

REPORT OF PROCEEDINGS BEFORE

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

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

At Sydney on Thursday, 17 November 2011

The Committee met at 10.00 a.m.

PRESENT

The Hon Robert Borsak (Chair)

The Hon Cate Faehrmann
The Hon Luke Foley
The Hon Trevor Khan
The Hon Matthew Mason-Cox
The Hon Melinda Pavey
The Hon Adam Searle

CHAIR: Welcome Mr Liebelt. Just a couple of formalities before we get started. Welcome to the second public hearing of the Select Committee on the Kooragang Island Orica Chemical Leak. This Committee is established by the Upper House of the New South Wales Parliament to examine the chemical leak that occurred at Orica's Kooragang Island plant on 8 August this year.

The terms of reference ask us to carefully look into the incidents and the response of both Orica and the New South Wales Government to it. Today we are hearing first from the managing director and chief executive officer of Orica, Mr Graeme Liebelt. We are also hearing from representatives of the Nature Conservation Council and the Total Environment Centre.

As Chair of the Committee I would like to thank all of our witnesses who are attending today.

Procedural matters - before we begin with our first witness, I need to make some comments about procedural matters.

Regarding broadcasting, the Committee has previously resolved to authorise the immediate broadcast sound and video excerpts on public proceedings. Copies of the guidelines governing the broadcast proceedings are available from the table by the door.

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

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

Regarding questions on notice, witnesses are advised that if there are any questions you are not able to answer today, but that you would be able to answer if you had more time or certain documents to hand, you are able to take the question on notice and provide us with an answer at a later date.

Regarding in camera deliberations, if you should consider at any stage during your evidence that your response to particular questions should be heard in private by the Committee, could you please state your reasons and the Committee will then consider your request.

Protection afforded to witnesses - I would like to remind all those present that witnesses who appear before Parliamentary committees are protected by Parliamentary privilege for the things that they say during the hearing. This means that what they say cannot be used against them later in a court proceeding.

Regarding adverse mention, I would remind witnesses that freedom afforded to witnesses by Parliamentary privilege is not intended to provide an opportunity to make adverse comments and reflections on specific individuals. Witnesses are asked to avoid making critical comments about specific individuals and instead speak about the general issues of concern.

The Committee is aware that the EPA has initiated proceedings in the Land and Environment Court against Orica in relation to the incident at Kooragang Island on 8 August. The commencement of legal proceedings does not, however, prevent the Committee from examining the incident or questioning the Orica representative today.

Nevertheless, in the light of the sub judice convention, we will be mindful that legal proceedings have been initiated.

Finally, I remind everyone to please turn off their mobile phones for the duration of the hearing.

I would like to welcome our first witness, Mr Graeme Liebelt, managing director and chief executive officer of Orica.

GRAEME RICHARD LIEBELT, Managing Director and Chief Executive Officer, Orica Limited, sworn and examined:

CHAIR: Would you like to make a short opening statement?

MR LIEBELT: I would Mr Chairman, thank you and I do appreciate the opportunity to say a few words by way of opening.

First and foremost, as I have done publicly on a number of previous occasions, I want to offer our sincere apologies to all those who have been affected by the August 8 incident in our Kooragang Island site; most particularly to the residents of Stockton but also to other neighbouring communities, the various regulatory bodies and to our customers. This incident has really shaken us as an organisation. The comments about our company that we hear from the community and elsewhere are very distressing. We do not accept that they reflect who we are and we are very determined to turn that around.

In responding to the incident on August 8 and its aftermath, we have sought to provide complete cooperation with the authorities and in a transparent way. We chose to publicly release the independent expert's report into the incident itself, as we did with the independent toxicology report into the potential health effects of the release.

We also supported the work of Mr O'Reilly in his inquiry and we have supported his recommendations.

So what do we have to do now? First, of course, we have to ensure that the design of the procedural shortcomings that caused the August are fixed and ensure that the plant is safe for restart.

Just as importantly we need to acknowledge that we have let the community down and we need to work to rebuild their trust. We know that will take some time. We know it will take improved communication and an extended period of proven performance.

Just to add a word or two specifically about the chromium excursion. The question of whether we reported within the requirement of as soon as practicable has been the subject of much criticism and is now the subject of legal proceedings. Whatever the outcome of those proceedings, we have publicly acknowledged that we regret not reporting to the authorities sooner. I wish we had reported it sooner.

We support the recommendations of the O'Reilly report which are clearer in the reporting timeframe.

Finally I would like to explain a little of the positive contribution Orica and Kooragang Island make to New South Wales. Orica is an Australian success story. We have gone from being the subsidiary of an overseas based multi-national in 1997 to today being a proud Australian owned global leader in mining services.

In New South Wales we have over a thousand employees. We have sales of over \$600 million and we pay salaries of over \$125 million. Kooragang Island itself employs 170 people and at any given time there is likely to be around 150 additional contractors on site. At times of plant turnarounds or expansions there can be as many as 700 people on site.

Over the past six years we have spent over \$400 million in capital on the site and we have a planned expansion of ammonia nitrate that will see us expend at least another \$600 million over the next three years. This of course, will create more jobs during the construction phase and on an ongoing basis.

The site provides mission critical products to the mining, health, water treatment, agriculture and food and beverage sectors. The ammonia nitrate capacity expansion is critical to the ambitious plans of the mining industry in New South Wales.

So let me end my opening remarks where I started them, we deeply regret the Kooragang Island incident and its consequences. We are very determined to improve our performance as a result. So thank you for the opportunity to speak Mr Chairman and I welcome your questions.

The Hon. Luke FOLEY: Was Orica's delay in notifying the government for 16 hours a stuff up or a conspiracy?

Mr LIEBELT: Our delay I think has been the subject of some discussion and of course is now the subject of legal proceedings. We have publicly acknowledged our disappointment that we did not inform the authorities sooner and I believe the reason for the delay in part is to do with the activities that were on site at that time and of course that is going to be the subject of legal proceedings and I would not want to go too much further in relation to that.

The Hon. Luke FOLEY: What discussions, if any, have you as I think it was said the other day, the absolute top person at Orica, had with the New South Wales environment minister since the incident?

Mr LIEBELT: I have had no direct discussions with the New South Wales environment minister, although I have had contact with her chief of staff on a number of occasions.

The Hon. Luke FOLEY: That contact with the minister's chief of staff has been with regards to the August 8 incident has it?

Mr LIEBELT: Yes it has.

The Hon. Luke FOLEY: What else have you discussed?

Mr LIEBELT: Just to give a bit more colour to those discussions, I called the chief of staff on I think 15, 16 and 17 August. I called the chief of staff because I was at that time seeking to speak to the minister. I had intended to say essentially three things to the minister.

One is to express my regret for the incident. The second is to say that we were doing everything possible to respond to the incident in a responsible way and to put these matters right, to cooperate with the authorities in terms of that response. Then thirdly to reinforce with the minister that we as a company take these matters very seriously and we believe we have good standards in this area. So I was seeking to make those three points.

I would have made those three points, without recalling the absolute detail of each of those discussions; I would have made those three points to her chief of staff.

The Hon. Luke FOLEY: But you did not succeed in getting put through to the minister, is that right?

Mr LIEBELT: That's correct.

The Hon. Melinda PAVEY: Do you know why that is Mr Liebelt?

Mr LIEBELT: I spoke to the chief of staff on a number of occasions and she explained to me that the minister was busy and she would see whether--

The Hon. Melinda PAVEY: It was inappropriate for the minister because legal proceedings had commenced, is that right?

The Hon. Luke FOLEY: Mr Chairman, aren't these my questions?

CHAIR: Yes they are.

The Hon. Luke FOLEY: Mr Liebelt, could I take you to page 10 of your company submission where you talk about the steps that Orica has been taking over the last three months with respect to emergency response procedures and indeed other procedures.

Mr LIEBELT: Yes.

The Hon. Luke FOLEY: Could I take you to paragraph (c) where you state that Orica is consulting with stakeholders in relation to whether to install additional air quality monitoring equipment at Stockton to monitor particulars and nitrogen oxides. Could you update us on how that consultation is going?

Mr LIEBELT: Mr Foley, I am sorry, I think that is a question I am going to have to take on notice if you want the most recent update. I am aware that there have been discussions going on but I would need to take that on notice.

The Hon. Luke FOLEY: If you could get back to us within 21 days I think is the usual timetable, we would appreciate that.

Could I put it to you then that in terms of your stated desire to rebuild the trust of the local community in Orica's Kooragang Island operations that it would be an absolute sign of good faith for Orica to fund and install comprehensive air quality monitoring equipment in Stockton?

Mr LIEBELT: I think I should just note that Mr Foley. I am not sure of the status of these discussions. I will find that out and we will take it forward from there.

The Hon. Luke FOLEY: Your submission speaks of improved community engagement, your steps you have taken and your desire to improve your community engagement. You tell us that you are taking steps to recruit a full time; I think you call it a stakeholder relations officer to deal full time with the local community. Could I ask given that an ammonia plant has been operating here on the south eastern tip of Kooragang Island 800 metres across the water from Stockton, why only now, why haven't you invested in a full time community relations person before now?

Mr LIEBELT: I would not want to leave the impression that the company has had no community liaison activities. Indeed, we have. We have had a community reference group for some time. That community reference group has met from time to time. I think twice a year the minutes of those meetings are available on websites.

We also have other communications with the community in the form of communications from the plant. I believe we do a calendar, for example, each year and there are other communications that have gone on.

I think what has happened in relation to this incident though is that it has been demonstrated that we need to do more and so that is what we are responding to now and hence we are employing a community liaison officer to undertake those duties full time.

The Hon. Luke FOLEY: We toured your plant on Monday afternoon. We then held a public forum open to the people of Stockton on Monday evening and numerous residents came to the microphone and called for your operation to be shut down. How do you respond to that?

Mr LIEBELT: Of course we are very disappointed with the fact that the community is so irritated with us that they feel the need to make those comments and I can understand how they react like that when they have been faced with an incident like the one that we had back in August. I acknowledge that.

I would point out that this plant has been in operation for a very long time in the community and I would contend that its record is a positive one. I also contend that it makes a very positive contribution to the New South Wales economy. I think it makes a positive contribution to the local community as well.

The task at hand for us of course, as I said in my opening remarks, is to rebuild that trust. I acknowledge that is going to be difficult and will take time.

The Hon. Adam SEARLE: Mr Liebelt, one of the causes of the incident was the increased volume of condensate generated by the factory as a result of the overhaul. Your own report said that there had been an ongoing problem with the level of condensate generated and as a result of the overhaul increased levels were expected to be produced but the levels that were actually produced were more than expected. What work had been done by the company as part of the overhaul process to work out what volume of condensate it might reasonably expect to generate by the operations.

Mr LIEBELT: First of all I need to acknowledge early in the piece I am not an engineer and so I am not going to be well qualified to deal with the technical issues.

The Hon. Matthew MASON-COX: We have that in common.

Mr LIEBELT: In fact, I am not familiar with the calculations that might have been made by our team on the ground with respect to condensate being generated.

I might add though that my reading of the independent engineer's report is that the main issue at hand was to do with the fact that we were not heating the water to a steam phase sufficiently well; that the design error that was in place was that we did not heat that steam to a high enough temperature and as a consequence we generated far more condensate than had been expected.

It is that condensate that in turn was not able to be contained within the drainage system and therefore vented out the stack.

The Hon. Adam SEARLE: In the report it says that the de-aerated temperature was much lower than it had been on previous start ups and that contributed to the increase in condensate. It is not described, as I read it, as a design error, it just says it was operated at a lower temperature; the implication being, as I read it, that that was done manually in terms of the operations not from a design error. Have I just misunderstood that part of the report?

Mr LIEBELT: Again, that is a technical question and perhaps I ought to take that question on notice and get our technical experts to have us clear on this matter.

The Hon. Adam SEARLE: A further exacerbation or cause of the incident is said to be a deviation or deviations from operating procedures such as the timing of vent valve operations. When we asked the shift supervisor who was on duty at the time of the incident, he indicated that that would have been decisions made by the day shift supervisor and by people on the day shift.

I expect you would have to take this on notice but can you tell us what the appropriate timing should have been for those operations, why they were deviated from, if they were and why those decisions were made and who made them?

Mr LIEBELT: I would have to take that question on notice.

The Hon. Adam SEARLE: After the incident your company sent its employees out to door knock some of the affected residences. On what basis was the door knocking area chosen by Orica? Why some houses and not others; why the zones?

Mr LIEBELT: When the incident happened we formed a crisis management team and to be frank, those decisions were taken by the crisis management team, so I am not familiar with the exact criterion on which that group of houses was chosen.

The Hon. Adam SEARLE: Who decided to appoint a crisis management team?

Mr LIEBELT: I think our general manager Australia Asia for mining services, mining services is our explosives business, being the senior person in New South Wales, I think he is the person that convened the crisis management team and I would have thought in conjunction with others but it would be his decision.

The Hon. Adam SEARLE: Can you get back to us with a more specific answer?

Mr LIEBELT: I should be clearer. I am confident that that is the person that convened the team.

The Hon. Adam SEARLE: Was there a standard operating procedure according to which that decision was made?

Mr LIEBELT: We would not call that a standard operating procedure but there is a crisis management plan in the company. It does rely on the exercise of the judgment of our people but there is a crisis management plan that guides that decision, yes.

The Hon. Adam SEARLE: Who comprised the crisis management team and who appointed them?

Mr LIEBELT: The crisis management team was comprised of - I may not get all of the people correct here and I am prepared - in fact, it might be better if I took that on notice to be sure that I am accurate.

The Hon. Adam SEARLE: We heard evidence from the site supervisor that in the wake of the appointment of the crisis management team a number of people from Kurri Kurri, from Sydney and I think from Melbourne all converged on the site. Were those people that would have been part of the crisis management team?

Mr LIEBELT: I believe that at least one person from Kurri was part of the crisis management team.

The Hon. Trevor KHAN: Who was that?

Mr LIEBELT: That is Mr Rod Williams I think. Again, Mr Khan, I will confirm the details of the membership of the crisis management team.

The Hon. Adam SEARLE: Who was in overall control of the crisis management team?

Mr LIEBELT: I think it was led by the general manager of Australia Asia for mining services.

The Hon. Adam SEARLE: He went to the Orica site to have a hands on approach?

Mr LIEBELT: I know he was at the Orica site for some of the time. I am not sure exactly when he got there.

The Hon. Adam SEARLE: You are going to get back to us with who actually had operational control of the crisis management team, who directed its operation on a moment to moment basis?

Mr LIEBELT: Yes.

The Hon. Adam SEARLE: So you are indicating that you think the crisis management team would have decided which suburbs or which houses to door knock. If you do not know, can you please inform us on notice as to what criteria was used to select the houses?

Mr LIEBELT: Certainly. I will need to take that question on notice too Mr Searle.

The Hon. Adam SEARLE: I know that there was a script used by Orica employees who went out door knocking. Just as to the employees, do you know how those employees were selected? Was it just anyone who was available off the factory floor?

Mr LIEBELT: Again I do not know those details. If you wish, I will get back to you on that as well.

The Hon. Adam SEARLE: And also, what particular training, if any, these people might have had about dealing with people in the community about a potential toxic exposure?

Mr LIEBELT: Yes.

The Hon. Adam SEARLE: At page 52 of your submission, the company's submission, which is the script, about halfway down the page there, there is a line that says, "If you find evidence of exposure, this appears to be sodium chromate" - why was that term used rather than Chromium VI when as I understand it, it is Chromium VI that was actually emitted from the factory?

Mr LIEBELT: Again, that is a technical question which is going to be beyond my knowledge Mr Searle. I am again, happy to get back to you.

The Hon. Adam SEARLE: The script goes on to say that, "We have consulted with our internal medical and occupational hygiene professionals and they have advised there is little to no risk from this substance." Are you able to say on what basis that assertion was being made?

Mr LIEBELT: This set of questions and answers and notes for speaking to residents was formulated by the crisis management team I believe. Again, I can get back to you with respect to the specifics but I understand that they did take some advice from people who had knowledge of toxicology in formulating that remark.

The Hon. Trevor KHAN: Who?

The Hon. Adam SEARLE: You will get your say Mr Khan. In relation to this advice, at this point in time when the door knocking was done, was there an occupational hygiene professional on site who had firsthand knowledge of what had happened or was it merely someone in Sydney or Melbourne getting a verbal report over the phone and getting advice on that basis?

Mr LIEBELT: What I know about that is that there were toxicological experts on site from time to time but what I do not know is whether they were on site at precisely this time.

The Hon. Adam SEARLE: I guess what I am really wanting to know here is, is this just off the cuff information that someone got on the end of the phone saying, we've had a bit of an emission, what's this all about or is this actually proper informed medical information that has been provided to Orica by an independent expert for the purpose of this exercise or was it just made up on the run?

Mr LIEBELT: I am certain it was not made up on the run. I am certain that it is based on advice but the actual details of when that advice was given I cannot provide at this time.

The Hon. Adam SEARLE: I would like to know when that advice was provided, what it was and if it is in documentary form, whether we could have a copy of that?

The Hon. Melinda PAVEY: And who it was.

The Hon. Adam SEARLE: Hopefully the document would reveal the author.

The Hon. Melinda PAVEY: Just to make it clear.

The Hon. Adam SEARLE: Indeed. Going back to the design process, your company had invested something like \$100 million in the overhaul of the site, is that correct?

Mr LIEBELT: More than that in fact, so just to be clear on that matter, we were doing two things. We were doing an up-rate of the plant and we were doing a routine turnaround of the plant.

The Hon. Trevor KHAN: A five year turnaround.

Mr LIEBELT: A five year turnaround of the plant. The turnaround itself would cost in the order of \$40 million. The up-rate would be the \$100 million that you are referring to.

The Hon. Adam SEARLE: So it is a very significant investment, you would accept that?

Mr LIEBELT: Yes it is.

The Hon. Adam SEARLE: Involving potentially dangerous substances on the site?

Mr LIEBELT: Yes.

The Hon. Adam SEARLE: Why then was it that the site manager was not intimately involved in the design and implementation of the overhaul process?

Mr LIEBELT: All I can say in relation to that matter at this time and I may need to give you more information in the fullness of time, but what I can say about that is that Orica has strong project management processes. We have a very specific project management process. That involves appointing the relevant people with expert knowledge. It involves appointing steering teams as appropriate and so on. It does, of course, obtaining from outside the company particular types of expertise. We would expect that that project management process has been followed.

The Hon. Adam SEARLE: This particular project was undertaken between Orica and a Swiss based company, is that correct?

Mr LIEBELT: We will have used a range of external providers.

The Hon. Adam SEARLE: But your own report says an impression has been gained that the overhaul was assessed as a collection of small projects rather than as part of a holistic review of the ammonia plant. Given the scale of the investment this seems like an incredible concession made by your own company's document, does it not?

Mr LIEBELT: I can confirm it is the nature of this project that the up-rate - I should say the expansion of capacity was achieved by way of a large number of modifications and that is the point being made in relation to this point. I think there were some hundreds of modifications that were made on the plant in order to achieve the up-rate capacity. That is the reason for it being managed like that.

The Hon. Adam SEARLE: But nevertheless it is part of the five year turnaround, it is a very significant investment of money and time, it just seems incredible, given what you said about the strong project management credentials of your company, that it would not have been dealt with as a single project, albeit one in stages?

Mr LIEBELT: I think that the individual modifications have to be dealt with as individual modifications and that as a consequence, managing it in that way is appropriate. As to the comments on the overview of the totality of that, I would be happy to take that on notice. I do not have more information.

The Hon. Trevor KHAN: Mr Newman indicated to us when he gave evidence on Tuesday that a hazard study had been undertaken with respect to, I think you could say, the implications of the design changes that had been made to the plant. Are you able to provide us with a copy of that hazard study?

Mr LIEBELT: I would need to take that on notice Mr Khan.

The Hon. Trevor KHAN: Why?

Mr LIEBELT: Well, I would just like to check that we are able to provide it and that I am not relinquishing anything that might be privileged or commercially sensitive or whatever in that process.

The Hon. Trevor KHAN: Are you aware of whether there is a hazard study in existence or not?

Mr LIEBELT: I would believe that the hazard study is in existence but I would need to confirm that too. I have not sighted it myself.

The Hon. Trevor KHAN: Do I conclude from that that you hope that there is a hazard study in existence?

Mr LIEBELT: You can conclude from that Mr Khan that I believe there is a hazard study.

The Hon. Trevor KHAN: But you have never seen the document?

Mr LIEBELT: I have not seen the document.

The Hon. Trevor KHAN: Do I take it that you accept that you were ultimately responsible for the issues of safety, health and environment as they relate to your company?

Mr LIEBELT: Yes, I am the chief executive of the company and like any chief executive, I feel accountable for that aspect of our company's performance.

The Hon. Trevor KHAN: Do I take it that in the preparation for coming here today, for instance, you read the company's submission?

Mr LIEBELT: Yes.

The Hon. Trevor KHAN: And you understand your company's submission?

Mr LIEBELT: I believe I do.

The Hon. Trevor KHAN: And you adopt it?

Mr LIEBELT: I am not sure what adopting a company's submission means, Mr Khan.

The Hon. Trevor KHAN: What I am asking is, is essentially the start of your evidence the submission that Orica put in?

Just a point of order, I do not know if that is necessarily a question for advice from a lawyer. That is a matter of fact I suggest.

CHAIR: It depends on the question that he answers.

Mr LIEBELT: Would you mind repeating the question Mr Khan?

The Hon. Trevor KHAN: What I am asking is this: Do I take it that this document which is in red because originally your company wanted it to be confidential, that you read it and you say that is your evidence of what the company did and did not do?

Mr LIEBELT: Mr Khan, it is a company submission and I have reviewed and cleared the submission, yes.

The Hon. Trevor KHAN: Did you, before it got in, read it and clear it?

Mr LIEBELT: Yes I did.

The Hon. Trevor KHAN: Did you ask questions to ensure you understood what it was saying?

Mr LIEBELT: I asked some questions, yes.

The Hon. Trevor KHAN: Did you ensure that in fact the assertions that were in it with regard to the steps that were taken for instance on 9 August were accurate?

Mr LIEBELT: Subject to my being in a position in which I have to take advice from others, because I was not present and of course therefore do not have firsthand knowledge of all of that, yes I did.

The Hon. Trevor KHAN: Do I take it that in a sense you volunteered on behalf of your company to be the one that came forward to give evidence to assist this Committee?

Again, I just wonder of the need for a lawyer to advise Mr Liebelt on that.

CHAIR: Mr Liebelt can seek advice on every question if he wants to.

Mr LIEBELT: My attendance has been in response to the request that was made by the Committee for three witnesses, myself included.

The Hon. Trevor KHAN: We are going to go through some specific issues with regard to 9 August.

Mr LIEBELT: Yes.

The Hon. Trevor KHAN: Are you able to tell us, for instance, why it took some two hours after it was evident to your sustainability manager to get somebody to visit a Stockton resident who complained of yellow spots on their car?

Mr LIEBELT: Mr Khan, I cannot explain that delay specifically.

The Hon. Trevor KHAN: In your submission one of the observations that is made by your company is “Nevertheless, Orica immediately made arrangements for an employee to visit the Stockton resident’s home.”

Mr LIEBELT: Yes.

The Hon. Trevor KHAN: Would you agree with me that whether he went by car or in fact swam that side of the Hunter River, it would take in the order of 15 minutes or thereabouts to get from Walsh Point to Stockton?

Mr LIEBELT: I see your point Mr Khan and I think that our manager would have attempted to contact the person as quickly as he could have.

The Hon. Trevor KHAN: Do I take it that in a sense what you are doing in terms of explaining the delay is to speculate as to why it took the two hours?

Mr LIEBELT: I am not speculating, I do not know why it took the two hours.

The Hon. Trevor KHAN: Let me ask you this, in your timeline, which you have read I take it, on 9 August, what is made clear is that at 12.30 Orica employees returned to the site and the report that fall out was visually evident off site on residential properties in Stockton. Do you see that?

Mr LIEBELT: Yes.

The Hon. Trevor KHAN: This is 18 hours after the emissions and then it goes on, “OEH advises Orica to contact NSW Health and prepare a communication strategy to advise members of the public of any risk.” Would you agree with me that in addition to in fact an OEH officer telling your employees to do this; that it is fair to conclude that your employees, your managers said: Yeah, we’ll go and contact Health?

Mr LIEBELT: Frankly, I do not know whether they said that Mr Khan. Our submission, I believe, is accurate with respect to the timing of these things and I cannot comment on the details of any conversation between our employees and OEH.

The Hon. Trevor KHAN: It is clear, is it not, that notwithstanding having been advised by OEH to contact Health, it took until 11.15am the following day for Orica to finally contact the Department of Health?

Mr LIEBELT: I think that is correct.

The Hon. Trevor KHAN: Why did it take something in the order of roughly 22 hours from being advised to contact the Department of Health to get around to doing it?

Mr LIEBELT: I do not know the answer to that question.

The Hon. Trevor KHAN: Why not?

Mr LIEBELT: Well, because I have not been in a position to ask the employees who were advised by OEH as to why they did not contact the Department of Health immediately. The fact is that we did not contact until afterwards, the next day.

The Hon. Trevor KHAN: You knew before you came here today that these were precisely the sorts of questions that I and others were asking of your site manager on Tuesday. You were aware of that, were you not?

Mr LIEBELT: I have seen no transcript of the proceedings on Tuesday.

The Hon. Trevor KHAN: With the greatest of respect Mr Liebelt, that is not the question that I asked. I know you have not seen the transcript. You were aware however that this was the line of questioning that your site manager was being asked on Tuesday, were you not?

Mr LIEBELT: I have had some feedback that this kind of questioning did occur but I have no knowledge of the details of that questioning.

The Hon. Trevor KHAN: Having got that feedback that that was the line of questioning that I, amongst others, was asking, I take it you have done nothing to clarify the issue of the reason for delay?

Mr LIEBELT: That is correct; I have not followed up on that particular question.

The Hon. Trevor KHAN: Mr Liebelt, why not?

Mr LIEBELT: I can only say that I have not followed it up Mr Khan.

The Hon. Trevor KHAN: Do I take it you came here in an effort to assist the Committee?

Mr LIEBELT: Yes of course.

The Hon. Trevor KHAN: Do I take it in an effort to provide the detail that clearly was not evident from the submission that Orica had put in?

Mr LIEBELT: Well again Mr Khan I am certainly happy to take any questions on notice that I am unable to answer about.

The Hon. Trevor KHAN: Mr Liebelt, the way we are going, 21 days is not going to be enough time for you to answer the questions.

Was it not appropriate prior to coming here for you to arm yourself with the facts necessary to assist, not only this Committee, but the people of Stockton with the answers for the way in which Orica handled this incident?

Mr LIEBELT: I did endeavour to prepare for this Committee Mr Khan. I cannot though, promise to have every detail to hand with respect to everything that happened.

The Hon. Trevor KHAN: Mr Liebelt, it is not a detail I suggest to you, to know how your crisis management team and your line management went about the task of informing and not informing both government and the people of Stockton. Those matters were clearly vital and within the terms of reference, were they not?

Mr LIEBELT: Again Mr Khan, I can only tell you what I know and I will need to take that question with respect to the reason for not advising Health sooner on notice.

The Hon. Trevor KHAN: Who finally made the decision on 9 August to notify OEH of the incident?

Mr LIEBELT: That was notifying OEH in the morning at about 10.28 and I think it was done by the site manager, probably in conjunction with others.

The Hon. Trevor KHAN: You think it was the site manager that did the notification?

Mr LIEBELT: I think the call was made - I am not certain now about whether the call was made by the site manager or whether it was made by our sustainability manager on the site.

The Hon. Trevor KHAN: That is not a matter that you have sought to check?

Mr LIEBELT: I think that is known information Mr Khan, I just cannot bring that particular point to mind at the moment.

The Hon. Trevor KHAN: Can you tell me if there was a relationship between the notification to OEH and the appointment of the crisis management team, is that two independent thought processes that are going on or is it part of an overall management response to the incident?

Mr LIEBELT: I think the appointment of the crisis management team would have been made when there was a reasonable expectation that the chromium material was off site.

The Hon. Trevor KHAN: The crisis management team was formed, I think if you look at your timeline, and no doubt you will see the appropriate line, but the crisis management team was formed on the morning of 9 August, is that right?

Mr LIEBELT: That is my understanding, I think at 10.36.

The Hon. Trevor KHAN: That was at a time when there was a reasonable expectation that the chromium was off site, is that right?

Mr LIEBELT: That was after the time when we had received the call from the resident who felt that their car had these yellow stains on it, and so it definitely raised that question.

The Hon. Trevor KHAN: So that in a sense there was not only a toxicological event occurring on site, but a toxicological event occurring in Stockton?

Mr LIEBELT: At that time I would say that it was potentially the case, yes.

The Hon. Trevor KHAN: That then led, amongst other things, to eventually somebody turning up at 11.58 at the resident's home, is that the case?

Mr LIEBELT: Well somebody did go to the resident's home at 11.58. I would not describe the setting up of the crisis management team as leading to that. I would describe having received the call as leading to that.

The Hon. Trevor KHAN: A Dr Bruce Niven was retained to advise on health effects?

Mr LIEBELT: Yes.

The Hon. Trevor KHAN: Who approached Dr Bruce Niven?

Mr LIEBELT: I am not certain who would have called Bruce.

The Hon. Trevor KHAN: How was he selected?

Mr LIEBELT: He would have been selected on the basis of our knowledge of his toxicological expertise.

The Hon. Trevor KHAN: Would have been - do you know?

Mr LIEBELT: I am sure that would have been one of the elements; I am not sure it was everything.

The Hon. Trevor KHAN: You have no direct knowledge of how that decision making process was made?

Mr LIEBELT: No.

The Hon. Trevor KHAN: You are the person who is ultimately responsible, are you, for the safety, health and environmental objectives of the company, is that right?

Mr LIEBELT: Yes.

The Hon. Trevor KHAN: Let me go on. You knew from what you say or your company had a fair idea in the early morning, 10-ish, that there was a potential toxicological event occurring in Stockton. Why did door knocking in Stockton not occur until 10 August?

Mr LIEBELT: Again, that is a decision that was made by the crisis management team Mr Khan and so I was not there and was not party to that decision making process. I think though, looking at it--

The Hon. Trevor KHAN: Were you in the country?

Mr LIEBELT: I was in the country.

The Hon. Trevor KHAN: You were in Melbourne?

Mr LIEBELT: I was in Melbourne.

The Hon. Trevor KHAN: At 1 Nicholson Street?

Mr LIEBELT: Well, for some of the time yes,

The Hon. Trevor KHAN: Armed with phones and mobile phones?

The Hon. Luke FOLEY: Ringing the Minister.

The Hon. Trevor KHAN: I do not know what he would have said to the minister, but armed with phones and mobile phones?

Mr LIEBELT: We do have phones and mobile phones.

The Hon. Trevor KHAN: You had some idea, did you; that this incident was occurring?

Mr LIEBELT: Yes.

The Hon. Trevor KHAN: What were you doing to ensure the residents of Stockton were notified on 9 August that there was a potential toxicological event occurring?

Mr LIEBELT: When the event occurred, after the event occurred in fact and on 9 August the general manager of Australia Asia for mining services formed a crisis management team.

The Hon. Trevor KHAN: We know that.

Mr LIEBELT: I spoke to him about that and asked to be kept informed but the reality is that the specific response to the incident was, in effect, therefore delegated to that team. I was kept informed as time went by but I was not a member of that team and therefore not a party to all of the decisions that were taken by that team.

The Hon. Trevor KHAN: You have read, amongst other things; have you, the PAEHolmes air quality impact assessment report?

Mr LIEBELT: I read the Toxikos report that was produced by the Toxikos organisation. I have not read in detail the Holmes report.

The Hon. Trevor KHAN: Do you know what it covers?

Mr LIEBELT: It covers the air modelling I believe.

The Hon. Trevor KHAN: Are you aware that what it shows for instance is that you had a stack of some 54 metres high; that is the SP-8 stack, is that right? That the exit temperature of the condensate was 373 degrees kelvin; did you know that?

Mr LIEBELT: I did not know that detail.

The Hon. Trevor KHAN: Do you know if you take - I think it is about 270 - 272 off 373 that will give you about 100 degrees celsius as the exit temperature of that condensate? Do you know that conversion from kelvin to celsius?

Mr LIEBELT: I did not know that conversion.

The Hon. Trevor KHAN: Do you know that the weight of the velocity of the condensate is 17.8 metres per second?

Mr LIEBELT: I did not know that either.

The Hon. Trevor KHAN: Do you know how to convert metres per second to kilometres per hour?

Mr LIEBELT: I could do that if I had the time but not in my head.

The Hon. Trevor KHAN: Multiply by 3.6 and I suggest you are going to come up with a stream of liquid flying up into the air about 65 kilometres an hour; a significant event going on at your plant, is that right?

Mr LIEBELT: I agree with that, yes.

The Hon. Trevor KHAN: You have not read this report?

Mr LIEBELT: I have not read that report in detail Mr Khan. I have read the Toxikos report which, amongst other things, relied on that report.

The Hon. Trevor KHAN: Have you had lunch in Stockton at any stage when you have visited?

Mr LIEBELT: No, I have not had lunch in Stockton itself. I have certainly had lunch at the plant.

The Hon. Trevor KHAN: If you went to Lexie's Cafe on the beach there you would have actually been in the sense of the shadow of the dump of the Chromium VI that came from your plant that is right in the middle of the town. Are you aware of where this stream of condensate went?

Mr LIEBELT: I am aware of that Mr Khan yes, although I am not aware of the cafe to which you refer.

The Hon. Trevor KHAN: We go back to the issue, why did it, for instance, come about that 35 houses or thereabouts were door knocked on 10 August?

Mr LIEBELT: Again I will have to take that question on notice. It runs to the question of how the crisis management team selected those houses for the purpose of door knocking.

The Hon. Trevor KHAN: There is a further hazard study that has been undertaken that was to be completed by mid November. Are you aware of that?

Mr LIEBELT: I would need to take on notice questions about specific hazard studies. I am of course aware that there will be hazard studies going on at the plant.

The Hon. Trevor KHAN: Are you aware that a hazard study is being required as part of the process to allow the start up again of your plant?

Mr LIEBELT: Yes, that is what I am referring to in terms of being very aware of there being hazard studies being done.

The Hon. Trevor KHAN: And indeed your own submission refers to the preparation of that hazard study. Are you aware of that?

Mr LIEBELT: Yes, I am aware that the hazard studies were being done.

The Hon. Trevor KHAN: Can we have a copy of your hazard study?

Mr LIEBELT: Again I take that on notice.

The Hon. Trevor KHAN: Why?

Mr LIEBELT: Again I just want to be certain that we are in a position to release that material. This is a site that has obviously got some security issues and so on, and so I just want to be certain before I release those documents that we have covered off those points.

The Hon. Trevor KHAN: You are going to have to provide that, are you not, to the EPA prior to them allowing you to start the plant up again, are you not?

Mr LIEBELT: I would imagine that the EPA would see it, yes.

The Hon. Trevor KHAN: As night follows day they are going to require it, are they not?

Mr LIEBELT: I would think so.

The Hon. Cate FAEHRMANN: Did you have any discussions about whether the head of the crisis management team that you are continually referring to this morning should appear before this Inquiry perhaps along beside you?

Mr LIEBELT: My understanding is that we were requested to provide three witnesses, myself included, a shift supervisor and the site manager and we responded in that way.

The Hon. Cate FAEHRMANN: In the interests however of ensuring that the Committee members are able to get as much information as possible about what occurred on that day, I think you have heard Trevor Khan's frustration in terms of not being able to get much information from the shift supervisor or the site manager, who continually referred to other people making decisions. Surely you

knew that it would be the crisis management team head who would be able to answer the majority of questions we asked you today?

Mr LIEBELT: We responded to the request from the Committee to attend and that is why I am here.

The Hon. Cate FAEHRMANN: How many conversations did you have with the head of the crisis management team about appearing today to find out exactly what they did and what happened in the incident before today?

Mr LIEBELT: I have had many conversations with the head of the crisis management team since the incident on 8 August.

The Hon. Cate FAEHRMANN: Mr Liebelt, I turn to your letter contained in your submission to the Inquiry, the letter that was in fact written to the government in response to the O'Reilly report, the letter dated 4 November signed by yourself. Perhaps you will be able to answer this question: In that letter you challenge the O'Reilly report's findings regarding your obligations on the day under clause 344 of the Occupational Health and Safety Regulation, which outlines what you must do when there is a serious incident. That clause does say that when there is a serious incident you do need to notify WorkCover. Are you aware of that clause?

Mr LIEBELT: Yes.

The Hon. Cate FAEHRMANN: In your letter you say that in Orica's view the incident of 8 August 2011 was not a serious incident within the meaning of clause 344. Why is that?

Mr LIEBELT: Let me say that we regard this as a very serious incident in the ordinary interpretation of the words serious incident. I have said as much. If you look at, for example, our submission to the Australian Securities Exchange, our release to the Australian Securities Exchange, you will find that it says so there in as many words.

Our point in that letter regarding clause 344 is to do with the technical and legal definition of serious incident as defined in the OH&S Act and it is our legal advice that this incident does not meet that definition.

The Hon. Cate FAEHRMANN: I take it that Orica is a major hazard facility is it not?

Mr LIEBELT: Yes.

The Hon. Cate FAEHRMANN: As defined within chapter 16 of the Regulations of the OH&S Act?

Mr LIEBELT: Well to be clear, Orica has a number of major hazard facilities in different places and Kooragang Island is one, yes.

The Hon. Cate FAEHRMANN: Within clause 344 it does state that it is a serious incident in relation to a major hazard facility if there is a major accident in that facility and a major accident is defined as an incident, including an emission, loss of containment, fire, explosion and it goes on. It is clear - I do not know how much clearer it could be actually - that the incident on 8 August was a major accident as contained within the OH&S and under your obligations in that Act you need to define that as a serious incident and notify WorkCover.

Mr LIEBELT: The company took legal advice in relation to this matter and I am not a lawyer so I am not in a position to debate our advice and our assertion in that letter with you.

The Hon. Cate FAEHRMANN: When was the advice taken by your lawyers in relation to that?

Mr LIEBELT: Specifically I would need to take that on notice as well.

The Hon. Cate FAEHRMANN: Let me put it another way, so the next day following the incident on 8 August, the following morning your site manager, Stuart Newman, was saying that on that day he was very busy trying to determine the toxicological effect of the release of Chromium VI onto the plant on his workers, your workers. Do you think then it was a serious incident? Do you think Stuart Newman would have considered that that was a serious incident?

Mr LIEBELT: Again, we regard this as a very serious incident in terms of the ordinary interpretation of the words serious incident. Our point in the letter that you have referred to is specifically with respect to the technical definition of serious incident inside the OH&S Act.

The Hon. Cate FAEHRMANN: The company failed to notify WorkCover within the time specified I would say, within the OH&S Act, given I think this Committee probably does believe it was a serious incident or at least I do. You also failed to notify the Office of Environment and Heritage as has been raised already and can I just inform you of OEH's submission where they state in their submission that while the officers were conducting an inspection of the site, Orica admitted that there was also fallout of material in the nearby suburb of Stockton, we have heard that already. The OEH officers verbally directed Orica to notify Ministry of Health and the potentially affected community of Stockton.

Do you think your workers should have done that at that time when they were advised by the OEH to notify the Ministry of Health? In your opinion as CEO of Orica, do you believe your workers should have notified the Ministry of Health when they were notified by the OEH on site after the release of Chromium VI in your opinion - not your lawyer's opinion, probably yours.

Mr LIEBELT: I intend to answer the question. Your specific question is that in my opinion do I believe that our people should have informed Health particularly upon being asked to do so by OEH. I think my answer to that question would be yes, I think that would be very desirable.

If you are going further and suggesting that we believe that this was a notifiable event under the OEH legislation running to the specifics of that legislation, then I think we would still take the view that it does not fall within the definition of serious incident as defined by that legislation.

Let me say again, we do regard it as a serious incident within the company.

The Hon. Cate FAEHRMANN: Mr Liebelt, you have claimed in the media that you do take your regulatory responsibilities seriously as a company.

Mr LIEBELT: Yes.

The Hon. Cate FAEHRMANN: Your regulatory responsibilities under the Protection of the Environment Operations Act, not under the OH&S Act, I am sure you know that you have lots of responsibilities under many Acts operating a company such as Orica. Your responsibility was to notify the authorities as the Act stood at the time, as soon as practicable after you became aware of the incident. Your staff, your workers knew that this was an incident that had considerable fallout within the site, so they were required - and we are not talking serious incident here, we are now talking an incident which causes material harm to the environment - to notify the authorities and they were required to notify the OEH. Do you agree with that - as soon as practicable after becoming aware of the incident?

Mr LIEBELT: I agree with that.

CHAIR: Mr Liebelt, I sat through the witnesses on Tuesday, I believe your night shift supervisor and your site manager. I believe they gave us proper evidence. I certainly had the impression it was all very truthful and they certainly did the same as we walked around the plant, they were very open and we really appreciated that.

One of the things that intrigued me and given my background, I really could not come - and maybe I missed something in the evidence but I really could not come to grips with actually who was responsible from a line management point of view for the start up process that was actually going on at the time.

I know it may run for two or three days to get the start up process up to speed and I realise shifts change and people come and people go, but it just seemed to me that the night shift supervisor was in charge of that process at that time and when difficulties were encountered he called the plant manager, who came out, came back to site and then he in turn called the site manager, who then also came back, but in questioning my impression was that the site manager really was not in charge of the process. Who was in charge of the process of the start up? Who was the senior line manager on the site at Kooragang Island that would have to take responsibility for what was going on there?

Mr LIEBELT: My view of that would be that it is the site manager who takes ultimate responsibility for the site. There is a plant manager who looks after the ammonia plant and you referred to him in your introductory remarks Mr Chairman and then at any point in time we will also have shift supervisors who are also in that same line. But the line would be from the site manager to the plant manager to the shift supervisor.

CHAIR: Again, my recollection of the evidence given by the site manager was that he said he did not understand the processes that were going on at the ammonia plant because he was not qualified in that fashion.

Mr LIEBELT: I would not expect that he would understand the processes in the ammonia plant for example as well as the plant manager who is a very experienced person and understands that plant very well. I would expect though that he would have a good knowledge of the way in which the ammonia plant works overall, but perhaps not the same level of detail as the plant manager.

CHAIR: Who did the site manager report to? From a line management point of view within your company, who does he report to?

Mr LIEBELT: The structure of mining services - and perhaps this gives me an opportunity just to explain the reporting structure of the company in total - so I am the chief executive of the organisation. We are a company that operates in 50 countries. We sell into twice as many as that. We have many sites around the world, not many of them as big as Kooragang Island but some that are of that scale. We have perhaps 500 sites though if you look at all of our business around the world.

I have three divisions reporting to me, mining services, of which Kooragang Island is a part; Minova, which is an underground strata control business which is not relevant to this inquiry and our chemical stream. So there are three divisions that report to me and each of those has a chief executive.

The structure of mining services then is that the manufacturing part of the organisation is functionally organised and so the major plants report through to functional heads. The site manager at Kooragang Island will report through a manufacturing structure ultimately up to the chief executive of mining services.

CHAIR: When you say through a manufacturing structure, maybe you do not know the name of the person, but what is the job title that he reports to? Ultimately I am assuming that the site manager is the manager ultimately responsible for the management of the whole site and then you have plant managers under him, and then you have shift supervisors and engineers and that sort of thing going down the line?

Mr LIEBELT: I may not get this title exactly right and I would be happy to provide the exact title if you wish, but it is going to be the global manager for nitrates manufacturing.

CHAIR: As I said earlier, it just seemed to me that he was not in a responsible enough position to be able to make the call.

The Hon. Melinda PAVEY: With the added complication of the \$100 million investment to increase the capacity of the plant by 20 per cent, so that complicated the process for the site manager.

CHAIR: That is then leading me up to saying - and it is not to say that Mr Newman was doing anything wrong in that sense, I think he was handling spectacularly well the problems that he was having on the site at the time. Who ultimately, at least at that point in time, because we are talking

through the processes of why it took so long to make a decision, who was responsible for the earliest possible notification to the OEH? That is really what it gets down to. Do you know? Is there someone on site that has got enough power to make a notification or do they have to go back further up the line?

Mr LIEBELT: There is no doubt in my mind that Mr Newman and indeed other managers on the site would have the power to notify OEH if they thought that was appropriate.

CHAIR: Mr Newman again, correct me if I am wrong, in evidence he gave to us thought that it might have been his responsibility, it might have been the sustainability manager's responsibility, it might have been anyone within the implementation team. He did not seem to be quite clear about whose job it was to do it. In the end I think he said the sustainability manager was the one that made the notification. Do you think it would be a good idea if the person who has the line responsibility to run the plant, obviously in quick and immediate consultation with their immediate line manager, would be the person that has the hard edge responsibility to make the call as to when notification should be made?

Mr LIEBELT: That is an interesting question. First of all, I would not agree that a site manager should have to get sign off from his or her supervisor in order to make such a notification. So I would not expect that Stuart, for example, would need to consult with his boss before notifying OEH.

I think in our organisation that from time to time it is not just being the site manager but the sustainability manager has also notified the authorities in relation to reportable events.

CHAIR: Do you think if that responsibility had been a little bit more clear cut that you may have been able to handle the notification process better on site?

Mr LIEBELT: Again, Mr Chairman, I think the process of the timeliness of our reporting of the incident is the subject of legal proceedings and I am feeling a bit uncomfortable going too far into that at this time.

CHAIR: Earlier in your evidence you mentioned and again, you are not an engineer and I am not either, but you thought there may have been a design error in the redesign for the upgrade. I assume that that design work would have been done by - and I believe we were told - external engineers, consulting engineers that came in and did the work. At least to my mind anyway, some of those major changes I think in relation to coil line which was moved or taken out of the process perhaps did not allow the gases to heat up quickly enough - if that is the right terminology.

Were any of the Orica on site engineers or other senior engineers, engineers that were working for the company involved with the design team in assessing or helping them work on the design to your knowledge?

Mr LIEBELT: It is my understanding that our people were indeed involved in that process, yes.

CHAIR: Then it is not the case that the external design engineers simply put it on the table that this was the design that was required for the upgrade of the plant; that the decision making was made by competent engineers that were actually employees of Orica at the time?

Mr LIEBELT: My advice and understanding is consistent with that, yes.

CHAIR: Again just harping back to our visit to the site, would you agree with the proposition that at least the initial delay in relation to notification may have been or was due to the belief that perhaps the leak was contained to the site only?

Mr LIEBELT: Again I would say that was a contributing factor to the consideration of our people at the time. Again, we are going to get into the territory of the legal action here as to why it is exactly that we took 16.5 hours to report, so I am getting a bit uncomfortable with that process too, because it is the subject of legal action Mr Chairman.

CHAIR: I only ask that question because again it did seem to me, having visited the site and having had the employees talking to us during and after, and I might add even before the physical site visit, that they seemed to be not really on top of where the condensate ended up initially and that even though they could physically see it close to their office aerial control room, they physically had to conduct physical inspections at the time, and one would expect that, and that they had drawn the conclusion in the short term that it did not in fact go anywhere else, because it was not even on their cars in their car park downwind of where the stack was. I believe that they were absolutely factual and truthful in saying that at the time.

The Hon. Adam SEARLE: In relation to the standing notification of different government agencies, and I know you indicated you do not want to get too much into specifics but I just wanted to ask what documented policies and procedures exist within your company about the obligations on individual position holders in the organisation as to when, at what times and in what circumstances they should notify different external regulatory bodies such as Health or WorkCover or Environment?

Mr LIEBELT: Mr Searle, the way in which we approach that as a company is that we have a management system in this area which starts with of course a safety, health and environment policy and then there are a series of standards. Our company has a series of model procedures. Some of those model procedures will deal with, not in the specific but in general terms about the notification of authorities. It is expected that those model procedures are adapted to individual sites and so the site should have procedures with respect to notification of authorities.

The Hon. Adam SEARLE: Could we receive those relevant documents relating to this site from your organisation?

Mr LIEBELT: Again I will take that on notice.

The Hon. Trevor KHAN: Is that a yes?

Mr LIEBELT: I will take it on notice Mr Khan.

The Hon. Adam SEARLE: Just to be clear, is that yes subject to legal advice that you are not waiving any privilege?

Mr LIEBELT: Again I want to take it on notice. I just want to be certain in providing those documents that there are no ramifications that I do not at this point understand.

The Hon. Trevor KHAN: How can an emergency procedure have ramifications?

The Hon. Adam SEARLE: Mr Khan, you will get your chance in a moment. Your site manager gave some evidence to us that it was the practice I think of him to liaise with Health; I think your compliance manager was in the habit of liaising with I think it was WorkCover, it just seemed to be different people in different positions seemed to have an external body that they particularly liaised with. To your knowledge was that the subject of documentation? Is that a documented procedure or is that just some ad hoc improvised procedure that had grown up in practice?

Mr LIEBELT: Again, I am not certain of the answer to your question Mr Searle.

The Hon. Adam SEARLE: But you will take it on notice and get back to us?

Mr LIEBELT: Well I am happy to, yes.

The Hon. Adam SEARLE: In relation to the emissions going off site and we have heard some evidence from the shift supervisor about the steps that were taken to ascertain whether or not there had been off site leakage, including sending people out to inspect their vehicles. This was at about 7.30 at night, it was dark. It was said that the car park area was lit but it seems to me to be a fairly imprecise measure of whether there were leakages off site to inspect a car in the dark.

What particular processes or mechanisms did your company have in place so that it knew when and where there were off site leakages from the Kooragang Island facility or were there no such mechanisms or procedures?

Mr LIEBELT: There will be around the site various point of measurement designed to measure particular chemicals, for example, nitrogen oxides or ammonia and so on. Those will be indicators of whether there are products in the air moving off site but we did not have any particular probe or measurement system which would have detected sodium chromate containing Chromium VI.

The Hon. Adam SEARLE: In the general you did have some kind of mechanisms that should have set off an alarm if something leaked off site but not for this particular chemical?

Mr LIEBELT: These things will be related to particular types of measurements and most likely particular chemicals.

The Hon. Adam SEARLE: Again, the people on site at the time of the incident appear to be relying on visual inspection in, at best, semi light as to whether they could see any leakage. Did those people who were on site receive any particular training as to how they could detect whether there were off site leakages?

Mr LIEBELT: Again, I would have to take the question on notice. Let me just say in relation to this matter, I will be surprised if we have specific training with respect to that point.

The Hon. Adam SEARLE: If that is the case, that would be a gap in the training, would it not?

Mr LIEBELT: It would be an improvement that we could contemplate, absolutely.

The Hon. Adam SEARLE: Perhaps more than contemplate at this juncture. In relation to your report, and I am just referring to page 6 of your report, in the second paragraph there is the indication that the company received a contact the following day about there being yellow spots on a car. Your report says this, "that it seemed implausible without further investigation that a sodium chromate solution would have been present in Stockton given the timing involved and the resident washing their vehicle after the timing of the incident and then noticing the spots".

To my untutored mind it would seem to be entirely logical that, if there was an off site leakage that had reached this particular location, for them to have discovered the spot or spots at that time and yet in this report your company seems to be saying that it seems implausible. What exactly seemed implausible to your organisation about that?

Mr LIEBELT: I think what we are saying there is that it seemed implausible to the people on site at the time without further investigation that the sodium chromate would have gone to that position, yes.

The Hon. Adam SEARLE: Again, we do not know exactly what position this car was because of course it is not identified and the address is not identified, but it does get back to the issue of, I think the crisis management team's selection of the door knocking zones and how and on what basis your company reached a view, once you knew that it had gone off site, where would the product have been likely to have drifted. Do you know whether or not your company has turned its mind to that analysis? The company was surprised that this vehicle had spots?

Mr LIEBELT: Yes, at this time we were surprised by that, I agree with that. Have we subsequently tried to better understand the exact extent of the excursion of the material off site and into the Stockton community, yes I understand we have done that, in conjunction with the authorities who did their own testing too I think.

The Hon. Adam SEARLE: Which authorities do you understand have done that testing?

Mr LIEBELT: I think OEH has done some testing and then Health has been involved in testing as well for the impacts of some of that material.

The Hon. Adam SEARLE: Just to be clear, you are confident your company, based on all this information, did its own analysis about where you think the product was likely to have drifted as part of what you call the excursion, is that correct?

Mr LIEBELT: Again, I would just like to be certain.

The Hon. Adam SEARLE: I will be very clear, if there is such an analysis and document--

The Hon. Trevor KHAN: PAEHolmes, he should know, it is his own document. It is on his website, he just has not read it.

The Hon. Adam SEARLE: What I would like you to take on notice is apart from that document which is available, whether your company has done any other work around that issue; if you could get back to us on that?

Again, in relation to that particular resident noticing a spot on the car an employee of the company was dispatched to investigate. What expertise did that employee have in detecting Chromium VI or as you like to refer to it, sodium chromate?

Mr LIEBELT: Sodium chromate containing Chromium VI is the way it is put to me Mr Searle. Again, I do not know the specific expertise of the employee and Chromium VI exists in the plant for only a very short time every five years as we do this turnaround and restart of the plant, so again I would need to take your question on notice. But it is not something with which our people are familiar on an everyday basis.

The Hon. Adam SEARLE: In response to a number of questions Mr Liebelt you have obviously had to take them on notice and you have indicated that you and the other Orica personnel of your company who have come to give evidence have done so on the basis of this Committee's request, if this Committee forms the view that really it needs to hear from some other persons to fully inform its deliberations, for example, the head of the crisis management team, whoever he or she maybe, would the company voluntarily facilitate their presentation to the Committee?

Mr LIEBELT: Again I would like to consider that Mr Searle but we would certainly be favourably disposed, yes.

The Hon. Melinda PAVEY: Could we find out by the end of today's hearing for sure who that person is because earlier today you only thought it was somebody. Can you confirm who that is by the end of the today?

Mr LIEBELT: Yes I will.

The Hon. Adam SEARLE: Again, just to be clear, we would like to know who the head of the crisis management team was, who the individual members were and really what their roles and responsibilities were in terms of the management of the crisis, but in particular, who was on site doing moment to moment direction of traffic as it were; if you understand, that is what we would really like to understand?

Mr LIEBELT: Yes. Is that what you are seeking to have by the end of today Mr Searle?

The Hon. Adam SEARLE: I am not being so adamant about that.

The Hon. Melinda PAVEY: Just the name of the head of the crisis management team would be a great idea by the end of today.

The Hon. Adam SEARLE: Yes, if we could learn that.

The Hon. Luke FOLEY: Mr Liebelt, just for the sake of the record, there has been an ammonia plant there at Kooragang Island since 1969, has there not?

Mr LIEBELT: That is my understanding.

The Hon. Luke FOLEY: When did Orica assume the operations of that plant?

Mr LIEBELT: There have been some ownership changes with the plant over the years. Orica as Orica took over in 2003. Prior to that for a period of time it was a subsidiary of Orica's which is Incitec, which was then a subsidiary. It is now no longer a subsidiary that operated that plant.

The Hon. Luke FOLEY: Originally in 1969 it was Eastern Nitrogen Limited.

Mr LIEBELT: My history on that is a bit shaky.

The Hon. Luke FOLEY: To your knowledge how many incidents like the one that occurred on August 8 2011 have occurred since 1969; that is on how many occasions has a toxic chemical been discharged into the atmosphere and blown into your residential surrounds?

Mr LIEBELT: Since 1969 I do not know that number. Certainly with respect to this particular type of chemical I am not aware of any other incident that has been of specifically this nature. I am of course aware that we have had, for example, excursions of ammonia and that we have had excursions of nitrous oxide, but not chromium.

The Hon. Luke FOLEY: As CEO of Orica are you committed to your company continuing to operate at Kooragang Island into the future?

Mr LIEBELT: Mr Foley, not only am I committed to our company continuing to operate at Kooragang Island but I am very committed to operating this plant safely. We acknowledge that this incident is unacceptable. It is unacceptable to the community, it is unacceptable to us. But we wish to operate this plant. We wish to expand this plant as a matter of fact, as I said in my opening remarks, and we are committed to doing that safely.

The Hon. Luke FOLEY: There are 170 employees of Orica at the plant and around another 150 contractors who are there more often than not.

Mr LIEBELT: Yes.

The Hon. Luke FOLEY: What are they doing at the moment? They are still being paid?

Mr LIEBELT: They are still being paid.

The Hon. Luke FOLEY: Are they still coming to work?

Mr LIEBELT: We have avoided any stand downs so far and we will continue to avoid stand downs insofar as we can. They have been doing other activities of a maintenance and cleaning type of operation, that sort of thing.

The Hon. Luke FOLEY: What can you tell us about the work of the start up committee that involves various agencies of the New South Wales Government and representatives of your company, how is that going in terms of any sort of timetable for a restart of the plant?

Mr LIEBELT: We do not have a timetable for a restart of the plant so the start up committee has met several times. We have one member of our staff on that start up committee and we have been providing, as you might imagine, a great deal of information to the committee to satisfy the requirements of the various agencies represented on that committee. It is my understanding that we have provided the information requested and that we are advanced in that process but we do not have a time for restarting the plant.

The Hon. Luke FOLEY: Could I put it to you that you certainly have an obligation to 4,200 residents of Stockton to be good neighbours but you also have a very heavy responsibility to 300 employees and contractors who rely on Orica to pay them and provide their livelihood and that you

owe it to them to work as efficiently and responsibly as possible to get your operations rebooted in a safe and responsible way in the interests of your workforce and the wider community.

Mr LIEBELT: Mr Foley let me reassure you firstly that I feel both of those responsibilities very acutely and that secondly, we are working as diligently as we can with the regulatory authorities in order to satisfy them and indeed, satisfy ourselves that we are going to be in a position to restart this plant safely as soon as we possibly can.

The Hon. Adam SEARLE: In relation to the incident itself, we have been told that once they saw the steam coming out of the SP-8 stack the flow was redirected to another vent but that because of its inadequate containment it has backed up and then continued to rise and rose to the point where there had been a temporary repair done to the silo and it started to leak out of that onto the workforce who were there present trying to deal with the situation. Are you able to inform us how it was that that temporary repair was so deficient?

Mr LIEBELT: The extent of my knowledge is that there was a temporary repair; I think that has been reported in the various reports, particularly the independent engineer's report. That repair was made to a stack which was accustomed to handling gas and I suspect - and if you want me to confirm this point too - strongly that the fact that fluid was flowing up that stack is going to be the reason that it failed.

The Hon. Adam SEARLE: If you could take that on notice.

The Hon. Melinda PAVEY: Mr Liebelt, you mentioned earlier in your testimony that Chromium VI only happens in the five year cycle of the start up and shut down of the plant. Are you aware of any other incident in previous start up and shut downs of the plant at Kooragang Island of the release of Chromium VI?

Mr LIEBELT: I am aware that in the 2006 turnaround that there was water in contact with the catalyst and the water absorbed some Chromium VI and was contained on the site.

The Hon. Melinda PAVEY: Can I just read from your annual report. It says, "Orica recognises the importance of risk management practices across all businesses and operations." In fact, it was testimony to us on Tuesday at Stockton that in fact the release of Chromium VI in 2006 could have very well have been more than it was in 2011. Are you aware of that?

Mr LIEBELT: I am not aware of that.

The Hon. Melinda PAVEY: What was the fine to Orica for the 2006 event for breaching the EPA controls at that time?

Mr LIEBELT: In relation to the Chromium VI, again I am not aware that we were fined and I would need to take that on notice just to check that point.

The Hon. Melinda PAVEY: In terms of risk management, was the company on a sense of heightened preparation for the start up of the plant? Were you in daily contact as the CEO, even from Melbourne in terms of this important event after your company had just spent \$140 million in the six week shut down and start up phase?

Mr LIEBELT: Again Ms Pavey, you need to understand the structure of our company. This is a very important project and I do not resile from that point, but it would not be my normal practice to be in daily contact with somebody starting up in relation to to even a \$100 million project.

The Hon. Melinda PAVEY: But you were aware that you had had a bad incident in 2006. Were you aware at the time of this start up or has that only just come to your attention since?

Mr LIEBELT: Is the question Ms Pavey about whether I am aware that the start up was happening or whether I was--

The Hon. Melinda PAVEY: Mr Liebelt, were you aware before the 2011 start up there had been a Chromium VI leak in 2006?

Mr LIEBELT: No, I was not aware of the Chromium VI incident in 2006 at that time. I am now of course.

The Hon. Melinda PAVEY: When did you arrive at the Orica plant post August 8?

Mr LIEBELT: I was there on August 15.

The Hon. Melinda PAVEY: What did you do when you got there on August 15?

Mr LIEBELT: Well again met with our employees on that site.

The Hon. Melinda PAVEY: Did you meet with the head of the crisis management team?

Mr LIEBELT: Yes I did, he was on the site and I met with him.

The Hon. Melinda PAVEY: You said earlier that you were not quite sure, 100 per cent sure who that was?

Mr LIEBELT: I did not mean to say that.

The Hon. Melinda PAVEY: In the annual report, the chairman's report for the 2010 ending financial year, the chairman says, "While it may be little consolation to a justifiably concerned community, the incident resulted in no health impacts." Where did that information come from?

Mr LIEBELT: Again, I would like to just check the exact wording of that.

The Hon. Melinda PAVEY: I will pass it on to you Mr Liebelt. That is your chairman in the annual report.

Mr LIEBELT: I see the remark in the chairman's address and so again, the question?

The Hon. Melinda PAVEY: How did he come to that conclusion?

Mr LIEBELT: Well it is our understanding from the toxicological report that there is a negligible risk, a very, very low risk of there being ongoing health effects in the community either with respect to respiratory effects or with respect to potential cancer.

The Hon. Melinda PAVEY: Have you read the transcript of the public forum that we had on Monday?

Mr LIEBELT: I have not read that transcript. I have had a report back about the meeting but I have not read the transcript.

The Hon. Melinda PAVEY: The transcript explains in detail the impact that it had on certain people, so how can you claim in an annual report that there was no health impact?

Mr LIEBELT: We are relying on the toxicological report there and indeed, supported by the work that the Department of Health did I think.

The Hon. Melinda PAVEY: That same annual report had you earning \$7 million or thereabouts last financial year, is that correct? It was on our annual report as a public document.

Mr LIEBELT: Yes. Mr Chairman, I am not disputing what is in recorded in the annual report, could I just question whether you regard this as relevant in the terms of reference?

CHAIR: No, I do not think it is relevant.

The Hon. Melinda PAVEY: I contest Mr Chair that it is relevant in the impact that the company profits for what Mr Liebelt will earn in the next financial year because of the impact that this plant closure will have on Orica.

CHAIR: That means he will earn less next year.

The Hon. Melinda PAVEY: I was going to ask him that question.

CHAIR: And the relevance is?

The Hon. Melinda PAVEY: The impact that this is having on the company from the incident of August 8.

CHAIR: Then why not ask the question what is the impact, the profit impact on the company, the loss of productivity? I still do not see what Mr Liebelt earns is relevant.

The Hon. Melinda PAVEY: I think it is relevant in terms of management of this company, what the company is going through and where the bottom line lies, with Mr Liebelt.

CHAIR: I have ruled on the issue. If you want to get the profitability of the company, please ask a direct question.

The Hon. Melinda PAVEY: What impact will this Orica event of August 8 have on the company at this point in time?

Mr LIEBELT: In our 2011 financial year report we show that the loss of profit was \$21 million up until the end of the 2011 financial year. We are now into our 2012 financial year. I should explain, we close our books on 30 September, so we are now in the 2012 financial year and depending on how long it takes to restart the plant, it is presently likely costing us somewhere between \$2 and \$4 million a week.

The Hon. Melinda PAVEY: Do you feel that you as CEO have adequately supported the workforce at Kooragang Island?

Mr LIEBELT: I have been concerned about the welfare of the workforce at Kooragang Island. For example, in the early stages of response to the incident of August 8 I did ask questions about whether we had support on site and whether people were availing themselves of our employee assistance programs and so on. As late as either earlier this week or late last week I asked again about the support for employees on site.

The Hon. Matthew MASON-COX: Mr Liebelt, I just wanted to go to the Johnson Matthey catalyst report which was commissioned by Orica. In particular, I note recommendation 9.1 which states that there should be a review and a rewrite of the operating procedures so that they accurately reflect best practice for starting the plant. Does it concern you that your procedures in relation to what is something that happens every five years and involves the shutdown of the plant, a \$40 million maintenance cycle and in this case \$100 million modification process do not reflect best practice?

Mr LIEBELT: We agree with the report there were some shortcomings in relation to the start up procedures which were actually applied in terms of restarting the plant this time and that does concern me; yes it does.

The Hon. Matthew MASON-COX: It goes on to so that a range of modifications are recommended for the plant and you would agree that we would not be here if these modifications had been put in place so that the plant would not have produced any condensate, we would not have had kilograms of fluid going through the chimney and spraying all over Stockton if the modifications outlined in this engineering report had been put in place before the incident; is not that the case?

Mr LIEBELT: I am satisfied on the advice I have taken from our technical experts that the recommendations made by independent engineer will make the plant safe and I think it therefore follows that your assertion is correct.

The Hon. Matthew MASON-COX: Can you just explain to me - I know we are not engineers - why these modifications were not put in place earlier, given that you have spent \$100 million on hundreds of modifications, why not pick the ones that are actually going to improve the safety for the surrounding community?

Mr LIEBELT: Well again I think that is going to go to why it is that we had these design shortcomings in the original design of the plant. None of us is happy that that occurred and we agree with the independent engineer that we need improving in those areas.

The Hon. Matthew MASON-COX: You concede that really there were some engineering design problems and some risk management issues in relation to that design that are the cause of this incident?

Mr LIEBELT: Mr Mason-Cox, I am advised by our technical people and they accept the points made in the independent engineer's report and I am happy to accept that advice.

The Hon. Matthew MASON-COX: You mentioned to just in relation to the question that the Honourable Adam Searle asked you in terms of information, that there are strong project management processes at Orica. Would you provide us with the management matrix in relation to those strong project management processes as they relate to that project on upgrading the existing plant and the modifications as well as the maintenance program?

Mr LIEBELT: Again, as will all documents I would like to take that question on notice but we will certainly look at that.

The Hon. Matthew MASON-COX: Upon first hearing of the incident, what was your reaction and what did you do?

Mr LIEBELT: Well my reaction is always disappointment and concern frankly. At that point we did not have certainty with respect to whether or not the excursion had gone into the community. There was a suggestion at that time when I was informed that the material had gone into the community and so I asked a series of questions about our own people, how we responded and what has been done about the crisis management team and those sorts of things; obviously I was very concerned.

The Hon. Matthew MASON-COX: When did you first learn that the material had gone into the community off site?

Mr LIEBELT: I think we had a strong suspicion that the material was off site in the afternoon of Tuesday, Tuesday the 9th. When that was absolutely 100 per cent confirmed for me is, I believe, Wednesday.

The Hon. Matthew MASON-COX: Were you surprised by the strength of the community reaction as they began to learn that a toxic chemical had floated into their neighbourhood?

Mr LIEBELT: It is hard to recall my emotion in terms of surprise. Would I have expected a strong community reaction if they were to learn that a toxic chemical was in their community, I would absolutely expect a strong community reaction.

The Hon. Matthew MASON-COX: Was it not the case that initially the company view was that this was not a serious incident and not just in the nomenclature, but that it was not a serious incident in the general phrasing of that term?

Mr LIEBELT: Nobody has said that to me and I certainly did not take that attitude when I heard about the incident. We had, after all, activated our crisis management team.

The Hon. Matthew MASON-COX: Can I just put to you, given that you, given that you were not at the forum that we held in Newcastle, just a comment which I think is fairly representative of some of the submissions made on that night. I would just like your reaction to it. "I honestly feel

that Orica has shown contempt to this community. I would expect at the moment that they would be hyper-vigilant in order to regain our trust. The release of ammonia recently just shows that they do not have the level of concern that they should be having for us.”

Mr LIEBELT: I think I said in my opening remarks that I find the comments coming back from the community, and I do not dispute the veracity and the concern of the people in the community, but we find that distressing as a matter of fact. We are trying to manage - we are making every effort. We are endeavouring to fulfil the requirements of the regulatory authorities absolutely as best we can and so that is my intention, to prosecute this matter in that way.

The Hon. Matthew MASON-COX: Given that there have been a sequence of incidents at the site, and let me take you back, incidents under investigation or being prosecuted from October 2010, March 2011, June 2011, two incidents in August 2011 and in November 2011. It is pretty clear the community’s trust has been seriously eroded by Orica. Do you think that you can make that up?

Mr LIEBELT: I have no doubt that the community’s trust has been eroded, no doubt at all about that. I believe we can make it up but I do not underestimate the task. I think we have a long period of time in front of us in terms of improving our communication and indeed, in terms of proving our performance before we will have earned that trust back.

The Hon. Matthew MASON-COX: It has been put to the Committee that this is really a pattern of behaviour and that your company has been complacent in protecting the community that is surrounded from these types of risk?

Mr LIEBELT: I do not really accept that assertion. It is my view that we have, as an organisation, for a long time, had a very strong focus on this area. We find none of the incidents that you refer to or for that matter any of the non-compliances that we have reported over the years acceptable. We find no non-compliance acceptable and I think our culture, indeed our expressed values in the organisation focus strongly on this area. So it is my contention that whilst we have had incidents and we find those unacceptable, that the company is very focused in this area.

The Hon. Matthew MASON-COX: It is interesting to note Mr Liebelt the recent ammonia leak was not actually identified by your company initially, it was identified by two railway workers in Mayfield feeling sick and being hospitalised and then emergency services tracing that back to your company. Is it true that was the time that you found out about that leak recently?

Mr LIEBELT: Mr Chairman, I understand the ammonia release last week is outside the terms of reference of the Committee but it is from that that we found out about the leak, in response to not so much the two employees but two employees off site that indicated that there was an issue. I am not sure if it was those two employees.

The Hon. Matthew MASON-COX: It goes directly to the community’s eroded trust in your company being able to protect them from toxic chemicals produced at your plant and it is an ongoing issue, and that is why I asked you that question. Can I also ask you what confidence the community can have of a continuing nature when these sorts of leaks continue to happen and you are not even aware of them?

Mr LIEBELT: To the question of confidence that the community can have in our company, what I would like to say in response to that point is that the community can be absolutely assured that not just myself but all of the employees involved in the Kooragang Island site and indeed in the management of the company are very focused on improving the performance of this plant and that we will be doing our utmost to ensure that the performance of the plant is satisfactory to the community. None of us feels comfortable with any of these incidents that we have had.

The Hon. Matthew MASON-COX: I put it to you Mr Liebelt that your risk management strategy and your operation of this plant is failing the community of Stockton?

Mr LIEBELT: Mr Mason-Cox, I think our risk management strategy and the processes that we put in place to assess risk in relation to the many activities of our company, so this risk management question of course is a very multi faceted question. It is across not only the question of

plants but across the management of the company as a whole. We have strong risk management processes in place and so whilst again I have to say that we have had incidents and we find those unacceptable and in response to incidents we certainly do the investigations and look for whatever improvements we can put in place, I think that that total process of risk management and improvement up to stride is good practice.

The Hon. Matthew MASON-COX: It has been put to the Committee that your risk management practices are inadequate in relation to this site, however it appears that your risk management processes after the incident in terms of ensuring the company's risk are obviously very, very sensitive and evidenced by the legal presence of your solicitor here today, as well as the myriad of documents and documentation and steps you are taking in order to ensure your company's risk of prosecution is minimised as a result of this very serious incident.

Mr LIEBELT: Thank you Mr Mason-Cox but I am just not clear what the question is.

CHAIR: It is not a question Mr Liebelt, it is just a statement and we will stop it there.

The Hon. Cate FAEHRMANN: Mr Liebelt, how do you feel about the pollution licence breaches of your company? Are you aware how many pollution licence breaches there has been?

Mr LIEBELT: Yes, over the recent decade or so I am aware.

The Hon. Cate FAEHRMANN: How many is that?

Mr LIEBELT: On the advice that I have in relation to that matter, if you go back to 2001 through until now, that we will have had something like 115 non-compliances. I should add that it is sometimes a little hard to know how to count these data but it will be broadly in that area and of those 115 roughly 35 are to do with tests not completed, which is a non-compliance in its own right.

The Hon. Cate FAEHRMANN: Some of those breaches however do include unlawful releases of toxic chemicals, do they not?

Mr LIEBELT: Every one of the breaches that I have described is outside of our licence compliance. I think we have been prosecuted in relation to - putting aside the two legal actions I should add pending now - I think we have twice previously been prosecuted.

The Hon. Cate FAEHRMANN: I will put it to you Mr Liebelt, as well as your Kooragang Island plant, Orica has also breached its licence according to the Native Conservation Council and the Total Environment Centre submission, 177 times since 2004 at its Port Botany facility and a similar pattern of breaches for Port Kembla and a total of 139 breaches for Kooragang Island. Those breaches did include unlawful releases of arsenic, hexavalent chromium, nitrogen, oxides and ammonia. During that period you said you have been prosecuted how many times?

Mr LIEBELT: You have given numbers in relation to other sites as well. My original answer was in relation to Kooragang Island. Again, I have not counted the non-compliances in relation to those other sites. The fines that we were given go back to 2004 and I was talking there in relation to Kooragang Island and of course we have two legal proceedings pending now.

The Hon. Cate FAEHRMANN: In your opinion as CEO of Orica over that time, say if we just think about the Kooragang Island facility, considering all of those breaches, do you think one fine over that 10 years of \$10,500, which is, as I understand it, what the company has been fined, is much of an incentive for you to ensure you do not continue to breach your licence?

Mr LIEBELT: I would not say that fines are the incentive to cause us not to breach our licence. I need to say to you that our organisation does not find licence non-compliances acceptable in any sense.

The Hon. Cate FAEHRMANN: Why do they keep occurring then if your company does find it unacceptable?

Mr LIEBELT: Perhaps I can just give you a sense of my view at least of how the licensing system works in New South Wales by reference to an example might be the best way.

If you go back to 2005/6, we had a licence condition for the emission of nitrogen, which is nutrient in our effluent. The licence limit at that time on my understanding was in the order of 400 tonnes per annum. We had met that licence partly by supplying weak nitrogen solution to our neighbour, Incitec. For whatever reason they chose not to take that product any longer and the outcome of that was that we had nitrogen load of 600 tonnes plus for a year there. We then--

The Hon. Cate FAEHRMANN: Mr Liebelt, I wonder whether you could actually provide the rest of this answer on notice similar to your other answers. I am aware of the incident you are referring to but I have four minutes left to ask questions of you and I do have a number of other questions. It is not the main point that I was asking you. If you could provide it on notice, that would be good.

Are you aware of the Stockton Community Action Group Mr Liebelt?

Mr LIEBELT: I am aware of its existence, yes.

The Hon. Cate FAEHRMANN: Have you read their submission into this Inquiry?

Mr LIEBELT: I have looked at it, yes.

The Hon. Cate FAEHRMANN: They state in their submission, "We are concerned that there may have been unwillingness on the part of Orica staff and/or management to inform the OEHL due to the potentially damaging political consequences, in particular in light of Orica's continued negotiations for expansion of the plant." What are your views on that comment?

Mr LIEBELT: Again my view is that we first and foremost need to put this plant right, meet all of the requirements of the regulatory authorities in order to start it up and we are doing that; we are co-operating with the authorities as much as we possibly can in that regard.

If you are asking a question about the expansion, that expansion is very much required by the mining industry, particularly in New South Wales.

The Hon. Cate FAEHRMANN: Do you think the staff on duty at the time and the site manager the following day may have been worried about notifying the OEHL of the incident because those expansion plans were before the Department of Planning for approval and it would not look good for your company?

Mr LIEBELT: I have never had anybody say that to me.

The Hon. Cate FAEHRMANN: You do not think that is the case?

Mr LIEBELT: I have got no reason to believe that would be true.

The Hon. Cate FAEHRMANN: I think previously in the hearing the door knocking script was mentioned. That, I assume, is written by your employees, somebody within your organisation would have written that door knocking script. The script states if anyone found evidence, any of your employees when they were on site, found evidence of sodium chromate or hexavalent chromium or Chromium VI they would say to the Stockton resident, "This appears to be sodium chromate, please do not be too concerned. We have consulted with our internal medical and occupational hygiene professionals and they have advised that there is little to no risk." Little to no risk from this substance, "However, we would like to clean this up for you."

Your material safety data sheet however for that substance, which I am sure you are aware what a material safety data sheet is as you are the CEO of a company that produces toxic chemicals, states for Chromium VI that "Chromium VI is toxic if swallowed, inhaled or absorbed through the skin. Strong oxidiser. Contact with other material may cause a fire. Causes burns by all exposure routes. May cause allergic, respiratory and skin reaction. Harmful if swallowed. Toxic to aquatic

organisms. May cause long term adverse effects in the aquatic environment. Cancer hazard. Possible risk of impaired fertility. May cause heritable genetic damage.”

Your door knocking script written by your employees stated that “there is little to no risk from this substance. However, we would like to clean it up for you.” Did your company lie to the residents of Stockton when they were door knocking immediately after the incident about the hazards and about the risk associated with this substance?

Mr LIEBELT: Well again Ms Faehrmann, that script was produced by people and then ultimately signed off by the crisis management team. The impact on the population runs not only to the toxicity of the particular chemical but the means by which that chemical might be ingested or by way of respiratory inhaling, and I think the toxicology advice was that --

The Hon. Cate FAEHRMANN: To say there was little to no risk from this substance was a bit of a stretch, was it not?

Mr LIEBELT: Again, I was not present when the specific advice was given.

The Hon. Cate FAEHRMANN: Now that you know what your material safety data sheet said and you know what your door knocking script said from your company, that was wrong information to give the residents on that day, was it not?

Mr LIEBELT: I understand that there was advice given by internal toxicological experts to that effect.

The Hon. Cate FAEHRMANN: To what effect?

Mr LIEBELT: To the effect of the statement in the script.

CHAIR: Mr Liebelt, I am talking particularly about the ammonia plant, although of course it applies to not only Kooragang Island but all operations, would you not characterise the risk management processes in and around and on the site there of the ammonia plant, belts and braces approach to risk management?

Mr LIEBELT: Belts and braces is a term that I find difficult to define actually but I think what I would say is that we expect our people to apply thorough risk assessment processes and then put in place in response to that assessment the appropriate mitigation plans.

CHAIR: Listening to your evidence and listening to the evidence of your employees in Stockton on Tuesday, to my way of thinking would it be more correctly able to characterise the risk management process as one of not so much risk management as a mistake fix it driven process? Is the company, has the company learnt very much from its 2006 leak and now again in 2011 there is another leak?

Mr LIEBELT: I do not believe that our risk management processes are at all as you describe them, in a sense waiting for a mistake and then fixing it. I think our own risk management process is very much to identify the risks that might occur in relation to a project or in relation to other parts of our business and then put in place necessary mitigation plans.

CHAIR: It did come out in evidence that after the 2006 leakage one tonne of fluid, I do not know what the concentrate was in that, but to avoid that same thing occurring drainage mitigation was put in place. You then go through a process of what I would think is reasonably substantial redesign of the plant but there was nothing done--

The Hon. Trevor KHAN: Knowing that it would create additional condensate.

CHAIR: Well assuming that there may be the opportunity for the creation of additional condensate, so you ended up in a situation, it seems to me at this stage, where the condensate overtook you, overtook your staff, overtook the plant and the mitigation processes that were put in place after the leakage in 2006 were overwhelmed and you were unable to deal with it. That is why I asked the

question about risk management and who was actually in charge of the implementation of that process earlier on, because it seems to me that the design engineers have done a job that allowed you to increase the capacity or whatever engineering purposes you changed the plant to achieve that, but at the end of that process no one seems to have paid much attention to what was going to be a likely outcome and that there probably would be some leakage but perhaps did not seem to be able to deal with the volume of leakage that actually did occur based on the redesign. That is why I asked the question about belts and braces earlier on.

Mr LIEBELT: Mr Chair, I understand the independent engineer's report, it would say that we had anticipated that there would be some Chromium VI in water that needed to be collected and that we put in place a process to collect that water. I think it would also say that we under estimated the amount of condensate that was going to be produced and that therefore the capacity of that containment system was inadequate to catch what eventually was produced.

CHAIR: But then is it not true to say that that is what risk management is all about, identifying the risks and putting in place processes that will deal with those risks, especially when you change the volume, the capacity, I suppose to some degree almost the nature of the plant?

Mr LIEBELT: Yes, it is my belief though that we under estimated the amount of condensate that would be produced.

CHAIR: That is exactly my point, what I am saying is that I believe that you had people working for you as engineers who were perfectly well enough qualified to be able to identify that at the time?

Mr LIEBELT: I think the independent engineer's report would be critical of the fact that we had not identified that the temperature would not be at a level which prevented this amount of cod being produced.

CHAIR: Using my terminology, you definitely were not conducting a belts and braces approach to risk management at the time that you were attempting to start up of the plant?

Mr LIEBELT: I think there is no getting away from the fact that the, and again, the independent engineer's report would say that we under estimated that amount of condensate, if you like, we under estimated that risk in that sense.

The Hon. Matthew MASON-COX: If I could just come in there for a moment Mr Chairman?

CHAIR: Yes.

The Hon. Matthew MASON-COX: In fact the independent engineer's report says that you anticipated an increase in condensation but the amount of condensation was not quantified by your company and hence effective safeguards were not implemented - just to clarify?

Mr LIEBELT: Yes.

The Hon. Matthew MASON-COX: Which is very different to what you just said. In other words you knew you were going to get more condensate, you did not work out how much more or go through a risk analysis to work out how much more. You just put in place what you thought might be effective but they were clearly ineffective.

Mr LIEBELT: I mean, it is clear, I think Mr Mason-Cox that we under estimated the amount of condensate that was going to be produced.

The Hon. Matthew MASON-COX: You failed to estimate and you failed to risk manage Mr Liebelt, that is what your engineer's report says.

CHAIR: Mr Liebelt, do you think that there is a role for the OEH in terms of working with your company or I suppose other companies in trying to come up with a correct or a more accountable

process for coming up with the correct answer to this type of problem? It seems perhaps it is fully delegated to you to come up with the answer. Should the OEH have had a role in assessing in more detail the upgrade of the plant and then therefore the potential for the creation of more condensate than you thought or maybe anticipated?

Mr LIEBELT: Just to be clear, so your question is about the role of OEH in the design of the upgrade?

CHAIR: That's right, in assessing this risk.

Mr LIEBELT: OEH of course have had a very strong role in terms of the response to the incident. OEH would not normally, on my understanding, have a role in terms of design of any particular project, whether it be ours or others and your question therefore, should OEH have a role, I would like to think about that a little more.

CHAIR: I am just asking your opinion. You talked a little bit earlier about the crisis management team and you spoke to the crisis management team and the person that ran the crisis management team. Who was that person that you spoke to?

Mr LIEBELT: That was our general manager of Australia Asia mining services, the person I referred to previously, James Bonner.

Just on that point and to Ms Pavey's question earlier, our staff has checked, the head of the crisis management team was indeed James Bonner, so I can confirm that.

CHAIR: Thanks very much for coming today and answering our questions. Can you just take on note that the Committee has resolved that answers to questions on notice must be returned within 21 days and the Secretariat will be in contact with you or your office in relation to these questions taken on notice.

(The witness withdrew)

(Short adjournment)

PEPE CLARKE, Chief Executive Officer, Nature Conservation Council
and

JEFFREY SAMUEL ANGEL, Executive Director, Total Environment Centre,
affirmed and examined:

CHAIR: Would you like to make an opening statement?

Mr ANGEL: Thank you very much for inviting us to present. I am just going to make a very brief statement and then Pepe will follow up.

What happened at Orica at its Kooragang Island plant on 8 August 2011 was situation normal, unacceptably normal. It was unacceptably normal to have a licence breach following many other breaches and it was unacceptably normal to have start up issues. It was unacceptably normal to have inadequate monitoring in and outside the plant. It was unacceptably normal to not tell WorkCover about the release of contaminants “from height or to ground”. It was unacceptably normal to regard the incident as not serious, as they say in that letter to Brendan O’Reilly. It was unacceptably normal to not notify the Office of Environment and Heritage of the incident in prompt time.

We think it was unacceptably normal for the residents of Stockton to live virtually in a pollution cloud and we note that when one of the residents informed Orica of the particular toxic emission, they were at the time washing their car of coal dust - so there is some other serious accumulative pollution impact issues around that precinct.

We think the incident reflects a slack culture at Orica about risk assessment and pollution reduction and we think that the lax regulatory regime helped cultivate that slack culture, because the regulator took their eye off the crime. Its primary duty is to protect the public and the environment.

Mr CLARKE: Our research has reinforced this impression, that the events of 8 August were not isolated; either in time at that particular facility nor in the context of Orica’s other facilities in other locations, nor in the context of the thousands of licensed industrial facilities across the state.

There has been some reference made to our submission, the research that we conducted based on the publicly available information on the protection of the environment operations register. Our research found that the Kooragang Island facility has breached its licence every year since 2000, except 2004, with a total of 131 breaches.

It appears that the reason for the difference in the total number of breaches between our findings and Mr Liebelt’s is simply the fact that he was talking about the period 2001 to 2011, whilst we are talking about the period 2000 to 2011. There were 23 self reported breaches in the year 2000.

These breaches, whilst many of them are minor, did include unlawful releases of arsenic, hexavalent chromium, nitrogen oxides and ammonia.

During that period, according to the public record, Orica was not issued with a single prevention clean up or prohibition notice. The register as is currently composed; does not include information about penalty notices. However, thanks to the recent amendments to the relevant legislation that information will now be publicly available.

Orica was prosecuted and convicted once; the prosecution commencing in 2004 and completing in 2005 and they paid a fine of \$10,500.

There is a similar pattern at Orica’s facility in Botany. Orica has breached its pollution licence 177 times at that facility since 2000. The facility has breached its licence every year since

2000, with the exception of 2003, and those breaches include unlawful releases of ammonia, sulphur dioxide, vinyl chloride and acidic effluent. Orica was not prosecuted for any of those breaches.

This is also in the context of much broader problems with the management of toxic chemicals at that site.

The facility in Port Kembla, the public record tells a similar story. Orica has breached its pollution licence hundreds of times across these three facilities alone and yet the alarm bells were not rung for Orica or for the EPA. For only one prosecution to be completed in response to more than 300 breaches across three facilities is simply unacceptable.

It is our position that there is a need to closely review the manner in which the EPA monitors and responds to compliance failures. To have this scale and nature of pollution breaches across these facilities for a major industrial operator that should know better, is simply unacceptable.

Unfortunately Orica's situation is not unique. There are numerous industrial facilities across the state with a similar pattern of self reported non-compliance. One of the BlueScope steel facilities at Port Kembla for example, breached its pollution licence 32 times in 2009/2010. This is not a unique or isolated incident.

We have seen since 8 August a succession of further breaches indicating that adequate risk management procedures are simply not in place at the Kooragang Island facility and the public record indicates that there are similar failures elsewhere.

It is important to note that we are talking to you about self reported breaches. There is also a significant major problem with unreported breaches. Compliance audits by the EPA revealed that the large majority of the facilities audited have at least one and in many cases more, breaches of their pollution licences. They vary in their severity, but in some cases they create a significant risk to the community and have neither been reported to the EPA, nor the residents nearby.

The Hon. Luke FOLEY: Thank you for appearing. I think your organisations make your key point well in your joint submission. But Mr Angel, when you say that what happened on August 8 is unacceptably normal, it is not normal to dump hexavalent chromium on a residential neighbourhood, is it?

Mr ANGEL: Well, that's what I mean by the term unacceptably normal, but what we are reflecting upon is the culture at Orica which we believe was encouraged and helped in this encouragement and cultivation by the pollution regime that government had implemented.

The reason that they did not tell the EPA because they did not think it was a serious incident was because that is the sort of reinforcement year in, year out that that type of regulatory system had put in place and Orica believed was a comfortable corporate position. There were systemic problems, not just an accident on 8 August.

Mr CLARKE: In 2005/2006 the public record indicates that there was a release of chromium in excess of licence conditions from Orica.

The Hon. Luke FOLEY: But not into the air, into the Hunter River?

Mr CLARKE: There is no specific information on that on the public register but it is reasonable to conclude that it was chromium.

The Hon. Melinda PAVEY: We found that out in our visit.

CHAIR: It was into the river.

The Hon. Luke FOLEY: In their last five year start up, yes. Just to be clear for the record, the point the environment groups are making to us is that you believe the regulatory regime has been too soft on polluters.

Mr ANGEL: Yes.

The Hon. Luke FOLEY: And that a licence breach is unacceptably normal.

Mr ANGEL: Yes.

The Hon. Luke FOLEY: But you are not saying that an airborne release of hexavalent chromium into a residential suburb is normal, are you?

Mr ANGEL: I do not know if you are asking whether it is normal for the residents of Stockton to breathe in that chemical week in, week out. If you are asking me--

The Hon. Luke FOLEY: I am not trying to be tricky; I am just trying to get your point clear.

Mr ANGEL: If you are asking me to reflect on a fact that the company did not believe it was a serious incident and communicate that to Brendan O'Reilly, then non-serious things are normal things. That is the sort of prism through which they see these incidents.

The Hon. Luke FOLEY: Mr Angel, you have been involved in the public debate on environmental regulations since the 1970s in this state and you have observed the evolution of our pollution laws. Could I put to you that essentially in Australian jurisdictions and comparable jurisdictions around the world, the story has been one of continuous improvement in the laws regulating pollution, but perhaps the improvement has been too slow from the perspective of the environment movement, but essentially the story has been one of legislatures around the world catching up and continually improving the laws. Would you agree with that?

Mr ANGEL: Yes, the laws have been improved over time in New South Wales, however, those laws do not achieve their stated objectives of protecting the public or the environment or in fact moving to dramatic reductions in pollution unless the bureaucracy implements them properly, and that is where the key failing, in our view, has been.

The Hon. Luke FOLEY: Are you familiar with the term regulatory capture?

Mr ANGEL: Yes.

The Hon. Luke FOLEY: Are you suggesting that perhaps the regulators, the bureaucracy, have been too close to industry, too close to polluting industry?

Mr ANGEL: I think there have been several influences on regulatory performance. Certainly that psychology of regulatory capture was inherited from the antecedents of the EPA, the State Pollution Control Commission. Over time I think the amount of resources allocated to pollution regulation and pollution prevention has been insufficient. I think the skills of community engagement and the capacity to take on big business have been lacking in the officials. I do not have any particular evidence, but the political climate may have been too easy with industry and there is no doubt that even with the current laws that have just passed through Parliament, business was complaining about over regulation as opposed to embracing the concept of having a much, much cleaner environment as we would aspire to.

So there are a combination of factors that combine to create an unhealthy environment for

good regulation.

The Hon. Luke FOLEY: Mr Clarke, are you familiar with the legislative changes that passed the Parliament in the last couple of weeks?

Mr CLARKE: I am in general terms, yes.

The Hon. Luke FOLEY: What is your reaction to the removal of community representatives on the board of the EPA?

Mr CLARKE: I would say that that is a disappointing change to the legislation. One of the key things of the response to the incidents at Orica is one of community involvement, transparency and very importantly, accountability.

To achieve improved environmental regulation it is essential that the agency responsible, the regulatory authority responsible is subject to public scrutiny and accountability mechanisms. There are different ways of achieving those outcomes. In our view the representation of local councils and regional and other environmental representatives on that board was an important accountability mechanism. So that change is disappointing.

The Hon. Luke FOLEY: In your view was that change consistent with the recommendations that Mr O'Reilly made to the government?

Mr CLARKE: I do not recall the precise words but from memory the O'Reilly report made specific reference to the representations of community interest on the EPA board; that does not appear to be reflected in the legislation.

The Hon. Trevor KHAN: Could I just first off ask you Mr Angel, what in essence I take to be your assertion in your opening statement that Orica has asserted that this is not a serious incident. Do I take it that you make that assertion on the basis of the letter from Orica dated 4 November 2011?

Mr ANGEL: To the Brendan O'Reilly inquiry, yes.

The Hon. Trevor KHAN: In the submission there is a letter. That being the case, have you read it, the letter?

Mr ANGEL: Yes.

The Hon. Trevor KHAN: Do you genuinely put to us that what Orica is saying at point two of that letter on the second page, that this is not a serious incident? I am going to be frank with you; I think you are overcooking the egg.

Mr ANGEL: Well, they say, "Accordingly the incident which occurred on 8 August 2011 is not, in Orica's view a 'serious incident' within the meaning of clause 344 of the OHS regulation."

The Hon. Trevor KHAN: This was a matter, was it not, in point two and I think you have been here, Orica is not getting an easy time out of this but point two relates to a matter of statutory interpretation of the Occupational Health and Safety Act and Regulations. That is what it relates to, is it not?

Mr ANGEL: I suppose it is the way they are expressing it but I would claim that that belief at Orica would transpose to a pollution incident and certainly their subsequent statements about no adverse health effects, et cetera, I guess they have used as a supporting basis for that claim that it was not serious, plus the comments that we are generically trying to bring forward that a lot of industries do not think these types of incidents were - let's face it, people are not falling down and going to

hospital - are serious.

We think they are serious both as an indicator of the inadequate offloading procedures and risk management systems and both in terms of not appreciating how the community perceives what essentially is continual pollution of the environment.

The Hon. Trevor KHAN: I am just a little bit concerned, the weight of your submission, if it is dependent upon a paragraph in a letter, you do not get there on that.

Mr ANGEL: No, it was an example amongst many other parts of our submission.

The Hon. Trevor KHAN: Indeed, of course, if you are not in a position - and I am not being critical of you in this regard - to either have heard the evidence that was given on Tuesday by the site manager and shift supervisor as to the circumstances surrounding this incident I suppose.

Mr ANGEL: Sure.

The Hon. Trevor KHAN: You are aware are you not, at least both from the submission and the evidence given here today - however one takes that - that this is an incident that occurs at the start up of the plant.

Mr ANGEL: Yes.

The Hon. Trevor KHAN: That the incident I think we are now aware, the release of hexavalent chromium in 2006 again was a start up issue involving a condensate discharge into the sewer, which then flowed into the Hunter River. This incident was of a quite different nature to that. You would agree?

Mr ANGEL: Yes, I did hear one of your group's previous questioning about whether they had properly quantified the risk and whether they had taken sufficient measures.

The Hon. Trevor KHAN: Indeed.

Mr ANGEL: There is a corporate practice or an operational practice process behind that and these guys are running a large chemical plant 24 hours a day and they have procedures in place; for whatever reason those procedures did not set off alarm bells. That is the critical question for them to fix up.

The Hon. Trevor KHAN: You are alive to this concept of if you have got the choice between a stuff up and a conspiracy, it is more likely a stuff up?

Mr ANGEL: Yes, but sometimes stuff ups do not happen because of conspiracy, sometimes stuff ups happen because you are not properly trained or you have not taken enough anticipatory measures, et cetera. I am not saying there is anything criminal or negligent in an OH&S sense, it is the attitude of the company about how much they invest in precautionary measures.

The Hon. Trevor KHAN: Indeed. I cannot speak for the others but one would get the tenor of the evidence that we have heard is that this was a monumental stuff up in terms of both the specific incident and also their response to it.

Mr ANGEL: Yes and the subsequent question is was it a stuff up waiting to happen or something completely out of the left field.

CHAIR: Sorry, say that again?

Mr ANGEL: Was it a stuff up waiting to happen as opposed to something unpredictable, completely out of left field?

The Hon. Luke FOLEY: Should it have been foreseeable?

Mr ANGEL: Well I guess some of the investigations they have had subsequent to that incident would suggest that if they had been more precise, more careful in their outlook it could have been foreseeable.

I am afraid I tend to think the operation of that facility has induced a degree of complacency of the management of that facility and it was not top of their agenda. Obviously the publicity since then has put this at the top of their agenda and every incident sends the alarm bells off. Well, frankly if you are in the public and you want to be protected from pollution and you want the environment protected, those alarm bells should always go off.

The Hon. Trevor KHAN: Mr Clarke, you have obviously read the O'Reilly report?

Mr CLARKE: That is correct.

The Hon. Trevor KHAN: You took that as a reasonably considered analysis of the events and a suggested course of recommendation to them?

Mr CLARKE: That was my general impression of the report, however I would make the case that there is an opportunity for further reform in this area to improve the protection of the community and the environment, but yes.

The Hon. Trevor KHAN: And I take it that notwithstanding the very targeted nature of the question that Mr Foley asked you, that you would agree that the legislation that has now passed through the House is a reasonable and considered response to this issue and the more general issue as well?

Mr CLARKE: I would say that the amending legislation does improve the Act in some significant way. There are areas for further improvement. One specific example is when we look at the quantum of penalties that have been imposed by both the Land and Environment Court and local courts in relation to pollution offences. We see that the average quantum is relatively low and certainly when we are talking about major pollution incidents at large industrial facilities, it would appear that the penalties being imposed by the courts are inadequate to create an incentive for risk management control essentially. However, the amendments that were passed by the department are a significant step in the right direction, notwithstanding the changes to the EPA Board. However, there is still an opportunity for further reform I think and this inquiry I think is an important part of that process.

The Hon. Trevor KHAN: Of course, that was not the only thing that occurred in response to this incident, was it? In essence, the plant was shut down by the authorities as well.

Mr CLARKE: Following further breaches of the pollution, yes, that is correct.

The Hon. Trevor KHAN: In regards to the ammonia plant, it has been down since that time, that is right, is it not?

Mr CLARKE: Yes.

The Hon. Trevor KHAN: Of course, the nitrate plant has been down as well for an entirely separate incident but the government's response was to shut down something that had not occurred for instance, in regards to the 2006 incident?

Mr ANGEL: Yes.

Mr CLARKE: I am not aware of the response to the 2006 incident so I cannot answer that question.

The Hon. Trevor KHAN: Indeed, you will have heard some of the evidence and I think it is in part of your submission as well, whilst there has been a large number of breaches, prosecutorial action up until this point, it would not be unfair to describe it as patchy at best.

Mr CLARKE: That would be a generous assessment.

The Hon. Trevor KHAN: Essentially what we have seen is a more robust response than we have seen in the past in terms of breaches by Orica.

Mr ANGEL: Yes, that is correct. Yes, the legislation is a great improvement on previous iterations but the culture of the bureaucrats in implementing it would be absolutely essential and the job of the new chair of the EPA and the board, and the chief of the environmental regulator will drive that cultural change.

Mr CLARKE: I think it is essential that there is a culture of transparency and accountability for the new regulatory authority, one which ensures that there is a much stronger approach to pollution breaches than there has been in the past and to ensure that the Orica facility at Kooragang Island is not treated as an exceptional example but rather a trigger for deep reform and a change in regulatory practice.

There are local communities in highly industrialised areas like Botany, Newcastle and Port Kembla who are exposed to risk of pollution breaches and also routinely to daily releases of pollution and also longer standing waste disposal and waste remediation challenges. I think this really is an opportunity for much deeper reform. We should not assume that Orica is an isolated example.

The Hon. Trevor KHAN: Indeed in regards to that, one of the further steps that has been taken by the government at the moment that you would be aware of is an audit of all major hazard facilities across the state. I think that report is due by the end of the year.

Mr CLARKE: That is correct. We welcome that initiative and have welcomed it totally. One of the specific areas of concern in relation to major hazard facilities is that unlike Victoria, it has been the practice and policy in New South Wales to keep the location of major hazard facilities confidential. Of course, the existence of the facilities and their pollution licence conditions and so on are publicly available, but the classification of those sites as major hazard facilities has in the past been kept secret. To the best of my knowledge that is still the case.

We would argue that the Victorian model in which major hazard facilities are actually subject to greater transparency and disclosure is a model that should be considered for New South Wales. We appreciate that there is an argument that major hazard facilities are of their nature a security risk, however on balance we believe that there would be greater benefit in making this information open to the public and ensuring that they have access to detailed information about emergency response plans and the action that they should take in the event of an emergency.

The security argument while not entirely unfounded is perhaps not highly persuasive when you consider that it is not that hard to identify a fuel refinery or a major chemical facility.

The Hon. Cate FAEHRMANN: Thank you both for appearing before the Committee and for your submission, which I thought was very valuable. You talked about the culture of the EPA which to this day does not seem to prosecute for licence breaches much at all and there seems to be a culture of allowing ongoing licence breaches which may actually in some ways contribute to the

culture at Orica of having so many licence breaches.

I am interested to know your recommendations around how the culture of the EPA can be changed and some more specifics or more information about why exactly the culture of the EPA is contributing to those licence breaches?

Mr ANGEL: Essentially at various times of the electoral cycle governments get sensitive about businesses looking at them with disfavour and that happens to any government. Business does push these lines about light regulation and give us self regulatory capacity. We do the job, et cetera, et cetera. At various times governments are more prone to adopt that.

First off I think we have to be careful about that because the bureaucrats are clearly getting the message, lay off industry for whatever the economic arguments that are then put up are. Secondly, the type of people employed by these organisations are usually technical people, they are not very well versed in engaging with the community, talking in plain English to the community, being frank about the data that is coming over their desk and on the other hand they are not particularly skilled negotiators with business.

Those staff, those departments do need those additional skills and the confidence of the support of their board and CEO and the support of government. It does not take days of headlines to be tough with business.

Thirdly, while there has been some debate, discussion about splitting up of OEH and the merits or otherwise of that, the fact that the EPA now has a renewed focus on pollution will undoubtedly assist and clearly the public and as a result of all the controversy arising from Orica, people will be looking at the EPA and public pressure will assist and of course the media will be watching as well.

Unless you get those elements lined up, the bureaucracy inevitably retracts from its primary duties and we have to continue to work with the EPA as government does and as business does to achieve much more in pollution reduction.

The Hon. Cate FAEHRMANN: Did you want to say something Mr Clarke?

Mr CLARKE: It depends how you are going for time.

The Hon. Cate FAEHRMANN: Not well. Orica's door knocking script you may have heard in the hearing before says it was written to advise residents that if Chromium VI was found on their property, and I know that the Orica employees were advised to look for little yellow dots, so definitely Chromium VI, that if they found evidence of that they were to tell residents that they had been advised that there is little to no risk from this substance, however we would like to clean this up for you.

What is your view on Orica's script to employees that there is little to no risk from Chromium VI?

Mr CLARKE: It is not consistent with the well known chemical properties of Chromium VI. It is false information.

The Hon. Cate FAEHRMANN: What are your views of Mr Liebelt's description of when chemicals escape from their plant, when chemicals escape from his plant or any of his plants I am assuming and escape and make their way to residential areas. His term for this was an excursion. Have you heard that term before?

Mr CLARKE: It sounds like fun.

Mr ANGEL: A very interesting piece of terminology. I think it is called pollution.

The Hon. Melinda PAVEY: Or spin.

CHAIR: An emission.

Mr CLARKE: I think the use of this kind of language and the content of the letter or the briefing is consistent with a damage control strategy. We have certainly seen this by industry.

The Hon. Trevor KHAN: It has not worked.

Mr CLARKE: It has not worked particularly well. It is an issue not only with industry but also with the regulator. The EPA has at various times in the past sought to allay community concerns at a time when there have been significant risks. The Orica facility, its contamination of groundwater in Botany is one very well known example of that. This damage control approach, particularly from the regulator does the community no good in terms of helping people to understand the risks to which they are exposed and also to gain trust in the regulator and the government to do what is best for the community.

The Hon. Cate FAEHRMANN: What are your views on the proposed expansion of Orica's Kooragang Island ammonia nitrate facility that as I understand it a modification of that approval is currently on hold within the Department of Planning and that is upgrading their production to a 750,000 tonne facility from a 500,000 tonne facility?

Mr CLARKE: In my view it is entirely inappropriate to be considering the expansion of a production facility while known safety risks continue at the site.

Mr ANGEL: Also I think that the guidelines of the assessment processes need to be upgraded because in this interesting letter from Graeme Liebelt of 4 November he does say that SEPP 33 was simply a planning policy document that did not impose any obligations on the proponents. There is clearly some additional work that has to go into development assessment of new or expanded hazardous industries.

The Hon. Trevor KHAN: Or the conditions that apply to any DA that is approved.

Mr ANGEL: Yes and I may be over interpreting it but I thought that indicated that while the possible conditions were stricter the EPA has said to us it is our pollution licence and unfortunately that licence was weaker.

CHAIR: Mr Angel, do you think or do you believe that the EPA should have a greater interventionist approach to regulation?

Mr ANGEL: My understanding is that we now have sufficient powers for intervention. At the Total Environment Centre we do run a program called Green Capital where we work with business and talk to business about best practice and social responsibility. Some in business embrace that enthusiastically. Unfortunately there are parts of the industrial sectors, the business sectors that still have these knee jerk reactions to regulation. Regulation, yes it is the stick, yes it is the last resort in a sense, whether it is fines, gaol sentences, et cetera, but it is incumbent on business to come forward and say we are not being defensive, we want to do the best thing possible, and this is how we do it.

These regulatory interventions are either invitations to do better and work better, whether it is with the community and/or the regulators or it is an invitation for the regulator to throw the stick at them. This is the sort of, I guess political negotiation or community conversation that has not happened for many years with industry on pollution.

CHAIR: Following on from that, do you see Orica as a good corporate citizen?

Mr ANGEL: I certainly think the recent incident and the revelation of the previous incidents of breaches have caused serious damage to its reputation. Clearly that is why it is in the process of damage control. It is trying to say the right things but if they want to regain a reputation, the regulators are going to have to really put them through the washer.

The Hon. Trevor KHAN: That is not really an answer to the question you were asked. You were asked whether you thought they were a good corporate citizen?

Mr ANGEL: On balance I do not think they are a good corporate citizen, no. I was just trying to reflect on the fact that they do have sustainability reports and companies do make attempts but they have not gone far enough to make them a good corporate citizen.

CHAIR: Do they contribute to your trust?

Mr ANGEL: No.

CHAIR: They do not?

Mr ANGEL: No. Let me just say, yes we have a green capital program. There are some corporate partners but the agreement we make them sign is that we can still criticise them publicly. If they come across at that then they are fairly robust mature type corporates.

CHAIR: I understand that. I think if they are big boys playing the big game, they should expect to be able to be criticised. It is quite normal.

For a breach like this, and let's just talk about this particular breach, what level of fine do you think would be adequate for the stick part of the coercive powers of Parliament to be applied?

Mr ANGEL: I do not know how to answer that because I am not really the judge and the various gradations it would impact.

CHAIR: I am talking not so much in terms of what the current legislation is but what in your view would be adequate?

Mr ANGEL: To be perfectly frank, I do think some action sometimes has to be taken personally against the directors and there is some capacity for some type of gaol sentences. I am not saying that this particular incident may be relevant to that sort of sentence. The fact the plant has been shut and losing millions every month will no doubt be taken into account.

I really do not know because you think of a really big fine but to a company like Orica it is not very big and there needs to be some additional penalty pressure on them.

CHAIR: You alluded to part of the answer I think, the fact that they are closed down is a big penalty to the company and they are losing somewhere between \$2 and \$4 million a week. That is not to say that that is the only penalty they are going to wear. They are going to lose reputation, if indeed they had a good reputation. They may indeed end up losing employment on the site because of restrictions in controls that might be put on them.

Mr CLARKE: May I comment in relation to the issue of sentencing and court orders?

CHAIR: Please do.

Mr CLARKE: Ultimately I think the test for us is what brings about the change in behaviour and there are a number of different factors in determining the rate of regulatory compliance. They include not only the penalty that is ultimately imposed but also the likelihood of detection of the breach in the first place and the likelihood of enforcement action being taken in response.

I think it is apparent from material available on the public record that there are routine breaches of pollution licences and therefore this is a clear indication to us that the system as it is currently operating is not effective.

So there are multiple points in the process, not only the ultimate sentence but the rate of compliance auditing, the frequency with which enforcement action is taken in relation to self reported or unreported breaches and also the use of penalties in addition to financial benefits. Custodial sentences for the individuals ultimately responsible will certainly send a strong signal. The types of audits that have been used in this case, but otherwise very, very rarely in the past, do send a strong signal, not only to Orica but also to industry generally that compliance with pollution laws must be a high priority for them in terms of their investment and their internal risk management processes.

We do not necessarily need to think of this in moral terms, although there is certainly a moral dimension to this but more a process of change; a change in corporate behaviour, a very real change and that requires not only increased financial penalties but also orders that have a more onerous impact on companies where that is appropriate.

CHAIR: Thank you very much gentlemen for coming in today. We will call the Committee to a close for the day.

(The witnesses withdrew)

(The Committee adjourned at 1.05 p.m.)