr DONALDSON: No, it has to go through a management process.

Ms LEE RHIANNON: I am concerned about how the proposed Act will operate in the changed conditions under which rail will operate in future. Can you explain how the proposed sectorisation of the CityRail network will impact on rail safety and the operations of the ITSRR?

Mr DONALDSON: Obviously, when we join together two organisations the size of the Rail Infrastructure Corporation and State Rail we have a huge organisation. One of the big issues that I am facing at the moment is, under the accreditation model, how they will combine the two safety areas, the two engineering areas, the two operational areas and the human resource areas, because they are critical in the safety management system.

Allied with that, if you bring the Australian Rail Track Corporation as a regional infrastructure owner, you have the interfaces which will be critical—in other words, the operating rules that a train will come out of that network into the suburban network. So that is a very complicated issue in terms of who you hold accountable.

In all industries, systems are being contracted out. For instance, the reverse thrust systems on Sydney ferries are now contracted out to Honeywell systems, and civil maintenance and signalling are contracted out; and safety-critical devices in trains are contracted out. What you have to be able to do it is to pin that organisation down and say, "You, as the accredited body, are directly functionally responsible for all those subcontractors." There has been a tendency to say, "It's not my problem, I contracted that out." I have had previous experience of this in Victoria, South Australia and Western Australia where there has been a privatisation of the networks.

So one of my big challenges on this validation board, working with Mr Peter Metlock, is to make sure that those accountabilities are clearly defined. If we are combining two organisations where you are coming out of a civil code of practice or a signalling, it is important to ensure that that standard is clearly being delivered in technical terms by the accredited body or the contractor. It is what we call integrity commissioning of a project. It is signed off by all the people who are the stakeholders in that signalling design, that laying of the track, that drainage project, or the rolling stock standards.

Ms LEE RHIANNON: Are you saying that sectorisation and privatisation actually make it more difficult to manage and monitor safety measures?

Mr DONALDSON: No. I think the Victorian model is deeply flawed and they are just putting it back together again. But that was for privatisation. What I am saying is that when you combine the organisations, and when you have interfaces, you have to clearly define the accountability of the people who are going to deliver those safety-critical projects or functions. And that goes right down to a train driver, where that train driver needs to know the operating rules and the protocols going from one jurisdiction to another, and where you might have the system handled by one authority and then you come into a new authority and it is handled by another authority. You have to have it very clearly defined.

If you look at a lot of the systemic and major accidents, it is not one thing; it is a number of issues that add up to the result of the accident. Hexham is an example. I do not want to talk about Waterfall, but that was another example. Glenbrook is another. Accountabilities were not sufficiently defined.

Ms LEE RHIANNON: Does the regulator have full jurisdiction over any private companies that operate rail services, such as the airport rail link company?

Mr DONALDSON: Yes, they are a fully accredited body, they come under the licensing system and they are audited. We even do things such as the Perisher ski tube and the monorail.

Ms LEE RHIANNON: And that would obviously be the case in future, I gather?

Mr DONALDSON: Yes.

CHAIR: Given that the Government has chosen not to adopt a model for the regulator whereby the regulator reports directly to the Parliament, and going back to your comments in relation to accidents and so on, when you said that you would be ringing the alarm bells, how does it work if at the top of the layers that you report through certain things that you think should happen do not happen? How do you get your reports out to the public?

Mr DONALDSON: That would come through the chief executive and the board after we do audits and compliances. Under that process at the moment, we have developed a system of putting it onto the Internet so it is a public scrutiny document. We also have the industry report that I alluded to, which has to be tabled by the Minister for Transport Services once a year.

If you are getting to the point where I had a concern about the investigative process, I would not be backward in coming forward and making it very clear to the chief executive that I think we are missing a part of that investigation, and she could then take it up with the chair, or I could go to the chair directly. But protocol would say that you would always inform the chief executive officer.

CHAIR: When you provide a report, is the report vetted by the layers above you?

Mr DONALDSON: There is a quality assurance process that all reports are put through. Most of my reports come under the badging of the director-general, if they are what we call level one major accidents, where they have been initiated by the Minister and he requires report through his director-general to be initiated, and so it goes back through the director-general to the Minister.

To answer your question specifically, I will dig in my heels on anything that I think is evidentiary and is beyond all reasonable doubt that should be put in a report—in other words, it should be put in a report. There is no doubt about that, because it defeats the purpose of having a transparent, investigative body. We work on a model called 5022, which is an Australian standard—which, I might add, I am not particularly happy with; as I had raised at the regulators meeting yesterday, I think it needs to be totally updated, because it is a part-time group and I am wanting to get more of international ISA-type standards.

But the methodology in that is very sound, and that is what we have used in the Waterfall inquiry. It goes through breaking it into components, taking out any innuendo or opinions, but basing it on fact. At times it is very difficult to assemble those facts—for instance, when you do not have data log information, you have to go back to signalling track circuits to obtain that information. The group I am working with at the moment is under strict instructions that there is to be no innuendo and it has to have a review process before it goes anywhere, and it has to be signed off by the whole investigative panel.

CHAIR: If you dig your heels in, as you say, on a particular matter, do you hold sway in the end on such matters?

Mr DONALDSON: I would hope so. If I feel passionately about it and I can put documentary evidence in place, I would be abdicating my responsibilities if I did not dig my heels in, because I think it is in the interests of public safety.

CHAIR: Have you had to dig your heels in?

Mr DONALDSON: From time to time over the last 17 months, yes.

CHAIR: Have your heels been adhered to, so to speak?

The Hon. JAN BURNSWOODS: Point of order: Madam Chair, I remind you that our terms of reference are to ask Mr Donaldson about the clauses of the bill. What Mr Donaldson may or may not have been doing over the last 17 months is not relevant to our terms of reference.

The Hon. DAVID CLARKE: Clearly, the surrounding circumstances that have made this bill necessary are very relevant. The idea is that we get this right. Safety is the paramount issue.

The Hon. JAN BURNSWOODS: That was specifically canvassed in the debate in the House on the amendment moved by the Hon. John Tingle, which was carried and became the terms of reference of this inquiry. The points about surrounding circumstances and asking other questions, and so on, by agreement with the Leader of the Opposition, whose original motion this was, were quite specifically rejected by the House and the terms of reference made it very clear that we were questioning Mr Donaldson and Mr Christie about the clauses of the bill.

CHAIR: I take that point. Mr Donaldson, do you feel that under the new regime your independence in reporting will be unfettered?

Mr DONALDSON: I hope so. Yes, I think it will be. As I made very clear to the previous Minister, I will not do the job where I am under any influence politically or by anybody else. Providing I can substantiate recommendations, and providing they are issues that I feel are of public safety criticality, yes, I hope so, and I am sure it will be.

CHAIR: In the end, where do you go if you feel that you are not being heeded?

Mr DONALDSON: I guess, the normal management process. You would go through the chief executive, then the advisory board. I guess it is always open to you to take it further, but I would hope you could resolve it internally. My line of attack is that if I felt that there was a safety issue out there, I can always vet it through pulling the accreditation. I probably cannot influence the investigation, other than saying, "I think you are missing issues."

CHAIR: You would have the power to pull the accreditation off your own bat?

Mr DONALDSON: On the recommendations to the chief executive.

CHAIR: So, again, you have to go back through the chief executive?

Mr DONALDSON: That is correct. But I have to do that now through the director-general.

CHAIR: Earlier you referred to the question of resources and field safety inspectors, and you gave the committee an indication of how many would be appointed under the new regime. You said that most people in charge of resources would like more resources. How does the number of field inspectors—and you might remind me of the number to be appointed—fit in terms of the optimum that you believe to be necessary?

Mr DONALDSON: We are moving from 5 to 13 within the total structure of about 83 in the independent transport safety organisation. The issues being about those 5 have also in doing a number of tasks, so they have had to do the accreditation, the compliance, and at times be pulled off for investigations as well. So we are going from 5 to 13 in that part of the organisation of the total new authority, which I think is envisaged to be around 80 to 83, but you would have to verify that.

CHAIR: Do you think that 13 will get the job done satisfactorily?

Mr DONALDSON: I am on record in Waterfall as a witness saying that I needed probably a threefold increase. I think I will have to go back from time to time and say that we have a mass audit out in the field and I need to redeploy some people out of the investigation area into that area if there is a serious deficiency in any safety issue.

To do a good field inspection you have to have the right people and you have to know what you are looking for, otherwise if you just sent out somebody without that expertise, you may miss a central issue, which I think has been indicated in some of the big inquiries we have got at the moment with bridges and Waterfall. From time to time I think there will be a requirement to send additional people out from the investigative team or bring additional people in from the technical panel or get particular people in on consultancies to help with the workload.

The Hon. DAVID CLARKE: To get this thing really right as far as safety is concerned in your view the optimum is about 39 or 40 investigators—I think you said threefold the number.

Mr DONALDSON: Safety officers as opposed to investigators. The investigative arm will have some eight to nine investigators.

The Hon. DAVID CLARKE: The 13 you are referring to—

Mr DONALDSON: We have just employed seven new people through an advertisement, from five.

The Hon. DAVID CLARKE: I think you indicated that a figure three times that would be the optimum position?

Mr DONALDSON: Yes, from what I had to what I have got now.

The Hon. JAN BURNSWOODS: Which were five. You had five and you asked for a threefold increase?

Mr DONALDSON: Yes.

The Hon. JAN BURNSWOODS: And you are getting 13?

Mr DONALDSON: I had 12, but some of those people in the previous organisation did not have the skills to go out and do field audits. There were a couple of policy people who really did not have those skills.

The Hon. DAVID OLDFIELD: Do you want three times 12 or three times five?

Mr DONALDSON: Probably in my whole group I will have about 39 and I need about 39 to 40, of which I need probably 80 per cent to 90 per cent of those people with the ability to go out and do field inspections.

The Hon. DAVID CLARKE: You have 13 at the moment?

Mr DONALDSON: Thirteen.

The Hon. JAN BURNSWOODS: No, he had five and he is getting 13?

Mr DONALDSON: I have got 13 that are coming on at the moment.

The Hon. DAVID CLARKE: You will have 13. You want 39?

The Hon. JAN BURNSWOODS: No, he had five and he asked for a threefold increase.

The Hon. DAVID CLARKE: Yes, I understood that.

CHAIR: In field inspectors?

Mr DONALDSON: In field inspectors.

The Hon. JAN BURNSWOODS: Three times five is 15.

Mr DONALDSON: Yes, but I had 12. What I was saying was threefold on the 12, to answer Mr Oldfield's question, but there were only five who had the skills to go out into the field as opposed to writing policy or in administrative positions.

The Hon. DAVID OLDFIELD: You really want 15 out of the 39 with those skills, do you?

Mr DONALDSON: A minimum of 15, possible more than that from time to time, absolutely.

The Hon. DAVID OLDFIELD: Do you expect to get those numbers?

Mr DONALDSON: I am hoping so, yes. I am putting in a good case.

The Hon. DAVID CLARKE: With safety, when we talk about optimum we really mean the bare minimum to do the job properly?

Mr DONALDSON: Yes. If you are going to take the view when you are just doing desktop audits that close enough is good enough, then maybe optimum. We have some big things that we have to fix in this State. If we really want to do in-depth audits and compliance inspections we have to dig a lot deeper and it is going to be a lot more involved than just doing a desktop audit, not that I am a mistrusting person of what people tell me out there, but I would rather see it with my own eyes.

The Hon. DAVID CLARKE: Dealing with safety, anything less than the optimum is really putting things at risk?

Mr DONALDSON: You could interpret it that way, I suppose, yes.

CHAIR: Under this legislation will you be accountable for any of the critical decisions made by the regular or will the CEO, the chair of the board and the Minister in terms of Parliament be accountable? Will you have any accountability role directly?

Mr DONALDSON: Under the legislation, it will be the chair and the chief executive officer, but they will obviously delegate those powers.

CHAIR: Can you tell the Committee the current budget of your office and what it is proposed to be under the new regime?

Mr DONALDSON: Under the Ministry it is \$4.9 million; under the proposal I think it is \$17.3 million, and that is a combination of the abolition of the Office of Co-ordinator General—that budget being rolled in—plus additional resources.

Ms LEE RHIANNON: Can you give the Committee a breakdown between the board, the regulator and the Office of Transport Safety Investigations, on an annual basis?

Mr DONALDSON: A breakdown in terms of numbers or a breakdown—

Ms LEE RHIANNON: A breakdown in terms of the amount you just gave?

Mr DONALDSON: At the moment the Transport Safety Bureau, which I run, has a budget of \$4.9 million and under the proposal that budget is around \$17.3 million, and that will be part of the Office of the Co-ordinator General, because a lot of those people have come over into the safety area, plus additional funding as proposed by the Minister. I cannot tell you the budget of the Office of the Co-ordinator General but I know mine was \$4.9 million and the new one proposed is about \$17.3 million or \$17.5 million.

The Hon. DAVID CLARKE: That \$4.9 million going up to \$17.3 million actually involves a proportion of which you are not aware of just rolling over from somewhere else?

Mr DONALDSON: Part of the Office of the Co-ordinator General, and obviously a large majority of that cost is made up of staff numbers.

Ms LEE RHIANNON: How much will the chief executive of the regulator be paid?

Mr DONALDSON: I have no idea. I imagine it is senior executive service but you have to direct that question—

Ms LEE RHIANNON: Fair enough. What about the five advisory board members? Do you know what they will be paid?

Mr DONALDSON: I have no idea what the recommended remuneration will be for them either.

The Hon. DAVID OLDFIELD: Is that something Mr Christie will be able to answer?

Mr DONALDSON: You will have to ask him that question. I cannot answer that. He maybe party to what he has recommended to the Minister, but I do not know.

CHAIR: Earlier we talked about the culture of the various bodies that are being restructured, particularly in relation to rail. Is the Office of the Co-ordinator of Rail one of the bodies with a cultural problem that needs to be addressed?

The Hon. JAN BURNSWOODS: Point of order: I remind you, Madam Chair, that the terms of reference of this inquiry are exceedingly specific and refer only to the clauses of the bill. The culture of any organisation, even The Nationals, is totally outside the terms of reference of this Committee.

CHAIR: We are talking about a bill relating to rail safety.

The Hon. JAN BURNSWOODS: And the nature of the people within the Office of the Co-ordinator General has nothing whatsoever to do with any of the clauses of the bill.

CHAIR: I will rephrase the question. With respect to the people coming across from the Office of the Co-ordinator General, are there particular matters under the new regime that need to be addressed?

The Hon. JAN BURNSWOODS: Point of order: I repeat what I just said and remind the Committee that we have before us a public servant. To ask him to comment on the character and other qualities of individuals in a certain office that may, after this bill is debated by both Houses, come across to wherever, is not only outside our terms of reference but an outrageous question to put to Mr Donaldson.

CHAIR: I put to Mr Donaldson a specific question following on from his answer earlier about the culture of various rail organisations that are being restructured.

The Hon. JAN BURNSWOODS: So now you are going to ask him about his opinion of individuals who may come across to the office—

CHAIR: No, I am asking a general question about the Office of the Co-ordinator General of Rail.

The Hon. JAN BURNSWOODS: Perhaps you can tell me what this has to do with the bill or the inquiry.

CHAIR: Was that an organisation that could be included in your earlier comments?

Mr DONALDSON: I think it goes across all sections, even internally. The vast majority of people coming across from the ACGR will be tied up with the reliability and performance side of the regulator, which is another section I did not mention but Mr Christie can perhaps give you some information on that. The vast majority of those people will be tied up with the reliability side as opposed to the safety side.

CHAIR: I want to ask a question about the model that has been adopted in the bill. Are there any matters that we, as legislators, should attend to, to improve the bill, particularly as it relates to rail safety, accountability and transparency?

Mr DONALDSON: It is all to do with accountability, which is what I have been saying. We just all want to be held accountable for our actions and deliver a better safety product.

CHAIR: Given that the model does not have the regulator reporting directly to the Parliament, how will that best be served?

Mr DONALDSON: The delegated powers are there now; the delegated powers are there in the future. That really is a government policy issue, the way the Government wants to develop a structure. I think that is outside my terms of giving an opinion, whether I should report to Parliament, whether I should report to an independent body. It is really a government policy issue.

CHAIR: On behalf of the Committee I thank you for your attendance here today. Hopefully, your thoughts will be taken into account when we debate the bill in Parliament.

(The witness withdrew)

(Short adjournment)

RONALD DAVID CHRISTIE, Advisor, Transport Safety and Rail Safety Regulator, 227 Elizabeth Street, Sydney, sworn and examined:

CHAIR: What is your occupation?

Mr CHRISTIE: I am retired but I am currently advising on the setting up of the new regulator.

CHAIR: In what capacity do you appear before the Committee?

Mr CHRISTIE: I appear as an advisor to the new regulator.

CHAIR: You appear also as potentially having a role on that regulator?

Mr CHRISTIE: Yes, I understand that to be the case.

CHAIR: Do you wish to make an opening statement?

Mr CHRISTIE: No, Madam Chair.

CHAIR: I advise you that if you should consider at any stage during your evidence that certain evidence or documents you may wish to present should be heard or seen in private by the Committee, the Committee would consider your request. However, the Committee or the Legislative Council itself may subsequently publish the evidence if they decide that that would be in the public interest. I am sure you are familiar with that procedure.

Mr CHRISTIE: Yes.

CHAIR: Could you indicate to the Committee your current role and outline that role under the new legislation?

Mr CHRISTIE: My current role involves me in providing advice on the setting up of the new regulator and assisting in that process. I have been engaged in that process since about April this year at the request of the Minister.

CHAIR: The Committee has received some indications that the bill provides that the chair of the new authority could be a full-time or part-time appointment. Could you indicate whether you will be full-time or part-time?

Mr CHRISTIE: The short answer is that I think that is a matter for the Minister in the first instance. I would like to explain that, and I come back to the point of accountability. In the model that is proposed by the legislation, there is accountability for day-to-day decision making with the chief executive for the whole of the regulator organisation, except the investigatory side. The regulator, he or she, is accountable for accreditation, audit and those sorts of activities connected with safety. There is point accountability to those individuals and also to the chief investigator. In a sense, I think that the work of the chair will fluctuate over time, depending on what sort of investigations are being carried out, the intensity of those investigations, and what matters are being referred to the advisory board.

CHAIR: So in the first instance would you anticipate, in setting up the regulator, that that would be a full-time job?

Mr CHRISTIE: Yes, it may be necessary, I think, to do that but I would not want to be definitive about what will happen in the future in relation to the amount of time that needs to be put in. But what I do think is important is that the chair give guidance to the organisation, provide value-adding to the organisation, but not necessarily interfere in all the day-to-day activities.

CHAIR: So you would see the CEO as getting on with the job of management?

Mr CHRISTIE: Getting on with the job, the regulator getting on the job, the chief investigator getting on with the job.

CHAIR: Can you give your understanding of the role that Mr Kent Donaldson will play as the new transport safety regulator under the new regime?

Mr CHRISTIE: Yes, Madam Chair. Within the Independent Transport Safety and Reliability Regulator [ITSRR], there are two main areas. One is, I suppose, the regulatory area in which Mr Donaldson is situated and the other is the investigations. There have been recommendations in the past, particularly from Commissioner McInerney in relation to the Glenbrook inquiry, that no-fault investigations be separated out from the regulatory function. That in fact is what is happening, and on the regulatory side, the CEO has a number of functions to perform. As well as the transport safety regulation, which is the area that Mr Donaldson is concerned with, there is a corporate strategy area which will, for example, deal with possible prosecutions, for which there are provisions in the existing Act and which have not so far taken place, and general reporting of the organisation.

In addition to that the Act provides for monitoring of performance of various transport organisations. There is a division concerned with the monitoring of performance which also reports to the chief executive. The other innovation that Mr Donaldson mentioned was the provision of the technical panel. In the past—I agree thoroughly with his comment—the regulator has not had available to it expertise in a number of areas. He mentioned rolling stock and I think there was structures, track, electrical communications and things like human factors. Now, given the state of particularly the rail industry at the moment, getting experienced people into the regulator from those areas is not an easy task, so we are well on the way to setting up that technical panel. Some of those positions are now occupied and their expertise will be available both to the regulator and to the chief investigator.

CHAIR: How many positions on the technical panel are there, and how many have been filled?

Mr CHRISTIE: We have on board now an operations expert, a signalling expert, a track expert, and we are looking for people to fill some of those other positions.

CHAIR: Can you tell us what those other positions are?

Mr CHRISTIE: Yes, structures, bridge experience, rolling stock, electrical communications and human factors.

CHAIR: What is the timetable by which you hope to have those people on board?

Mr CHRISTIE: We are hoping to have those positions filled by 1 January. However, it is important that we get people with experience and not only the knowledge, the technical knowledge, but the experience, which we hope they can then impart to various parts of this organisation. So it is not a case of—I have to say—just filling positions. It is a case of making sure we get the best possible person available. In some cases that person might have already retired and left the industry or be doing something else.

CHAIR: So you would have to bring some people back?

Mr CHRISTIE: I hope to bring some people back, and that is in fact what we have done already.

CHAIR: We heard today from Mr Donaldson and you were here during his evidence. Under the new regime, he will be accountable through the chair of the board. Do you think this legislation, as currently framed, has any implications for the independence of the safety regulator? In particular, does it take away from the independence of the regulator?

Mr CHRISTIE: I do not believe it does. The powers of the regulator are delegated. They come from the chief executive. They do not come from the board, I might add. The board is an advisory board so, to that extent, it is not that different from delegations from the Director-General of

the Department of Transport. However, the independence that has been put in place means that this organisation stands outside the Department of Transport, as it was. It is now the Ministry of Transport. That is an independent statutory organisation, so I would suggest that the independence has actually been improved quite markedly.

Ms LEE RHIANNON: I find that interesting when you say that. We talked earlier about how four of the five nominees come from the Government. Do you think it does deserve the title of "Independent"?

Mr CHRISTIE: I am sorry, I am not understanding your question.

Ms LEE RHIANNON: That four of the five nominees are made by the Government on to the board. I wanted to talk about the board here.

Mr CHRISTIE: Yes. The board is an advisory board and the purpose of the board is to provide quality control on the sort of material that has been produced. The board cannot direct a report to be changed. The board can make suggestions. The reason for having the board is that there are a number of people, we believe, who are expert in the safety fields and who are not necessarily wanting to be employed on a full-time basis or join an organisation, but are out perhaps consulting at the moment. Now we want to capture their expertise, and the bill specifically requires reports to be referred to the board for advice, but not for alteration.

Ms LEE RHIANNON: Do you think that it warrants the title "Independent" when four of the five nominees are from the Government? Do you not see that it is really like a Government board?

Mr CHRISTIE: They are part of an independent statutory authority. It is independent, compared with the previous arrangements when the Transport Safety Bureau was part of the Department of Transport.

The Hon. DAVID OLDFIELD: So you are saying it is independent only by comparison?

Mr CHRISTIE: Well, there are degrees, I suppose, are there not? In the end, safety, at the moment as I understand it under the Westminster system, is ultimately the responsibility of the Minister.

The Hon. JAN BURNSWOODS: Can I say they are not "from the Government". They are appointed by the Minister or appointed by the Government or the chief executive. In no sense are any of the five members of the board "from the Government".

Mr CHRISTIE: Exactly. I thank you for that because I thought I was explaining it in terms that we believe it is desirable to capture some resources that are out there, that will not necessarily want to be part of an organisation, but have expertise in safety, and I think the board enables us to do that.

The Hon. DAVID CLARKE: Is the Minister required to use any criteria in appointing those members of the board?

The Hon. JAN BURNSWOODS: I draw your attention to new section 42T (3). It spells out the five areas in which the members must have experience. If we are going to ask people here about the causes of the bill it behoves us to have checked the bill ourselves. It is on page 15.

Mr CHRISTIE: Yes, it is in the bill. I cannot immediately take you to the exact clause.

Ms LEE RHIANNON: That strengthens the point that I was making, that four of the five are appointed by the Minister.

The Hon. JAN BURNSWOODS: But the phrase you used was "from the Government". Appointed by the Minister is a totally—

Ms LEE RHIANNON: From the Government appointed by the Minister. I agree that they are different words but I think the intent is the same.

The Hon. JAN BURNSWOODS: For instance, when we appoint Kerry Chikarovski to chair the Drug Summit that is an appointment by the Minister but it is certainly not from the Government. I think we have to be clear about the differences between these terms.

The Hon. DAVID CLARKE: Did I interpret it correctly that you feel that probably in the initial stages the chair should be a full-time position?

Mr CHRISTIE: It is fundamentally a matter for decision by the Minister but I believe that one should have an open mind about these things and be flexible. The workload will be more intense when the organisation starts. Hopefully, we will not have a plethora of large accidents to investigate. But if that were the case I would imagine that the chair would be full time.

CHAIR: Will Mr Donaldson in his new role be able to initiate investigations into rail safety issues in the way that he can currently?

Mr CHRISTIE: Mr Donaldson can do that. In enforcing the Act he can investigate any matter in relation to which he has information, perhaps as a result of an audit. He can initiate an investigation. What was recommended previously in the Glenbrook inquiry was that the formal no-fault investigations which are meant to find the cause of major, and perhaps not so major, accidents be separated out under the leadership of a chief investigator, and that is exactly what we are doing. In the conventional way that these things are conducted these days, that means that the chief investigator can also initiate a major investigation, and it is a no-fault investigation designed to find the causes of an accident and make recommendations. That does not stop the regulator from then taking that material or that information and initiating his own investigation for the purposes of prosecution. So there are two distinct areas here. The reason for separation of the formal investigation into the chief investigator's area is obviously that they could be areas of regulation that come under scrutiny and criticism and it is important that there be separation between the two. Having said that, a good deal of information flow is required between the two parts of the organisation. I think I heard Mr Donaldson talk about data. There is a crying need for more information on trams, data on accidents not only here but overseas and in other areas, and for that to be analysed and be available to both the chief investigator and the regulator.

CHAIR: Presumably, answering that crying need for more data would be a high priority of the new—

Mr CHRISTIE: Yes, it is, and it is one of the areas that the chief executive of the regulating organisation has to pursue. The regulator himself will be at the forefront of dealing with accreditation of various operators, of doing audits of their performance. But behind the scenes we hope we can have more assistance to the regulator by having part of the organisation under the chief executive working on the analysis of information and data which can be used by both the regulator and the chief investigator.

CHAIR: Could you go through the steps of how the regulator will commence an investigation? How does it get under way? Who has to be consulted and who has to give approval?

Mr CHRISTIE: A formal no-blame investigation can be initiated by the chief investigator. He can be asked to carry out an investigation by the Minister, but the bill expressly prohibits the Minister from stopping an investigation. There are safeguards in there about investigations. Similarly, if something comes up in an audit that requires the investigator to investigate further into a matter he is able to do that of his own accord.

The Hon. DAVID CLARKE: Is there any area where he cannot start an investigation of his own accord?

Mr CHRISTIE: No.

The Hon. DAVID CLARKE: So he has complete freedom?

Mr CHRISTIE: Yes. That is part of the delegation from the chief executive. The prime accountability rests with the chief executive, who will then delegate that in relation to accreditation and audits and whatever investigation is needed to the regulator. But the chief executive has other responsibilities to manage an organisation, which includes, as I have just been through, performance, data collection and analysis—all those sorts of things—to back up the regulator.

The Hon. DAVID OLDFIELD: Mr Christie, could you clarify suggestions that the model combines economic regulation with safety?

Mr CHRISTIE: I am glad you asked that, because it does not do that. There is no economic regulation in this model whatsoever. The funding to government-funded organisations comes through the Ministry, not through the regulator. In fact, the Ministry will set the standards. In other words, it is a Ministry function to set appropriate standards according to the funding that has been provided. In other words, performance standards are set outside the regulator. What the regulator is interested in doing is monitoring performance and giving independent advice to the Government on performance as it sees. I think this is a very important part of this whole operation. Mr Donaldson talked about being proactive rather than reactive in relation to safety risks and accidents. To do that I think it is important that the regulator have a capacity somewhere within the organisation to monitor trends in performance. This is particularly the case with, say, infrastructure. You find that audits are revealing, for example, sleeper problems in track. But those problems did not just appear; they have been coming for some time. One of the things I want to see is a monitoring of the inputs into, say, the infrastructure which might lead to a safety problem down the line.

Ms LEE RHIANNON: I would like now to move on to the issue of public disclosure, which is something that comes up more and more these days. When I got two page 85 I was concerned about the Freedom of Information Act exemptions. Why does the proposed Act exempt transport safety inquiries from the Freedom of Information Act?

Mr CHRISTIE: I cannot answer that off the cuff. I can take it on notice or perhaps Ms Carolyn Walsh, who has been associated with the draft of this legislation with the parliamentary draughtsman, can answer for you more explicitly than I could.

Ms LEE RHIANNON: Is she here?

Mr CHRISTIE: She is here, yes.

Ms LEE RHIANNON: I would like to suggest to the chair that we consider that. I am not sure whether it is possible. I was interested in the last paragraph on that page. You are left with the impression that we will end up with more of these inquiries because it sounds as if it is the only way we will be able to get some of these documents. I would suggest that that is not the best way to start.

Mr CHRISTIE: Notwithstanding that, the bill is quite explicit that any investigation report which goes to the Minister must be tabled in Parliament within 28 days. So there are safeguards here. I would not claim expertise in relation to that particular clause.

CHAIR: Mr Christie, our terms of reference are quite specific in that we have two witnesses that we are authorised to call.

Mr CHRISTIE: Could I get you an answer in writing on that?

CHAIR: Yes, that would be fine. Would by tomorrow be okay?

Mr CHRISTIE: Sure.

Ms LEE RHIANNON: Under the proposed Act how much information about operations, investigations and findings of the regulator and the board will be made public?

Mr CHRISTIE: The Act is quite explicit: all investigation reports will be forwarded to the Minister and then the Minister has an obligation to table them in Parliament.

Ms LEE RHIANNON: What will happen where private sector bus, ferry or rail operators are involved in an accident in terms of public disclosure? Do you anticipate that commercial in-confidence and other provisions will prevent the public getting access to the information?

Mr CHRISTIE: I cannot give a general answer to that. I think you will have to look at it on a case-by-case basis. No doubt parties will claim commercial in-confidence in relation to some areas, and we certainly have to have natural justice in any investigation. At the time of the investigation the regulator or the chief investigator will have available legal advice on that situation. But the overriding issue is to make sure that the cause of accidents is clearly identified and that the causes are addressed through recommendations and the follow-up of those recommendations.

Ms LEE RHIANNON: Can I take that to mean that you think that commercial in-confidence would be a justified reason in some cases?

Mr CHRISTIE: I can only answer it by saying that it depends on the particular case.

The Hon. DAVID OLDFIELD: Mr Christie, could you clarify the chairman's role in reviewing investigation reports?

Mr CHRISTIE: Certainly. Unless the chairman is actually conducting the investigation, which it is open to the chairman to do—and I might add to bring on board a panel of experts—but normally the chief investigator will submit investigation reports to the board for advice but not for alteration.

The Hon. DAVID CLARKE: I think Mr Donaldson indicated that the budget will increase from \$4.9 million to \$17.3 million in this year, but I think he also indicated that there was a rolling over of at least a proportion of that from other areas. Are you familiar with that position?

Mr CHRISTIE: There is a clear agreement that the budget will be increased to that amount. I think that what he was referring to was that in the first instance—perhaps the first year—funds that might have been allocated to an organisation that the bill abolished, the Office of the Co-ordinator General, might be used as a source of funds. But after that the source of funds is the normal allocation from Treasury. I am not quite sure whether that answers your question. The main consideration is the use of funds. The source of funds, in the first instance, is there are some funds that will be freed up because of the abolition of an office.

The Hon. DAVID CLARKE: What proportion is that?

Mr CHRISTIE: I do not have that figure in my mind. I think the important figure is that the funding for all of the functions that have been carried out previously but are going to be carried out on a larger scale goes from, I think Mr Donaldson mentioned 4.7 or 4.9, to over 17 million. It has been made clear that if we have a large investigation which is hard to anticipate the costs of then we will be supported on that as well.

The Hon. DAVID CLARKE: You had an input into this bill being put together and what went into it.

Mr CHRISTIE: Yes. I am not an expert on every clause. I am not legally trained.

The Hon. DAVID CLARKE: But you had a major input into the content of it?

Mr CHRISTIE: Yes.

The Hon. DAVID CLARKE: To the best of your knowledge was Justice McInerney involved or asked for any advice regarding this bill?

Mr CHRISTIE: I am not aware of that. All I know is that there is that briefing to take place with the commission. There is also the benefit of recommendations from Glenbrook and also there is provision in the bill—I cannot tell you the exact clause but it is quite clear that the Minister has to

have it reviewed in 12 months which would give the opportunity for changes resulting from recommendations coming forth from Justice McInerney, perhaps next year, to be incorporated or taken into account anyway.

The Hon. DAVID CLARKE: So when you say that you are not aware, do you mean you do not know whether or not Justice McInerney was—

Mr CHRISTIE: To the best of my knowledge I am not aware of any discussion with the commission, but I am not privy to every discussion.

The Hon. DAVID CLARKE: As far as you were aware he was not but you could not be certain about it?

Mr CHRISTIE: No.

CHAIR: So what happens if on being briefed Justice McInerney has got some recommendations which he thinks urgently need to be taken up?

Mr CHRISTIE: No doubt the Government will consider that at the appropriate time. It will be a matter for the Government I think. Could I just go back to the question on funding? I think Mr Donaldson was asked about the number of inspectors. The comparison that was made at that time, I think of 4 to 13 or something, is not a direct comparison. You have to understand that all of the functions that we are contemplating in an expanded organisation that Mr Donaldson, under a lot of pressure, has been trying to carry out with a lesser number of people, the result of that is that people are doing a number of functions from time to time. They may be doing audit functions or accreditation functions, inspection functions or investigation functions. So when you try to make comparisons all I can say is that the total number of resources that are going to be available—Mr Donaldson mentioned a number of 80-something I think—are substantially doing the same things that a number of I think around about 30 or less were doing previously. So the direct comparison of five to 13, or whatever it is, is not valid because if inspections are required the beauty of this organisation, or the feature of this organisation, is that other resources can be made available from the chief investigator.

The Hon. DAVID OLDFIELD: So if the five to 13 is not relevant—

Mr CHRISTIE: It is not entirely valid. I think Mr Donaldson was talking about a minimum number.

The Hon. DAVID OLDFIELD: Where do you see the impact in the changes that we are going to see with his group essentially reaching 39 at some stage with about 15 of those people directly investigated?

Mr CHRISTIE: It will help him to follow up on issues and it will help people to remain on, say, accreditation or audits for a longer period, whereas they had to be switched over to investigations or to other activities. So it provides a lot more grunt, put it that way, for the organisation. I think he said the total is going to over 80 and the functions are substantially the same. There is only one additional function that is not being carried out at the moment and that is the monitoring of performance. At the moment we have started that and we have started with one person. It is never going to be a big part of the organisation. So your direct comparison, if I might say so, is the availability of resources from about 30 or less to over 80.

The Hon. DAVID CLARKE: I think that Mr Donaldson would have assessed all that and taken all of that into account. Taking that into account I understood him to say that to get—

Mr CHRISTIE: If I can say this, if he needs more than 13 then there are many more than 13 people available to assist in that.

The Hon. DAVID CLARKE: I think he actually did indicate that he would prefer for us to get an optimum output in regard to safety issues, that it should be not 13 but three times that number.

Mr CHRISTIE: I am not sure that that was the case.

The Hon. DAVID CLARKE: That was my understanding.

Mr CHRISTIE: I do not know about that. I thought he said three times five.

The Hon. DAVID CLARKE: There was talk of five increased to 13. I dealt with the figure of 13 and he then indicated to us that he felt to get an optimum level as far as safety issues, and I guess an optimum level in regard to safety issues should be the minimum—

Mr CHRISTIE: But I do not think, with respect, that he was talking about inspectors. I think he was talking about the regulatory side of the organisation, his direct reports.

The Hon. DAVID CLARKE: I think he was talking about an increase of 13.

Mr CHRISTIE: But when he talked about 39 I take it he was talking about the direct reports to him. But let me cut through it and say this, whether it is 13 or whatever it is, there are increased resources available and will be made available to him in that organisation.

The Hon. DAVID OLDFIELD: Are you saying the validity in this is that these people are now specifically taking up roles that they will not be distracted from by being diversified into other areas?

Mr CHRISTIE: Yes, that is right. And even if you talk about the five, that five were probably doing other things as well, so it is not a direct comparison.

The Hon. DAVID CLARKE: I think that Mr Donaldson would have factored in all of those things when he did put that.

Mr CHRISTIE: I cannot speak for him but I am just saying I think the resources are there.

Ms LEE RHIANNON: I understand you are saying there is not a direct comparison but does it seem there has been a substantial increase or are you saying that these other people worked massive amounts of overtime or they were just brought in when the job needed to be done? We are talking about an increase in numbers, whatever those numbers are.

Mr CHRISTIE: Put it this way, whatever the effects, Mr Donaldson would not have had the numbers available to him that he will in the future. So the result of that, I was trying to explain, was that people in the main could not necessarily remain just on inspections, they had other functions, including investigations which are now being carried out by the chief investigator or are now proposed to be.

Ms LEE RHIANNON: So in the changeover one of the positions is the more dedicated, is that what you are saying?

Mr CHRISTIE: Probably, yes, I think that is true, plus there is still flexibility in the organisation to move people from one area to another.

The Hon. DAVID CLARKE: I think Mr Donaldson indicated that as far as safety culture was concerned he felt that it was 25 per cent right and 75 per cent not right. Would you basically agree with his assessment?

Mr CHRISTIE: I would like to be sure of what your question is about. Is it about the rail industry or transport generally, or about the regulator?

The Hon. DAVID CLARKE: I think Mr Donaldson was referring to the safety issue generally right across the board, unless I misunderstood him.

Mr CHRISTIE: In the industry generally. I would not like to put a figure on, with due respect. I think there is a long way to go in some areas. But, having said that, let us be fair, I think some players in the industry are probably doing it better than others. I do not think you can generalise

about it. I think it is well-documented that there is a cultural problem in rail at the moment that has to be overcome, and it is a big job. He could well be right on his figure. I would not necessarily argue with that figure.

The Hon. DAVID CLARKE: If we did accept those figures we have got a long, long way to go?

Mr CHRISTIE: Granted, yes.

CHAIR: Do you think that figure of 25 per cent applies to rail or is it worse than that in rail compared to across-the-board?

Mr CHRISTIE: Can I leave it on the basis I think there is a long way to go? There is definitely a cultural problem in rail that has to be overcome and I think it has been well-documented. I think people are aware of it. It is going to require a big effort and the regulator has got to play a part in that.

The Hon. DAVID CLARKE: How long do you say people have been aware of that cultural problem in the rail area?

The Hon. PETER PRIMROSE: May I ask which clause we are referring to here?

Ms LEE RHIANNON: All of them.

The Hon. PETER PRIMROSE: Which clause are we discussing?

CHAIR: It probably comes under the long title of the bill.

The Hon. PETER PRIMROSE: So you are saying anything to do with transport legislation, amendment, safety, reliability or bills in 2003 is relevant?

CHAIR: The safety issue in relation to cultural problems which we mentioned earlier. I think Mr Christie has effectively answered the question in saying that we have got a long way to go. He acknowledged that there is that problem.

Mr CHRISTIE: I have been asked the question, how long has that problem been there? How long have we been aware that we have got a long long way to go? I cannot answer that question definitively. There are certain risks that have come about no doubt by the break-up of rail in the mid-1990s from a purely integrated monolithic system to the current arrangements we have got today. I think they are some of the risks that have got to be attacked. I can only say that I think this new regulatory organisation is a way of assisting the industry to attack those issues, including the cultural one.

CHAIR: In relation to the chief executive officer [CEO], there is an acting CEO and apparently the position has been advertised, is that right?

Mr CHRISTIE: Can I just explain to you and the Committee along these lines: Mr Donaldson has been working very assiduously on a number of issues that have to be attended to and we have tried to foreshadow the new organisation by having an acting CEO in place so that some of the other areas of attention can be dealt with. I think there was a question to Mr Donaldson, for example, about did he frame the clauses—

CHAIR: Was he involved.

Mr CHRISTIE: Yes, was he involved? Can I just explain that I was not associated with the earlier legislation but that was groundbreaking legislation several years ago in the sense that it introduced the notion that risk management had to be a very big part of safety management. Undoubtedly Mr Donaldson had a great deal of input into that and his expertise was taken on board. Similarly, that has happened on this occasion, except that I have to tell you that he has been very, very busy over the past few months with a number of significant issues, not the least of which is

conducting an investigation into the Waterfall accident, which he was required to do by the previous Minister. In addition, I think he mentioned other issues that he had to address, including the Menangle Bridge problem. In a sense, if we are to start a new organisation on 1 January it is very important that some of the building blocks are put in place before then. It is not possible simply to open the doors and start a new organisation under a new Act on 1 January without some sort of tooling up in the process. This has involved an acting chief executive officer [CEO], who has had the responsibility of working up this legislation in consultation with the current regulator.

CHAIR: Has the CEO position been advertised?

Mr CHRISTIE: Yes, and hopefully there will be interviews and an appointment made between now and the end of the year.

CHAIR: Was the 1 January start date for the legislation predicated on the expectation that Justice McInerney's report would be finalised by then?

Mr CHRISTIE: No, the 1 January date was decided by the Minister. It is his requirement.

CHAIR: There is a question as to whether the board is a rotating board. Can it be described in that way?

Mr CHRISTIE: The board is an advisory body that will hopefully at any given time comprise the best safety people available. It is up to the Minister to decide whether he wants to change the membership of the board. No doubt the chairman would have a role in advising the Minister about that. But it is possible that the Minister may want to change the membership of the board from time to time to take advantage of the expertise available.

CHAIR: Can you outline how the recommendations regarding actions or sanctions will pass through a particular chain of command? What is that chain and how will each level relate to the question of safety?

Mr CHRISTIE: If you are talking about safety regulation the accountability for that rests with the chief executive and it is delegated to one division within the organisation, which is the safety regulation division. It is part of the daily function of the regulator in that division to accredit operators and to audit their performance against their safety management plans. To do that he does not need to refer to anybody—certainly not the board and certainly not the chairman.

CHAIR: Is the chairman accountable in any way for anything?

Mr CHRISTIE: The chairman is accountable for the chief investigation area. The area that comes under the chief investigator derives from the chairman. The chairman chairs a board that is there to ensure that the best output is obtained from this new organisation to provide quality assurance—I suppose that is the best way to put it—and to ensure that the two arms of the organisation are working closely together. The chief investigator has to be independent because on occasions he or she may have to criticise the regulatory side. In other words, if in the course of investigating an accident it is found that regulation is deficient, the chief investigator must be in a position to make that observation and associated recommendations, and therefore make a separate report to the chairman.

CHAIR: Do you feel that the regulator will be in a sufficiently strong position to make that separate report?

Mr CHRISTIE: The chief investigator does not report to the CEO; it is outside the main regulatory organisation to that extent but collocated and able to draw on the resources.

CHAIR: In framing the terms of the bill can you advise who from the private sector—the legislation is obviously overarching in terms of the regulation of all public transport, including those contracted to provide public services—was involved in the consultation process?

Mr CHRISTIE: There has been some consultation. It is ongoing at the moment. One consultation I was involved in was with one of the large private rail operators, but there have been others. There has also been consultation with the Labor Council.

The Hon. DAVID CLARKE: You said that you were not aware whether Justice McInerney was consulted in framing the legislation. Do you believe he could have had good input in the legislation if he had been approached? Do you think this proposed legislation would have been assisted by input from Justice McInerney?

Mr CHRISTIE: I cannot answer that. I do not know whether Justice McInerney could or could not. But we do have the benefit of his previous recommendations from the Glenbrook inquiry, when he specifically addressed the issue of the regulator. I cannot put words into his mouth; I do not know what he will say. But I anticipate that he may say more about his thoughts on that matter next year.

The Hon. DAVID CLARKE: Have all your concerns been addressed by this proposed legislation?

Mr CHRISTIE: I believe so, yes.

The Hon. DAVID CLARKE: So you have no further suggestions to make with regard to the finetuning of this bill?

Mr CHRISTIE: I think what is proposed here compares well with what is happening elsewhere. There is no other transport safety regulator in the other States that in my opinion has a better model than this one. I might say that without exception they all have the investigatory function and the regulatory function in the one organisation, which is contrary to what Justice McInerney recommended in Glenbrook.

The Hon. DAVID CLARKE: Where will we stand if Justice McInerney's findings recommend something else?

Mr CHRISTIE: I thought I had already answered that because the bill makes provision for the proposed arrangement to be reviewed within 12 months. So as I understand it there is an opportunity to take on board any recommendations. But that is a matter for government.

The Hon. DAVID CLARKE: I guess another approach would have been to approach Justice McInerney directly rather than waiting six, seven or eight months for him to bring down his final report.

Mr CHRISTIE: I cannot comment on that because I do not know what is in his mind and what will come out of that report. As I understand it, a whole section of work is still to be undertaken by that commission, starting now.

CHAIR: An interim report is due late this month.

Mr CHRISTIE: That is right.

CHAIR: We will have debated the bill by then.

Mr CHRISTIE: I have no knowledge as to whether that interim report will address the issues that we are talking about here. Whenever those reports come, I think the bill has built into it provision for review. It then remains for the Government to take on board those recommendations—to accept them or whatever.

The Hon. DAVID CLARKE: Or we should try to get it right to begin with.

Mr CHRISTIE: In answer to that, I think we have come a long way with this bill compared with the sorts of arrangements that have been in place within the Department of Transport.

CHAIR: Mr Christie, taking you back to the consultation on the provisions in the bill, you mentioned that you had had consultations with one rail freighter and the Labor Council but you were not aware of any other bodies that were consulted.

Mr CHRISTIE: I cannot answer for all the consultations. Some would have taken place without my presence, and I believe some are still to take place with industries other than rail.

CHAIR: Even though the bill is now before Parliament.

Mr CHRISTIE: I think there will be ongoing consultations with the industries about various safety aspects. The bill cannot possibly encompass all the issues that need to be addressed with each industry.

CHAIR: In terms of the drafting of the bill, I think Mr Donaldson said that a policy unit was established to perform that task. Can you tell us who was in that unit and what are their particular areas of expertise?

Mr CHRISTIE: I have already indicated that, owing to the fact that Mr Donaldson had to keep focussed on the safety issues that are part of his accountability as regulator, it was necessary to have a group of people put together the basis of this bill. That small group was led by Ms Carolyn Walsh. If it would help the Committee I am prepared to provide a written response to that question. The group comprised a legal representative and one or two other people who had an input in the bill on a policy side. There were regular meetings, including meetings with Mr Donaldson and others from the existing regulator, during the formulation of these plans.

CHAIR: It would assist the Committee if perhaps by tomorrow you could provide a list of those people and their qualifications. How many senior executive service positions are currently in place in the rail safety structure that this legislation will replace and how many will be created under the new regime?

Mr CHRISTIE: I will take that question on notice and respond in writing because I do not have that information at present.

The Hon. DAVID CLARKE: I note that the bill—in schedule 4 [116] on page 80—amends the Rail Safety Act in relation to alcohol and drug testing. What do you envisage will be the effect of those changes?

Mr CHRISTIE: I can say only that the mandating of the requirement for blood and alcohol testing—which is something that Mr Donaldson has been closely associated with—is a step forward for the safety of the transport industry. I thoroughly endorse it. I think it is the right move and can only improve the public's confidence in the industry they are using.

The Hon. DAVID CLARKE: Do you think it is a major problem that it is setting out to remedy?

Mr CHRISTIE: I do not know the extent of the problem personally, but I believe the measures are needed.

CHAIR: A number of new directors will have particular roles in the organisation. How many directors will be appointed and what will their roles be? Are you in a position to tell us who will fill those director positions?

Mr CHRISTIE: I cannot answer your last question, except to say that the transport safety regulator will remain Mr Donaldson. There is also a director corporate strategy, which involves legal corporate counsel, legal advice, legislation advice, prosecutions, the methods by which prosecutions will be conducted, industry dispute resolution when safety issues are involved, and reporting to Parliament and to the public generally. There is another division which is headed up by the director service performance, which provides advice to the Government on service standards. It also monitors benchmark performance, and it is also going to be involved in customer surveys on public transport. There is a business service division, which is not headed up by a director but is necessary to run an

organisation like this, including corporate services and records management human resources. Last but not least, very importantly there is a technical panel, which also reports to the chief executive officer but is available to both the regulator and the chief investigator.

CHAIR: Will there be a director of safety strategy?

Mr CHRISTIE: There is a director of corporate strategy, which includes safety strategy. However, most of the safety strategy on a day-to-day basis will be a function of Mr Donaldson's division.

CHAIR: Do you know who will be appointed director of corporate strategy?

Mr CHRISTIE: No, not at this stage. Those positions have not been advertised at this point.

CHAIR: I presume they will be advertised in time for the—?

Mr CHRISTIE: One hopes so, if the bill is passed. Obviously, we cannot appoint people to positions where we have no legislative backing.

The Hon. DAVID CLARKE: The Minister is required to take into account certain criteria for the appointment of members of the board. There is a provision that an appointed member may appoint a deputy, but does not appear to be any criteria to be taken into account in appointing deputies. Schedule 1 clause 6 (2) of the bill provides that in the absence of a member, the member's deputy may, if available, act in the place of the member. Subclause (6) provides that an appointed member may appoint a deputy only with the approval of the chairperson. In other words, theoretically you could have a board made up of a number of deputies who do not satisfy any of the criteria laid down for the original members to be appointed.

Mr CHRISTIE: I think subclause (6) deals with that, because the chairman would have to approve of that deputy.

The Hon. DAVID CLARKE: But there are no requirements laid down for the chairman to follow with regard to what criteria he needs to use. In other words, there are no criteria or restrictions on the chairperson as to who may be appointed a deputy. Whereas, the Minister has criteria imposed upon him as to whom he can appoint as a member.

Mr CHRISTIE: My view is that the chair would take note of the experience required for a deputy.

The Hon. DAVID CLARKE: But it is not specified that he is required to do that.

Mr CHRISTIE: That is correct.

The Hon. DAVID CLARKE: Does that appear to you to be an anomaly or defect in the bill?

Mr CHRISTIE: I guess my thought on that was that the chair would want to get the best people at any given time and would be wanting to vet the odd occasion when a deputy might be required.

The Hon. DAVID CLARKE: Of course, the Minister would want to get the best people, too. Even though he would want to get the best people, and we assume that he will, he is still required to follow certain criteria in appointing members of the board. But under the bill, appointed deputies can become members of the board and there are no criteria required for their appointment. There seems to be something missing from this bill. Does that appear to be the position in your view?

Mr CHRISTIE: I think it is a good point. I would have thought that the chair would make sure that the person acting as deputy for the time being had the qualifications or experience to add to the board's deliberations. It would be quite demonstrably absurd to have somebody as a deputy who had no safety knowledge or experience.

The Hon. DAVID CLARKE: Absolutely. But it would also be a rather bizarre situation if the Minister were required to use certain criteria but the chairperson is not required to use certain criteria to appoint people to the same position.

Mr CHRISTIE: My only answer to that is that I would expect that the chair would follow those same guidelines under the Act. While the Act specifies criteria, there is some variability in the—

The Hon. DAVID CLARKE: While you would expect that he would do that, you would agree that, as it appears with this legislation, he is not required to do that?

Mr CHRISTIE: As it appears that way, yes. But one would expect that a normal chairman would try to make sure that the person who was deputising for a particular meeting had the experience to add value to the discussion.

The Hon. DAVID OLDFIELD: Given what you are saying based on the Hon. David Clarke's questions, would you agree that the bill should be amended to reflect that any deputy who might be appointed should meet the same criteria as met by the existing members through the Minister?

Mr CHRISTIE: With due respect, it is a matter for the Minister to decide to what degree the bill might be amended. I cannot speak for him.

The Hon. DAVID OLDFIELD: I only asked for your opinion; I did not ask you to speak for the Minister.

Mr CHRISTIE: As the chairman, I would feel bound by the criteria in the Act. If you ask for my personal view, I would feel bound by those criteria.

The Hon. DAVID OLDFIELD: I was not asking you to speak for the Minister; I am only interested in what you are saying.

Mr CHRISTIE: I can only speak personally, and say that I would feel bound by those criteria because I believe they are important.

The Hon. DAVID OLDFIELD: Rather than feeling bound by the criteria, would you not agree that it would be best if you were bound by the criteria?

Mr CHRISTIE: I think that is a matter for others. I am not debating the bill.

The Hon. DAVID CLARKE: I asked you earlier whether you feel that any areas need improvement. Do you agree that this could be an area in which the operation of the bill could be improved?

Mr CHRISTIE: Perhaps, but, to be honest, I do not see it as a major problem.

The Hon. DAVID CLARKE: When you say you do not think it is a major problem, are you saying that there should be criteria that the Minister is required to follow to appoint members to the board but it is not really important that the chairperson should be required to follow the same criteria to appoint deputies, who can become acting members of the board?

Mr CHRISTIE: I believe it is important, yes. And personally, I would follow those criteria.

The Hon. DAVID CLARKE: Do you think it is essential that they be followed?

Mr CHRISTIE: I think it is essential that they be followed, yes.

CHAIR: Going back to the question of directors, is there currently a position of director of safety strategy?

Mr CHRISTIE: I do not think there is, but I would like to take that on notice. Are you talking about the current organisation?

CHAIR: I have a document, which I am happy to table, a memo from the acting chief executive officer, Carolyn Walsh, to all staff of the TSRR dated 9 October 2003, which sets out the organisational structure and proposes a director of safety strategy.

Mr CHRISTIE: Then that is what is proposed. I thought your question was: Is there a position in the current organisation that has existed up to the present time?

CHAIR: You said that the positions have not been filled, because the body has not been formally established. However, the memo from the chief executive officer says that this is an organisation chart that shows the placement of staff against positions in the new Independent Transport Safety and Reliability Regulator.

Mr CHRISTIE: What I should have pointed out to you—and I apologise for not doing so—is that, obviously, there are a number of people in the organisation who will be placed in the organisation, and they will be placed in discussion with them. In other words, we want to keep everyone who is now working in the organisation within the new regulator, and some of those people may have been placed in individual positions. I do not know what has happened with the position you are talking about. I am happy to give you an answer on it in writing.

CHAIR: The position, according to this chart, is filled by Catherine Hallinan, who was a fairly prominent witness in the McInerney inquiry.

Mr CHRISTIE: I do not know the position there. I am happy to get back to you on it. My short answer is that I think she is probably acting in that position. But I can get you an answer on that.

CHAIR: Presumably, if she is acting, she would have to apply for a director's position once it is advertised, if she wants the position?

Mr CHRISTIE: Yes, if she is acting. I will have to get back to you on that.

The Hon. JAN BURNSWOODS: We are getting a long way away from the clauses of the bill. Whether these questions are answered now or taken on notice, surely they should be within the terms of reference, which relates totally to the clauses of the bill.

CHAIR: I am trying to get to the point where we are confident about the directors' appointments and how they will be put into effect when the bill is through the Parliament.

Mr CHRISTIE: Madam Chair, which respect, is the Committee going to vet the appointments?

CHAIR: No, I am not suggesting that. I think the public would be interested to know about any appointment of Ms Hallinan, given—

The Hon. JAN BURNSWOODS: She is not named in the bill.

CHAIR: That is right, but she is named—

The Hon. JAN BURNSWOODS: —in a memo that is a month old, which has no direct relevance to our inquiry.

CHAIR: Safety issues were the issues that she was—

The Hon. JAN BURNSWOODS: We are not doing an inquiry into safety issues; we are doing an inquiry into asking two named individuals about the clauses of the bill.

CHAIR: Mr Christie, if you could provide an answer in writing as to the directors' positions, how they will be advertised and so on, it would be much appreciated.

Mr CHRISTIE: Yes.

CHAIR: What is your understanding of the number of employees that will be placed in the new authority?

Mr CHRISTIE: All the people who are currently working in the regulator will be placed if they choose to remain, and I understand that they will. Those people will be found places within the regulator. Off the top of my head I cannot give you the exact number.

The Hon. DAVID CLARKE: I note that new section 42I (1) provides that the regulator may give directions to the director-general or the Waterways Authority relating to the safe operation of transport services and associated matters. Subsection (2) provides that if the director-general or the Waterways Authority consider that complying with any such direction would require too much funding, they must request the regulator to review the decision. I note that subsection (5) provides that following the review, the regulator can confirm the direction only if it has worked out how much it will cost, it has referred the matter to the Minister, and the Minister, after consultation with the Treasurer, has approved the direction.

Am I correct in saying that the Minister, after consultation with the Treasurer, can knock back any direction given by the regulator, simply because it would cost too much, even though a matter of important safety was at stake?

Mr CHRISTIE: It is a matter that affects that organisation, the Waterways Authority. In other words, it is a safeguard required by the Government to ensure that the regulator does not require, for example, the Waterways Authority to vastly expand its resources without any consultation with anyone else. It does not affect the safety of operators. It is only the Waterways Authority as a regulator. It is a safeguard that is required by the Government to ensure that that other regulator, which is a regulator of safety in the maritime area, for which this regulator we are discussing has an overarching primacy—

The Hon. DAVID CLARKE: Except for the words relating to the safe operation of transport services?

Mr CHRISTIE: Yes.

The Hon. DAVID CLARKE: We have a situation here that they could give directions in matters relating to the safe operation of transport services but after we go through the process the Minister can, in effect, just veto it.

Mr CHRISTIE: No. I do not know whether I explained it. Nobody can veto a safety direction in relation to any of the maritime areas. For example, if the ITSRR chief investigator decides to investigate a maritime accident, he can do that or he can delegate it to the Waterways Authority. It does not affect safety issues or instructions to the Waterways Authority in connection with the maritime industry. It is a safeguard that the Government requires to ensure that the actual regulator in maritime is not given a direction, say, to expand its operation without relevance to the Government.

The Hon. DAVID CLARKE: I might be missing something. Subsection (1) says that the regulator may give directions relating to the safe operation of transport services.

Mr CHRISTIE: Yes.

The Hon. DAVID CLARKE: Clearly, that involves safety issues.

Mr CHRISTIE: Yes.

The Hon. DAVID CLARKE: Then we have a process where if the director-general considers that such a direction is going to—

Mr CHRISTIE: But only if it causes a significant variation in the funding of that agency.

The Hon. DAVID CLARKE: Sure, I understand.

Mr CHRISTIE: Not of the industry.

The Hon. DAVID CLARKE: But what if it is of very great safety concern and it involves considerable expenditure. My reading of the bill is that the Minister can veto it, even though the regulator believes that it is a deep safety concern.

Mr CHRISTIE: I think it would then be a policy decision of government. Is it going to expand the Waterways Authority to meet that requirement or, indeed, does it want to expand the ITSRR to take that function over? I am just hypothesising here. It is a policy issue for government.

The Hon. DAVID CLARKE: Sure, but it is also a safety issue. In other words, we are talking about the safe operation of transport services.

Mr CHRISTIE: Yes.

The Hon. DAVID CLARKE: We are talking about a safety issue. Basically, my reading of the proposed legislation is that if the Minister believes that it is going to be too costly to institute those safety precautions, he, in effect, can veto it?

Mr CHRISTIE: Only insofar as it might require supplementation of the budget, for example, of the Waterways Authority. It does not stop a safety instruction or direction to the industry.

The Hon. DAVID CLARKE: They are directions relating to the safe operation of transport services. That means relating to safety in transport services?

Mr CHRISTIE: Yes.

The Hon. DAVID CLARKE: It means relating to safety in transport services?

Mr CHRISTIE: No, it is relating to a direction, which may cause a significant variation in the funding required for the operation of either the Ministry or the Waterways Authority.

The Hon. DAVID CLARKE: Yes, but if that is incidental, if it does involve a significant variation of funding—

Mr CHRISTIE: With respect, that is a policy decision of government, whether to expand the Waterways Authority or the Ministry.

The Hon. DAVID CLARKE: Sure, but I am asking you about the safety side of it. Forget about the general funding side, I am talking about the safety side of it. There appears to be a bit of a problem here? I will ask you this: Does not this same provision relate to the Ministry of Transport?

Mr CHRISTIE: Yes, it does.

The Hon. DAVID CLARKE: It relates to the Ministry of Transport as well?

Mr CHRISTIE: Yes.

The Hon. DAVID CLARKE: So it relates to trains and buses?

Mr CHRISTIE: It is very unlikely that the Ministry would need to be expanded to improve safety. It is a provision that you will see in a number of bits of legislation required by the Government. It is a policy issue and I do not think I can answer you any better than that.

The Hon. DAVID CLARKE: But you would agree with me that the Minister has a total veto?

Mr CHRISTIE: Only in respect of expansion of the budget of an organisation that may well be reporting to this Minister or another Minister.

The Hon. DAVID CLARKE: An expansion of the budget?

Mr CHRISTIE: In my view it does not fetter safety.

The Hon. DAVID CLARKE: An expansion of the budget that involves a matter of safety, and it applies not only to the Waterways but it applies to trains and buses as well.

Mr CHRISTIE: Why does it apply to trains and buses?

The Hon. DAVID CLARKE: Did you not just say that it applies to the Ministry of Transport?

Mr CHRISTIE: That is the budget of the Ministry. It does not apply to the budget of the rail authorities. They have to abide by any direction given by the regulator.

The Hon. DAVID CLARKE: I am not convinced but thank you.

Mr CHRISTIE: We will agree to differ on that.

CHAIR: Can you advise on the progress of actually setting up the authority, apart from staffing that we discussed?

Mr CHRISTIE: As I indicated to you, we are in effect attempting to shadow the new organisation, even though we cannot really appoint people until we get legislation, and we have no board at the moment. We are trying to put in place as many of the systems that are needed for the new organisation; for example, data collection and filing, and a management system is needed to encompass the breadth and scope that we have anticipated in the legislation. Those sorts of things are going on now.

There is a requirement for a number of policies to be written, so we have some policy people on board at the moment working on that. We are trying to do as many things as we can because, in a practical sense, we cannot wait until 1 January to move on some of these things.

CHAIR: Proposed new section 125C on page 36 relates to improvement notices and states: "The Minister may give an improvement notice to the owner of a public ferry wharf" to ensure the safety of users. Given that that will be a legislative requirement, can you indicate if the ownership of public wharfs located on Sydney Harbour has been determined since the Waterways Authority submission to the Parry inquiry on public transport services indicated that ownership is in dispute?

Mr CHRISTIE: I do not have an answer to that. I do not know what has been resolved in that regard. All I can say is that this is specifically addressed in this bill, as I understand it, because the existing legislation does not cover this area satisfactorily, the safety of wharfs, and that is the reason it is specifically mentioned here. It is a vacant area so far as safety is concerned. That is my advice.

CHAIR: Can you indicate to whom or to which authorities such improvement notices would be issued if they were required. I can tell you which wharfs.

Mr CHRISTIE: If I may, I would like to reply in writing to that because I think it is quite specific. I think the arrangement is that it will be done through the Waterways Authority but I would not like to do it off the cuff.

CHAIR: Schedule 3 on page 48 relates to confidential reporting of safety information by transport safety employees. It states, "The Chief Investigator may establish a system for the voluntary reporting by transport safety employees of matters that may affect the safe carrying out of ... rail, bus and ferry services". Does that mean that it will not be mandatory to establish such a system?

Mr CHRISTIE: It is mandatory. It will be established, yes, and it is being worked on now in the organisation. The reason that it comes under the responsibility of the chief investigator is that he has the power to include that in investigations, to go and look at that, but he may decide to refer some of the matters over to the regulator.

The Hon. DAVID CLARKE: Page 15 states that "The Chairperson of the Board must have experience in transport safety management systems (including rail safety management systems)." There seems to be a bit of a discrepancy here. Can you indicate why division 4 does not require the same expertise and qualifications of the chief executive officer? That is on page 11.

Mr CHRISTIE: Could you just take me to the spot?

The Hon. DAVID CLARKE: Page 15, which states that the chairperson of the board must have experience in certain matters but then as far as the chief executive officer is concerned—

Mr CHRISTIE: Whereabouts are you quoting from on that page?

Ms LEE RHIANNON: Page 11, you are right; there is no requirement.

The Hon. DAVID CLARKE: Dealing with the appointment of the chief executive officer, there it is no similar requirement or criteria laid down on page 11 for the chief executive officer. We have a similar problem to the one we had with members of the board. We have criteria laid down for the appointment of a chairperson but not for the appointment of the chief executive officer?

Mr CHRISTIE: I am not aware that Acts normally lay down requirements for CEOs necessarily.

The Hon. JAN BURNSWOODS: Let us know if you think of one.

Mr CHRISTIE: I cannot quite work out why we have to be specific about every officer in the department.

The Hon. DAVID CLARKE: We are being specific about the chairperson.

Mr CHRISTIE: Yes, because—

The Hon. DAVID CLARKE: And we are clearly, and rightly, laying down that there should be some criteria—and that is understandable—but we do not have that in regard to the chief executive officer. I would have thought there should have been some criteria laid down for the chief executive officer, but you do not agree with that?

Mr CHRISTIE: I do not necessarily agree that we have to be specific about every part of this organisation.

Ms LEE RHIANNON: Why are we specific about one and not the other. I understand what you are saying but I do not understand why we are specific about one position and not the other?

Mr CHRISTIE: The board and the chairman have to add specific value to this organisation. The CEO has to manage the organisation, so having safety experience will be a big advantage. It is a question of what experience you are going to require.

The Hon. JAN BURNSWOODS: Is it not also the case that there are lots of legislation in New South Wales relating to management of the public sector, the SES and all sorts of other things, that lay down in huge detail the kinds of qualifications, experience, et cetera, that CEOs of any department must have?

Mr CHRISTIE: Yes.

The Hon. JAN BURNSWOODS: There is no piece of legislation, I am sure, that says that the CEO must know about health, finance, et cetera?

Mr CHRISTIE: For example, I do not believe, in the case of Health, that it lays down that the CEO of the Health Department has to be a doctor.

The Hon. DAVID CLARKE: We do lay down that the chairperson must be experienced in transport safety management, and certainly they should be, we agree with that, but I cannot see why the same criteria does not apply to a chief executive officer. Do you believe it would improve the bill if similar criteria were laid down?

Mr CHRISTIE: No.

The Hon. DAVID CLARKE: You do not believe that would be an improvement at all?

Mr CHRISTIE: No. I think we have to get the best person possible.

The Hon. DAVID CLARKE: That is right, who is experienced in transport safety management?

Mr CHRISTIE: That will be taken into account, but they have to have other attributes as well, if I may say so.

The Hon. DAVID CLARKE: Yes, but certainly with experience in transport safety management, and other attributes on top of that, I agree?

Mr CHRISTIE: Yes, but is it safety generally or transport safety?

The Hon. DAVID CLARKE: The safety referred to in the criteria relating to the chairperson?

Mr CHRISTIE: But the chairperson is different. He has got to add specific value. It is not like any other board. It is not like a governance board where you are talking about a corporation. There is no point in having a chairperson who is not going to add value to the organisation.

The Hon. DAVID CLARKE: Nor a chief executive officer?

Mr CHRISTIE: Certainly not, but I do not understand that any other bill prescribes qualifications for a CEO for managing an organisation. I am not aware of that.

The Hon. DAVID CLARKE: You have not convinced me, but thank you.

The Hon. PETER PRIMROSE: It would be an interesting Opposition policy, if the new legislation required specific things for CEOs.

The Hon. JAN BURNSWOODS: We could even have an inquiry into it.

CHAIR: Can you advise that the minutes of the Advisory Board would be made available to the public?

Mr CHRISTIE: Frankly, I have not thought about that. I do not have an answer. Not as far as I am aware, no.

CHAIR: Would it be a good idea, in terms of accountability?

Mr CHRISTIE: I cannot answer off the cuff. It is not something that I have given consideration to at this point in time.

CHAIR: You indicated that the model that is being adopted is unique to New South Wales.

Mr CHRISTIE: I made the point that it is a better model than that of other States, where the investigatory and regulatory functions are in the one area.

CHAIR: Can any one person be described as the chief architect of this legislation?

Mr CHRISTIE: No, I do not think so. The Minister made announcements about this as far back as April. He indicated quite clearly the question in which the Government wished to go. We are following that policy decision to set up this regulator.

CHAIR: Has such a model been implemented in a jurisdiction outside Australia that works successfully?

Mr CHRISTIE: I understand that the United Kingdom model for rail separates the regulator and the investigator, but they both report through the one department to the Minister. So they still have ministerial accountability for safety. The Australian aviation model has CASA and ATSB, but they both report through the Minister to Parliament. CASA is the regulatory side and the ATSB is the investigatory side.

CHAIR: In resolving the central question of safety and on-time running—obviously reliability is part of the purview of the bill—where is the balance? Safety or reliability?

Mr CHRISTIE: The degree to which on-time running at six safety is not an issue about on-time running as such. On-time running is the expectation of passengers, they expect both. Passengers expect safety and on-time running. They do not question the need for safety, they take it as a given, it has to be there, it has prime importance. The extent to which on-time running might influence the actions of individuals who are accountable in an organisation for the safe operation of that matter of transport, can come through unrealistic performance levels for example timetables that might be overly optimistic in most cases. It is not a question of on-time running as such, it is the effect it might have at various times on the decisions of people to cut corners.

CHAIR: Can you give an indication of the focus of the regulator's audit program over the next year?

Mr CHRISTIE: There is an existing program that is carried out by Mr Donaldson, which requires audits of all the accredited operators at various times. That program is in place at the moment. Hopefully, with the additional resources—and I think he indicated this—the audits can be more extensive and can ask questions about the reasons for various safety lapses that are thrown up by the audits. That is why I mentioned the fact that having some tracking of the performance of these organisations—and I mentioned the example of infrastructure owners—is a way of saying that the audit has picked up the problem, but how did it get to this situation? What safety system has broken down? Where has the safety management system failed? What decisions have been made by the organisation which caused this? To my mind, those are the areas that the organisation should get into to try to find the causes of the lapses.

CHAIR: With respect to reports to the Minister on performance, on page 8 of the bill, given that there will be reporting on performance of public transport providers, what auditable performance criteria and benchmarks will be put in place with respect to the operations of the regulator?

Mr CHRISTIE: On performance as distinct from safety, which the regulator mandates when required, it is an advisory role only. It provides a facility for the Government to ask for advice on appropriate levels of performance; for example, given the similarities between a transport system here and one overseas or in another jurisdiction. It provides a resource to the Government or decision makers which would include the Ministry of Transport as to what performance standards should be adopted. There is not provision whatsoever for this organisation to set performance standards. It is not part of its remit and it should not be.

However, it is available to the Government to get advice from the regulator—as an independent organisation, which is not an operator and not a funder—about appropriate performance standards in certain situations. It can also ask the regulator, and I think the regulator has to be in a position to provide advice on performance standards that lead to safety issues. In other words, in the view of the regulator if performance trends are going to result in a safety issue down the line, the Government is entitled to that advice.

The Hon. DAVID CLARKE: I refer to page 7 of the bill. What safety and reliability standards will be developed for public transport operators?

Mr CHRISTIE: The safety standards are derived from mandated requirements by the regulator on various issues. For example, the drug and alcohol testing is a mandated requirement. Or agreement in the accreditation of operators with their safety management plan and systems, which are then audited from time to time. In regard to standards, it is an advice role only to the Government, not a mandated role.

The Hon. DAVID CLARKE: Will those standards be compulsory?

Mr CHRISTIE: Safety standards are, yes. When talking about performance or reliability standards, no. It is not a decision-making role.

The Hon. DAVID CLARKE: What procedures have been put in place to address a finding of a commission of inquiry or other body that a safety or performance standard that the regulator has issued was to blame for an accident or incident? How would you address such an apparent serious conflict of interest?

Mr CHRISTIE: It is not a conflict if it is found by a commission of inquiry. I suggest that we have removed that conflict by separating out the chief investigator. If it is not a commission of inquiry, if it is a lesser accident, it is open to the chief investigator to comment on the adequacy of the regulation and the regulator's work. It may well be a consideration at some stage.

Ms LEE RHIANNON: Mr Donaldson spoke about the problems of old infrastructure and parts of the rail system. We know it would be costly to upgrade to achieve the necessary safety levels. Has that cost been a factor in the decision to replace train services with coach services on the majority, or possibly all, CountryLink services in the New Year?

The Hon. JAN BURNSWOODS: Point of order: Could the member state the clause of the bill to which her question relates?

Ms LEE RHIANNON: I take the point in terms of the issue being broad.

The Hon. JAN BURNSWOODS: It is not broad, it is highly specific. The question asks about specific services on specific railway lines.

Ms LEE RHIANNON: I did not interrupt the member, so I should be able to finish my comment. It would be regrettable if my question could not be put, because clearly it is another opportunity for the Government to clarify the status of CountryLink. If she is trying to take a point of order to stop my question, that would be unfortunate.

The Hon. JAN BURNSWOODS: I tried to use my point of order to point out that in the House we had lengthy debate about making the terms of reference of this inquiry very specific. We decided, unanimously I believe, in the Legislative Council that we would not have this inquiry deal with all other issues such as that in the question just asked. We are the creatures of the decision made by the Legislative Council. The member's question does not point to a particular clause in the bill, it goes way beyond what the Council decided the Committee was to do.

Ms LEE RHIANNON: I am happy to rephrase my question. Was the bill written with the understanding that CountryLink would be coach-based rather than train-based?

The Hon. JAN BURNSWOODS: Again, I ask the member to tell me what clause she is referring to.

Ms LEE RHIANNON: I listened to the member.

The Hon. JAN BURNSWOODS: I would like a ruling on my point of order, of course.

CHAIR: The member has indicated that she will rephrase the question, but she has not managed to get to the end of that.

The Hon. JAN BURNSWOODS: Will you rule on my point of order?

The Hon. DAVID OLDFIELD: We have not had a ruling on a point of order in the past 3½ hours.

The Hon. JAN BURNSWOODS: Yes, I know. And we are now 10 minutes over our finishing time, we might finally make it.

Ms LEE RHIANNON: Our finishing time is 1 o'clock.

The Hon. JAN BURNSWOODS: No, it is 12.30 p.m. for this witness.

Ms LEE RHIANNON: I apologise.

CHAIR: The member has basically withdrawn her question and is rephrasing it. The member can continue.

Ms LEE RHIANNON: Was the bill written with the understanding that CountryLink would be coach-based rather than train-based? Therefore, was there a further understanding that rail safety requirements across New South Wales would be greatly reduced?

Mr CHRISTIE: I cannot answer that question. I have no position in relation to substitution of rail services. I have no view on that. It has nothing to do with the legislation and I cannot see anything in the legislation that refers to that.

Ms LEE RHIANNON: Having looked at the legislation I realised that it is not referred to.

The Hon. JAN BURNSWOODS: That answers my question about the clause.

Ms LEE RHIANNON: Clearly such a major change in the amount of rail services in New South Wales would impact on the level of work around safety issues to be undertaken. In new legislation I would have thought that would have been relevant.

Mr CHRISTIE: Sorry, I do not see the relevance. The job of the safety regulation authority is to deal with the risks that arise, and to ensure that those risks are properly dealt with by the operators, whether they operate rail, bus, ferry, or whatever. It is not a function of this authority to deal with Government policy decisions about which services they run.

CHAIR: In relation to staff, on page 18 of the bill, can you outline how many permanent positions created within the new body are managerial and non-managerial?

Mr CHRISTIE: I would not try to answer that off the cuff. I would like to take it on notice and give a considered answer.

Ms LEE RHIANNON: I have just two short questions. You would have heard that I asked these questions earlier, but Mr Donaldson was unable to answer them. How much will the regulator's chief executive be paid?

Mr CHRISTIE: That decision has not been made, through you, Madam Chair. The position has only just been advertised.

Ms LEE RHIANNON: So it has been advertised but you are not aware of the decision?

Mr CHRISTIE: Not at this point in time, no.

Ms LEE RHIANNON: How much will each of the five advisory board members be paid?

Mr CHRISTIE: I have no information on that. Those decisions are governed by policy that the Government has, any government has, in relation to remuneration of board members, so I cannot answer that at the moment.

CHAIR: Mr Christie, Thank you very much for your time today. If members have no other questions, I declare the meeting closed.

(The witness withdrew)

(The Committee adjourned at 12.45 p.m.)