

**REPORT OF PROCEEDINGS BEFORE**

**LEGISLATIVE COUNCIL  
GENERAL PURPOSE STANDING COMMITTEE NO 1**

**INQUIRY INTO SERIOUS INJURY AND DEATH  
IN THE WORKPLACE**

---

**At Sydney on Tuesday, 17 February 2004**

---

**The Committee met at 9.00 a.m.**

---

**PRESENT**

Reverend the Hon. F.J. Nile (Chair)

The Hon. David Clarke

The Hon. Catherine Cusack

The Hon. Amanda Fazio

The Hon. Kayee Griffin

The Hon. Peter Primrose

Ms Lee Rhiannon

The Hon. Ian West

**CHAIR:** I need to make a statement and I made a similar statement yesterday due to the sensitive nature of this inquiry.

Before we commence I would like to briefly repeat some comments I made yesterday. The Committee is conscious of the sensitive nature of this inquiry and respects the personal pain that witnesses may face in giving evidence about the death of close relatives or indeed injuries they have suffered themselves. I ask the media and any other persons in the audience to show sensitivity in any approach made to witnesses during this inquiry, particularly media coverage of evidence.

In regard to Parliamentary privilege, the evidence in this inquiry has already included material which could be seen to adversely reflect on third persons, such as employers, WorkCover employees and others. The Committee believes that it is important that the evidence is heard in public as far as is possible, as this inquiry will not be able to serve its purpose by hearing evidence in camera which cannot be used in the Committee's final report.

The Committee is, however, also mindful of the need to ensure procedural fairness for all its participants. It is important that witnesses be aware that the Committee will review any evidence which may contain adverse reflection and the right of persons mentioned to reply in writing or as a witness before the Committee.

I therefore ask witnesses to consider this before making mention of individuals and companies. Parliamentary privilege which applies to Parliamentary proceedings, including Committee hearings, is not intended to provide a forum for people to make adverse reflections about others.

If it becomes necessary I may stop the witness at times if their evidence about another person is not necessary to address an issue in the terms of reference. The Committee will try at all times to be sensitive to balancing the need for a transparent public inquiry and the need for procedural fairness.

I also need to remind witnesses that although what they say during evidence is protected, what they say after the hearing is not protected by Parliamentary privilege, even if it is said within this building.

The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of the public proceedings subject to guidelines governing the broadcast of proceedings, which are available from the table at the door.

I point out that in accordance with the Legislative Council guidelines for broadcasting proceedings a Member of the Committee and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. In recording proceedings of this Committee the media must take responsibility for what they publish or what interpretation they may place on anything said before the Committee.

Witnesses, Members and their staff are advised that any messages should be delivered through the attendant on duty or through the Committee staff.

I advise that under the Standing Orders of the Legislative Council evidence given before the Committee and any documents tendered to the Committee that have not yet been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by any Member of such Committee or by any other person.

In regard to WorkCover, before WorkCover begins its evidence today, I would like to indicate that the evidence yesterday raised a number of specific matters that require a response by WorkCover. The Committee, through its secretariat, will identify these issues and send them to WorkCover so that you will have notice of these when WorkCover appears at the hearing to be held on 2 March. I wish to emphasise here that

Committee members will be expecting WorkCover representatives to be able to fully answer specific questions on those issues at that later hearing.

There may be some general matters raised today. If they are raised Committee members may still raise them at that point and we will take them on notice.

**JONATHON DENNIS BLACKWELL**, Chief Executive Officer, WorkCover New South Wales,

**JOHN STUART WATSON**, Acting General Manager, Occupational Health and Safety, WorkCover, and

**PHILLIP CHISHOLM REED**, Acting General Manager Corporate and Governance Committee, WorkCover, sworn and examined:

**CHAIR:** We usually remind witnesses that if you should consider at any stage during your evidence that certain evidence or documents you wish to be present should be heard or seen in private by the Committee, that is in camera, the Committee will consider your request. However, the Committee or the Legislative Council may subsequently publish evidence if they decide it is in the public interest to do so, unless we go into camera. Do you wish to make an opening statement?

**Mr BLACKWELL:** If I could make a brief opening statement, firstly, can I say that WorkCover and myself are pleased to be able to give evidence at this inquiry. It is an extremely important inquiry and one which we are wanting to cooperate with as much as we can.

I am the CEO of WorkCover. I have been the CEO of WorkCover since August of last year. Prior to that I was Chief Executive Officer of Central Coast Area Health Service and worked in health services for approximately 15 years around Australia. I am very keen to work in areas which are meaningful, where we can make a difference and which are important jobs. When I was approached to apply for this position, part of my consideration was the worth of the job, if you like, in relation to community service.

Clearly the roles of WorkCover in terms of preventing injury and death in the workplace are extremely important. They are important to me and important to the organisation. The other role of providing proper compensation for workers, medical care and help for workers when they are injured are also key components of what WorkCover does and that is also important to me and our organisation. We take our responsibilities extremely seriously. Certainly that is why we within the organisation are happy to be here today to provide accurate information in terms of what has occurred and the roles and functions that we undertake as an organisation.

The inquiry has already heard about the tragic deaths of Dean McGoldrick and Joel Exner and it is quite clear the effects of those deaths on family and the community and the friends of those young men. We at WorkCover believe that no death or serious injury in the workplace is suitable and we use our best efforts in every way to try to ensure that deaths are avoided, as is serious injury. We believe that having some community debate, which this inquiry is going to engender, around these issues is healthy and therefore we support that.

The inquiry also provides us with an important opportunity to listen to workers and their families and demonstrate our commitment to ensuring that workers do return home safely and that workers and their families do get the support and security that they need. It also gives me an opportunity to show that our inspectors and prosecutors are skilled and dedicated professionals. They take their jobs extremely seriously. They are not unmoved by the circumstances in which they find themselves from time to time when they are investigating serious injury and death in the workplace. They do take their role in terms of prevention extremely seriously and my view is that we have dedicated and professional both inspectorate and legal teams, who have to deal with these very difficult issues.

I guess that is all I want to say as an opening statement. I am happy to take questions.

**CHAIR:** In view of some of the evidence we have had already and our terms of reference, it would be good for the Committee to be quite clear about the role of WorkCover. Can you explain what is WorkCover's statutory role in relation to serious workplace injuries and fatalities?

**Mr BLACKWELL:** Yes, I can. We have made a detailed submission to the Committee. As you can see, in part four of the submission our role is to promote the prevention of workplace injuries and disease and developing healthy and safe workplaces; promoting the prompt, efficient and effective management of injuries to workers, so when workers are injured we make sure they are provided with the necessary support, medical and otherwise; ensuring the efficient operation of workers compensation arrangements, the income security, if you like, for workers; and ensuring appropriate coordination of the administration of both workers compensation and occupational health and safety schemes.

The primary purpose of the occupational health and safety legislative framework, which we have outlined in the submission, is to secure the health and safety of persons at work and we do that by placing duties on those people who have varying degrees of control over the workplace, in other words mainly employers and employees at the workplace.

**CHAIR:** There have been questions raised about prosecutions by WorkCover. Can you explain how the WorkCover prosecution Branch operates?

**Mr BLACKWELL:** Within parts five and six of our submissions, prosecution function resides within the criminal law practice of our legal group. Our legal group is fairly large and within that we have specialist units. The prosecution process involves close communication and regular liaison between practice solicitors and inspectors, so that inspectors can be provided with early legal assistance during their investigation. It is quite clear that inspectors need that support so that when they are collecting evidence it is evidence that is appropriate and going to be admissible in court and so forth.

Fatality matters that involve an intensive system of case management within the workplace fatality investigation unit, within the criminal law practice, require active involvement of the solicitor in the investigation process, so as soon as a fatality occurs an inspector is assigned to investigate the case, so is a solicitor from the fatalities investigation unit and they work together to make sure that the proper investigation, if you like, is conducted. Reasons for pursuing a prosecution are generally both punitive and preventative and the aim of a prosecution is to punish offenders and to deter them and other potential offenders. Factors taken into account when determining whether to prosecute include the seriousness of the incident. WorkCover will generally prosecute when a death has occurred, when there has been a serious injury, or where there has been a risk of fatal or serious injury. Other factors taken into account are the objective seriousness of the breach of the OH&S legislation and the degree of culpability of an offender; the need to highlight a common hazard or risk in order to deter other workplaces continuing such practices; and the public's concern about the prevention of workplace injuries and disease and ensuring that offenders are punished and other potential offenders are deterred.

Over the last five years WorkCover has successfully prosecuted an average of 444 prosecutions each year. During last financial year 2002-2003 we conducted 462 prosecutions, with a conviction rate of 96 per cent, which I think is a very positive result. Independent data from the comparative performance monitoring report, which is a nation-wide report, indicates that WorkCover conducts twice as many successful prosecutions as all other jurisdictions combined. I think it is a significant figure and significant achievement as far as WorkCover is concerned.

To ensure that workplace fatalities and serious injuries are prosecuted as efficiently and as effectively as possible, we have assisted in a Ministerial Task Force which was established to develop the protocol between the various agencies which investigate workplace accidents or fatalities. That protocol has been developed with New South Wales Police, the Office of the Director of Public Prosecutions and the State Coroner, as to the manner in which each agency will liaise and co-operate in the investigation of workplace fatalities and incidents of serious injury and, to the extent necessary, in any subsequent prosecution action.

It is very important for us to work closely with those other agencies, most importantly the Police. The

police are always involved in a workplace fatality. They have control of the investigation, if you like, and control of the site from the start, and they will investigate with a view to possible criminal procedure and they will provide a report to the coroner. At the same time our WorkCover inspectors go on site and investigate the circumstances as well. We, of course, are investigating from a slightly different angle and that is the angle of whether there has been a breach of the OH&S Act, so our inspectors have a different focus, if you like, from the police but it is very important that we work very closely with the police in these circumstances and, as I say, the police are always involved from the outset and there is very close liaison.

The protocol which has been developed is really putting in place a written protocol which basically supports the existing practices which have been there in the past, and it is very important that we do have understanding, not only between ourselves and the police, but also with the coroner's office and the DPP in relation to how matters progress, and we now have that in a written form.

**CHAIR:** As you know, our terms of reference specifically refer to certain cases. You may have to provide additional information when you appear at the next hearing. At this point, how did WorkCover deal with the serious accident of Mr Anthony Hampson and the fatality of Mr Dean McGoldrick?

**Mr BLACKWELL:** I will deal with Mr Hampson first. Part 6 of our submission puts in some detail, if you like, what occurred there and we do have additional detail which we can provide. There are some questions which we have been furnished with today which we are quite happy to answer in full, but we need to take on notice some of those questions.

Mr Hampson was injured on 21 June 2001 when he fell while performing work at Gosford High School. It appears that Mr Hampson's employer did not report the incident to WorkCover as required by the Occupational Health and Safety Legislation in place at the time. Mr Hampson lodged a worker's compensation claim on 28 June 2001. Pursuant to its claims management role the insurer assessed Mr Hampson's claim and provided him with support, including weekly benefits, medical and rehabilitation treatment. So it did come to the notice of the insurers and the insurers of the employer and the insurers commenced making payments to Mr Hampson in relation to his injury.

The insurer notified WorkCover of a claim in consolidated data as part of their normal reporting requirements. What occurs there is we have consolidated data that comes into the workers compensation side of our organisation, if you like, which is hundreds and thousands of files that come through on magnetic tape. There is no flagging system in there which actually would say this is something that should have had an occupational health and safety investigation.

At the time of Mr Hampson's accident, the onus was clearly on the employer to report the incident which occurred and he did not, as far as we are concerned, report that and we are taking action in relation to that and I will go into more detail on that in a moment. It is a bit difficult for us in the sense that some of these issues are sub judice and so we may need to go in camera at some stage to talk further about those. As a result of the employer not reporting the incident to WorkCover, and the workers compensation claim notification system in place at that time, we did not investigate that incident. We did not investigate that incident because we were not made aware of it by the employer. It was not reported by the employer as it should have been one at the time.

We now have a new simple notification system that started on 1 September 2002, which cross-references the workers compensation claims with the OH&S reports that come in from the employer. That has increased our capacity to identify and respond to incidents that are not directly reported to WorkCover, so there is a simple notification system which was not in place at the time, which now will obviate that problem arising again.

The employer's failure to report the incident may constitute a breach of the OH&S laws that were in force at the time. WorkCover is concerned that public discussion of this matter at this time may not be in the

public interest because it may compromise current criminal proceedings in relation to these particular matters and other related matters. We can give you an update in relation to that. Court attendance notices in relation to this particular issue have been served last Friday and the matter is now in the hands of the court, that is in relation to failure to notify us of the accident. Had we been notified of the accident properly, of course we would have investigated it.

**CHAIR:** In regards to Dean McGoldrick?

**Mr BLACKWELL:** On 1 February 2000 Dean McGoldrick was tragically killed as a result of multiple injuries sustained when he fell approximately 12 metres from the edge of a roof. Mr McGoldrick was employed by Metal Gutter Fascia Services Pty Limited, trading as Advanced Roofing, the defendant company. The director of Metal Gutter Fascia Services was Mr John Poleviak and he was the defendant director.

Normally with these cases what occurs is that they are referred by the police and by us to the State Coroner and the State Coroner makes the determination as to whether they are going to hold an inquest or not. We would normally wait for that process to take its course, if you like, before we go any further. Once the State Coroner determined that he would not be holding a formal inquest we prosecuted the defendant company, the defendant director, in the Chief Industrial Magistrate's Court. There has been some debate about whether that was the correct court in which to prosecute this case. This court was chosen on the basis that the Industrial Relations Commission and the Chief Industrial Magistrate would be bound by the Fines Act 1996 and previous court decisions which take into account the size of company and the defendant's capacity to pay and therefore would have imposed similar penalties. It was the view at the time, whether the case had been prosecuted in the Industrial Relations Commission or the Chief Industrial Magistrate's Court, the outcome would have been the same. The Chief Industrial Magistrate convicted the defendant company and the defendant director and fined the defendant company \$20,000.

Since July 2002 it has been our policy to commence all workplace fatality prosecutions in the Industrial Relations Commission and that is what we have done. The decision to prosecute in this matter in the Chief Industrial Magistrate's Court, where the maximum fine was low, was taken prior to the implementation of that policy. The policy changed in July 2002, some time ago, and all fatalities now are taken to the Industrial Relations Commission.

**CHAIR:** We heard a great deal of criticism of WorkCover yesterday from witnesses, family members, mothers and so on, concerning the lack of action by WorkCover. Can you explain how does WorkCover liaise with victims and their families?

**Mr BLACKWELL:** Certainly. Part 7 of our submission outlines our process in relation to ensuring that workers and their families are provided with the information, support and security that they need. In the event of serious injury, injured workers are provided with support including weekly benefits, medical and rehabilitation treatment, lump sum compensation, vocation and re-education and retraining. In the event of a fatality entitled dependent family members will receive benefits under the workers compensation legislation. The WorkCover Assistance Scheme provides workers and their families with assistance on a range of issues, including workers compensation, injury management and occupational health and safety.

We acknowledge that clearly workers and their families have a strong interest in the progress of the investigation and prosecution of serious workplace accidents, but recognise that ongoing contact and information can be distressing for those involved. Each case is different, I guess, in relation to how much contact the individual family members would like from WorkCover, and we try to be sensitive, if you like, to that. However, we do know that in many cases people do want to be kept up to speed with what is happening with the prosecution and so as a rule we generally do that. WorkCover recognises that families need to be given a choice on whether they obtain details on the progress of an investigation and prosecution. We try to balance the interests of workers and families in having access to information and their need for privacy, courtesy, compassion and respect for their dignity.

Prior to August 2002 when a fatality was reported to WorkCover, the general manager, who was the CEO at the time, would send the deceased worker's next of kin a condolence letter and that would outline support services available and indicate that they could discuss WorkCover's role and progress in the investigation of the fatality by contacting a nominated team manager. In September of 2002 the former CEO of WorkCover decided that that approach should be ceased pending a review of the publication itself, which was the letter which was sent out, and there was a publication that went with it which talked about what would happen next, et cetera, and consideration of additional counseling and support services. So, we acknowledge that during the review of these practices, which has been ongoing, we have not always struck the right balance between a family's right to privacy and respect and their need for information, so I guess we are saying that in some circumstances we have not provided enough information to families. Regretfully in some instances families should have been contacted earlier concerning the progress of the investigation. However, I would then say that in the far majority of cases family members have been well aware and have been contacted on a regular basis by the inspectors concerned and by the legal team concerned.

More recently we have created a new position in our work place fatality investigation unit, which is within our legal group, to co-ordinate the provision of information and counseling services. We have engaged the Salvation Army to provide interim counseling services to grieving families, prior to the finalization of arrangements for the provision of counseling services over the longer term. The Salvation Army already provides counseling services to inspectors who have, for example been involved in the investigation of a traumatic accident which may have led to serious injury or death. So that service is being extended to the families of deceased workers.

**CHAIR:** We might just have a break if any other Committee members wish to follow on questioning.

**The Hon. DAVID CLARKE:** Just following on that, were you aware that we had taken evidence yesterday?

**Mr BLACKWELL:** Yes.

**The Hon. DAVID CLARKE:** Did the WorkCover Authority have any representative here?

**Mr BLACKWELL:** Yes we did.

**The Hon. DAVID CLARKE:** Who was that?

**Mr BLACKWELL:** Ryan Fletcher.

**The Hon. DAVID CLARKE:** Mr Ryan Fletcher?

**Mr BLACKWELL:** Yes.

**The Hon. DAVID CLARKE:** So you are fully briefed on the evidence that we heard yesterday?

**Mr BLACKWELL:** We have been briefed on the evidence.

**Ms LEE RHIANNON:** Was he here all day?

**Mr BLACKWELL:** I believe he was.



**The Hon. DAVID CLARKE:** Is he here today?

**Mr BLACKWELL:** Yes, he is.

**Ms LEE RHIANNON:** Could you check if he was here all day because we understood he wasn't here all day?

**Mr BLACKWELL:** He was there all day.

**The Hon. DAVID CLARKE:** Now, you say that the WorkCover Authority now has, or certainly since September 2002, in place a procedure to liaise with relatives of the worker who has died as a result of a workplace accident. Is that right, and which as been reported to you?

**Mr BLACKWELL:** Not since September 2002. In September 2002 the existing process was reviewed and ceased. In other words, that was when a letter would go from the general manager or the CEO of WorkCover and it has been reviewed since then. More recently we have looked at the issue of providing counseling and so forth.

**The Hon. DAVID CLARKE:** How recent is that?

**Mr BLACKWELL:** Within the last six months or so.

**The Hon. DAVID CLARKE:** In other words, you now have a definite procedure in place to liaise with the relatives of deceased workers?

**Mr BLACKWELL:** Yes we do.

**The Hon. DAVID CLARKE:** Is that procedure listed in a manual? Is it written? Is it in some format that we can see?

**Mr BLACKWELL:** It is an internal working document at this stage. However, directions have been given that inspectors, for example, will liaise with families and directions have been given that the legal branch will do the same.

**The Hon. DAVID CLARKE:** When you say it's an internal working document, what do you mean by that? Is it a document that's given to all members of WorkCover Authority who would be involved in a matter involving a deceased worker?

**Mr BLACKWELL:** Sorry, we are reviewing the publication which we had previously and that is the document that we are working through.

**The Hon. DAVID CLARKE:** So, you did have a document that was in existence and that is being reviewed at the moment?

**Mr BLACKWELL:** Yes.

**The Hon. DAVID CLARKE:** Right. And updated, as it were?

**Mr BLACKWELL:** Correct.

**The Hon. DAVID CLARKE:** The document that is in the process of being updated, do you have a copy of that here?

**Mr BLACKWELL:** We don't but we can provide a copy.

**CHAIR:** Take that on notice, to supply that.

**The Hon. DAVID CLARKE:** Did you think that that would be a question that you would be asked today, specifically in view of the evidence yesterday, the complaints from relatives that they were not kept updated. Do you feel that that could have been a question that you would have been asked today, that you have available that document?

**Mr BLACKWELL:** I certainly thought that we would be asked questions in relation to how we did communicate with relatives, yes I did. The document hasn't been used for some time, so I didn't draw that conclusion. Otherwise I would have had it here.

**The Hon. DAVID CLARKE:** Is it possible to – how far away is the office where the document is kept?

**Mr BLACKWELL:** Our main office is in Gosford. Whether we have copies of that document in our office in Elizabeth Street, I couldn't tell you off hand. I'm happy to provide that document to you as soon as I can. In fact, we can do that today.

**The Hon. DAVID CLARKE:** So you're not sure – you've got an office in Gosford and you believe it's there and your office in Sydney, you're not sure whether it's kept there?

**Mr BLACKWELL:** Our office in Gosford is our head office. Our office in Sydney, in Elizabeth Street here mainly contains our legal group.

**The Hon. DAVID CLARKE:** Do you have any other offices around New South Wales?

**Mr BLACKWELL:** Yes, we have 25 offices around New South Wales.

**The Hon. DAVID CLARKE:** Is there a copy of these instructions in each of those offices?

**Mr BLACKWELL:** No there is not because that publication was withdrawn.

**The Hon. DAVID CLARKE:** Sorry?

**Mr BLACKWELL:** The publication that we're talking about was withdrawn.

**The Hon. DAVID CLARKE:** When it was in existence, before it was withdrawn, was a copy of it in each of these regional offices of the Authority?

**Mr BLACKWELL:** Yes.

**The Hon. DAVID CLARKE:** But it has since been withdrawn from all of these offices?

**Mr BLACKWELL:** There may be the odd copy in offices but yes, it has been withdrawn.

**The Hon. DAVID CLARKE:** What staff in those 25 regional offices, what instructions have they been following if that document has been withdrawn and there's not another one in its place?

**Mr BLACKWELL:** I might ask John Watson to reply to that if that's acceptable to the Committee?

**CHAIR:** Yes.

**Mr WATSON:** I can inform you in the interim, inspectors have been informed that they should contact their team manager, their line manager in respect of dealing with grieving relatives and that an appropriate response will be given in respect of the contact and we have put in place this arrangement with the Salvation Army so as that we can provide assistance as appropriate and as requested to families as they do and I guess it's fair to note that with a number of these matters that we deal with not all families require contact and in fact some would prefer not to have contact.

**The Hon. DAVID CLARKE:** When were staff informed to do that?

**Mr WATSON:** Staff would have been informed with the withdrawal of the more formal procedure and that has been reinforced in recent months.

**The Hon. DAVID CLARKE:** When they were informed of the new procedure, were they advised verbally or were they advised in writing?

**Mr WATSON:** They were advised verbally through their team meetings. The inspector would have a series of meetings which we use for information flow, both up and down the inspectorate, management structure, to ensure that we can deal with issues that arise quickly and they were informed through those team meetings.

**The Hon. DAVID CLARKE:** You say that there is now a set of written instructions that have been prepared or are now in place?

**Mr BLACKWELL:** They are being prepared.

**The Hon. DAVID CLARKE:** How long have they been in preparation?

**Mr BLACKWELL:** Over the last twelve months.

**The Hon. DAVID CLARKE:** A set of written instructions setting out the procedure to be used in liaising with the relatives of deceased workers has been in preparation for twelve months?

**Mr BLACKWELL:** This is because it doesn't just involve the inspector, it involves the legal branch as well. I might ask Phillip Reed, if that's acceptable, to deal with that side.

**Mr REED:** As a result of the previous CEO deciding that we were no longer going to issue a letter and that publication, there was then a process that was put in place within WorkCover to start looking at what would we do to replace the previous procedure and that process has been going on for about twelve months. At this stage we've been working through that document trying to ensure that it has the right information in it, because it does, did talk about a variety of things that could include coronial enquiries, it talked about court process and there are a number of things that have changed. The protocol that has recently been released deals with those matters and that process started to, I suppose, put in place a formal inter-relationship between the various agencies. So, a series of things have been going on behind the scenes that have precluded us from actually finalizing that document.

**The Hon. DAVID CLARKE:** Setting aside these series of things that have been going on behind the scenes, you were saying that there was a written document in place, written instructions, but that has no longer been used. For how long has that not been used approximately?

**Mr BLACKWELL:** Since September 2002.

**The Hon. DAVID CLARKE:** Since then the staff of WorkCover in their – how many offices do they have in New South Wales – 25 have been relying upon verbal instructions that have been conveyed to them. Would you agree that that's a very unsatisfactory situation to have had, that in something so delicate, something of such great importance, that the staff in 25 offices of WorkCover Authority have had no written instructions, no written procedure to follow in such a very delicate situation, as you have admitted yourselves?

**Mr BLACKWELL:** For precisely the reasons that they are delicate situations, it's important that we get it right, and that's why the original document was withdrawn. There has, in the interim, been a fair expectation, however, that both our inspectorate and our legal people dealing with the families of deceased workers will be in regular contact with those at their own – provided they agree with that – to update them on the progress of the investigation.

**The Hon. DAVID CLARKE:** Who was the person in WorkCover Authority who was in charge of this project to get these written instructions together and published?

**Mr BLACKWELL:** I mean this is something which, because it involves various parts of our organization, the legal branch, which comes into Phillip's area and the inspectorate, which comes under John Watson's area, it's an executive process. In other words we, as an executive group, would determine the final guidelines that are issued.

**The Hon. DAVID CLARKE:** So you have got overall supervision and I understand that but do you have any specific officer in WorkCover Authority whose job it is to liaise with you and to put together this document of instructions to be followed by staff of WorkCover Authority?

**Mr BLACKWELL:** I'm saying again I guess that there are various components of this whole process and really it's my responsibility to make sure those are all brought together. Different people have been working on different aspects, if you like. For example, the aspect in relation to provision of counseling services is something which Phillip, and Narelle Caldwell, who's also here, have been working on.

**The Hon. DAVID CLARKE:** To be included in this written document? You are talking about this written document this in progress?

**Mr BLACKWELL:** Yes.

**The Hon. DAVID CLARKE:** How far advanced is this document that has been in preparation for the last twelve months?

**Mr BLACKWELL:** We have a final draft.

**The Hon. DAVID CLARKE:** You have a final draft. So, when do you anticipate that the final draft will be approved and published and then distributed to the offices of WorkCover?

**Mr BLACKWELL:** I would imagine that the final draft will come to the executive group for sign off within the next three to four weeks and after that it will be printed, published and disseminated to the organization.

**The Hon. DAVID CLARKE:** Look, I have another series of questions I want to ask you specifically about allegations that were raised yesterday by relatives but Mr Chairman, I'll save those till later.

**The Hon. PETER PRIMROSE:** I have a number of questions. One relates to specific matters

involved Mr Jardine. What I may do, Mr Chairman, is just table those and if any aren't asked by other members during the course of the hearing, maybe they can be taken on notice, those that aren't asked.

**CHAIR:** Forward those questions now?

**The Hon. PETER PRIMROSE:** Yes, forward them to you.

I refer to paragraph 5.47 of your submission, and your earlier evidence whilst relating to factors that are taken into account when determining whether or not to prosecute, is there actually a WorkCover policy document?

**Mr BLACKWELL:** I might ask Phillip Reed to respond to that question.

**Mr REED:** There is currently a document that is called Compliance and Prosecution Policy which is on our web site that relates to those decisions and there is also on our web site a document which has recently been put there called the Protocol for Investigation and Provision of Advice in Relation to Workplace Deaths and Incidents of Serious Injury and Prosecutions Arising Therefrom and that is the protocol between WorkCover Authority, police and the Office of Director of Public Prosecutions.

**The Hon. PETER PRIMROSE:** So we can get that off the internet. Can you tell me in relation to what system is in place after the offender is prosecuted, in relation to which section of WorkCover, if any, is responsible to ensure that fines are actually paid?

**Mr BLACKWELL:** If I can refer back to our submission, I guess in Part 8 of the submission the courts determine whether a person or corporation is guilty of an offence, the appropriate level of penalty and whether further time should be permitted to pay the penalty. That is the first issue there.

The State Debt Recovery Office administers the fine enforcement system in New South Wales and is responsible for the receipt and collection of outstanding fines, and penalties are referred to it for recovery action by the courts.

WorkCover has no express statutory role in relation to the enforcement of court imposed sanctions or the recovery of unpaid penalties. It is the courts who set the penalties and the State Debt Recovery Office and the courts which recover the moneys.

Data from 1 July 1995 to 30 June 2003 indicates that there has been a recovery rate of 88 per cent for the \$40 million odd in penalties awarded by the courts for breaches of OH&S legislation. Data from 1 July 1999 to 30 June 2003 would indicate that there has been a recovery rate of 85 per cent for the \$7.2 million in penalties awarded by the courts for workplace fatalities. 85 per cent of the fines which have been handed out in relation to workplace fatalities have been collected.

While we have no role in relation to court fine enforcement or collection we are developing an enforcement protocol between ourselves, the Attorney Generals Department, the Industrial Relations Commission, Local Courts and the State Debt Recovery Office.

The objective of that protocol is to ensure that WorkCover is aware of the status of every fine imposed under OH&S legislation and that the courts and State Debt Recovery Office are taking all possible steps to ensure the fines are paid.

In short, we do not have a statutory responsibility in relation to fine collection, however, it is something which is clearly of interest to us and clearly of interest to the families concerned and we are in the process of negotiating a protocol with those other agencies to ensure we are kept up to speed with what occurs there.

**CHAIR:** If a fine has not been paid up until this point, WorkCover is not directly involved in that recovery?

**Mr BLACKWELL:** We do not have a responsibility to be involved in that recovery in the sense of actually making sure there is a recovery. That is the role of the State Debt Recovery Office. However, our belief is that we need to have a role in discussing with State Debt Recovery and others whether these fines have been paid or not and keeping people and family members informed as to the progress of that. That is something we are working on now and negotiating with the other agencies concerned.

We will not at this stage, unless there is some change in the legislation, have some statutory accountability in relation to the collection of fines around OH&S.

**CHAIR:** We know it is not a statutory requirement. You could say it is a moral requirement because of WorkCover's specific involvement in this area to even keep picking at the State Debt Recovery Office for action.

**Mr BLACKWELL:** I guess in an overall sense we have not had a concern in the main, because of the high levels of fines that have been recovered, so we know 85 per cent have been recovered and sometimes 88 per cent in terms of workplace interest, so there has not been an overall concern that the fines have not been collected because essentially they have in the main. However this is clearly a sensitive issue and clearly one where we need to take more involvement, if you like, in relation to making sure wherever we can that action is taken and families are informed if they have an interest.

**The Hon. IAN WEST:** On the question of debt recovery, may I be so bold as to suggest that there may be more than just a moral obligation. I would assume that in the protocol which you are developing there would be some direct involvement in yourselves being involved in ensuring that the debt recovery occurs, even if you are not physically involved in doing it, otherwise what is the point and what is the incentive of you taking the case in the first place?

**Mr BLACKWELL:** Absolutely. I might ask Phillip Reed to respond.

**Mr REED:** Clearly we are now in a process where we are negotiating with the Courts Administration, Attorney General's and the State Debt Recovery to make sure information flows between the agencies so that we are aware of decisions taken by the courts in terms of how a matter or fine or agreement is entered into for repayment or the payment of the fine, and also the State Debt Recovery Office.

We have had a reasonable amount of contact with State Debt Recovery in the past because we do, within our finance branch, maintain a record of moneys received. It is not as if these moneys disappear and they are not recorded, but the link back to the State Debt Recovery Office and ensuring that our records are identical to theirs, has been an ongoing issue.

We now, through the protocol, believe that we are getting closer to making sure that there is a free and open exchange of information between those parties.

**The Hon. IAN WEST:** On this particular issue would it not be a fundamental part of the liaison with the family members, the question of enforcement of any prosecution that you have received?

**Mr BLACKWELL:** I think that is an issue which needs to be discussed with the family members and they have to determine, I guess, whether they have an interest in keeping up to speed with that and if they do, clearly we will provide them with the information.

**The Hon. IAN WEST:** No, I was suggesting in the enforcement protocol that you are developing,

would it not also be part of that protocol, the question of the liaison with family members, as part of the process?

**Mr BLACKWELL:** I think, yes, I would have to take that on notice. Clearly one of the issues that we have, I guess, is that families, and I believe that this has been the case in the past, in the main have been communicated with in relation to the progress of a prosecution et cetera.

After the prosecution has finished and the fines have been ordered, it has not been our practice, I guess, to pursue the recovery of the fines et cetera. Now we are needing to look at that and that is something which is appropriate for us to do, because I think your point is that if fines are awarded and they are not paid, then what is the point of awarding the fine in the first place. So we are going to take a more active role in relation to that.

**CHAIR:** It seems as if there is a need for a unit in WorkCover that specialises in that area, especially with fatalities, the family liaison unit or something like that, as a priority rather than saying no-one is responsible now.

**Mr BLACKWELL:** I agree, and that is why I have established a position within the fatalities unit to coordinate that information that goes to families, not only information, but whether they require counselling services et cetera, so I think what has happened in the past has been that there has been a variety of parts of the organisation which have communicated with families during the process. It might have been an inspectorate. It might have been the legal team when it goes to prosecution.

I think that by establishing the single position within the fatalities unit, that there will be better coordination of the services and advice provided to families.

**The Hon. PETER PRIMROSE:** Is the Roads and Traffic Authority ever involved in collecting debts in terms of the protocol?

**Mr REED:** If I could answer that, the Roads and Traffic Authority get involved by the State Debt Recovery Office in a sense of things like - I am trying to get the right words - it is in our submission under section 8 where we are trying to define the State Debt Recovery Offices role, where there may be suspension of a driver's licence or a vehicle registration. As far as I am aware it is the role of the State Debt Recovery Office to coordinate what action is taken once it passes from the court process, because the courts themselves can reach agreement with defendants about the repayment of fines but I do not think the Roads and Traffic Authority are actually involved in any debt recovery.

**The Hon. PETER PRIMROSE:** I think out of this it would be good to have a flow chart in terms of your protocol about who is actually involved in the process of decision making for debt recovery, but that is something that we could give on notice for when you come back next time.

The issue was raised yesterday about the length and time taken for prosecutions. Do you have any statistics? I may have missed it in your report, if they are there, about the average length taken for prosecutions. I mean median length of time.

**Mr BLACKWELL:** We have not provided that in the submission, but we can provide that.

**The Hon. PETER PRIMROSE:** You mentioned police involvement and I realise this would be a matter for the DPP but can you maybe give us a rough figure, say to the nearest dozen, how many employers have been successfully prosecuted in New South Wales for murder or manslaughter in relation to a fatality in the workplace?

**Mr BLACKWELL:** In which jurisdiction?

**The Hon. PETER PRIMROSE:** In relation to the criminal law. You mentioned involvement of the police. In relation to the police, say to the nearest dozen, how many employers have been successfully prosecuted in New South Wales for murder or manslaughter, to those two criminal charges, in relation to a fatality in the workplace?

**Mr BLACKWELL:** None.

**The Hon. KAYEE GRIFFIN:** You mentioned you had 25 officers around New South Wales. How many inspectors would you have altogether across the State?

**Mr BLACKWELL:** 301 inspectors across the State.

**The Hon. KAYEE GRIFFIN:** Is that the full complement?

**Mr BLACKWELL:** There are 301 positions. How many are occupied at the moment, I might ask John Watson.

**Mr WATSON:** I believe we have approximately five vacancies at the moment.

**The Hon. KAYEE GRIFFIN:** When you are recruiting inspectors into WorkCover what sorts of skills and qualifications do you look for?

**Mr BLACKWELL:** I might ask John Watson to respond to that. It is his area.

**Mr WATSON:** We have in the past undertaken an annual recruitment and we look for a range of backgrounds, both academic qualifications in the occupational health and safety area or injury management or workers compensation area, as well as industrial background appropriate to the particular industry we have a vacancy in.

Occasionally we need to take in staff who have a very practical background, say in the construction area, and we will employ those staff. It varies on the particular vacancy. We find that we get a very large number of applications. It is in the order of 1,000 applications for each time we advertise, and that brings us a very large pool of very highly qualified inspectors, or potential applicants, from which we select the appropriate number, through a fairly extensive program of interviews and psychological testing and some practical testing to ensure we get the best applicants into our inspectorate.

Once we have started they go through quite an extensive training program to bring them up to speed before they are fully functional in the field as an inspector.

**The Hon. KAYEE GRIFFIN:** How many industries do you look at?

**Mr BLACKWELL:** WorkCover has jurisdiction across all industries in New South Wales, so every workplace in New South Wales falls under our jurisdiction, the full range of industries, so we have seven industry teams that we have broken the inspectorate up to but all workplaces and all classifications under the coding of workplaces are covered under those industries.

**The Hon. KAYEE GRIFFIN:** Just one more question. In terms of once you have recruited the inspectors, how long does the training last before they go onto the job?

**Mr WATSON:** WorkCover has been instrumental in developing a set of national competencies for inspectors which form the basis for a qualification known as Government Administration (Workplace) Inspection. It's a diploma and there's also an advanced diploma on those competencies. We run a



programme of eighteen months training where inspectors do a mixture of in class training and in field training. They receive their authorities about the eighth month mark, which allows them to operate as an inspector in the field under very close supervision. But it's a very extensive programme and it has been noted as being world class in respect of how we actually convert an applicant, if you like, and their entry to WorkCover to a professional inspector.

**CHAIR:** Just picking up that question. We've had some criticism that WorkCover inspectors have no practical knowledge. Out of the 301, how many would actually have practical knowledge, leaving aside their academic ability and so on, their practical knowledge of working in the industry, for example?

**Mr WATSON:** In respect of an actual number I wouldn't be able to answer but can I say that we do look for industry experience as being one of the components that we consider when we employ those people.

**CHAIR:** So, would you employ, have you got inspectors who have no industry experience? That's what we've been told.

**Mr WATSON:** I don't believe we have but we could provide information on that aspect.

**CHAIR:** Could you check your list of inspectors for us.

**Mr WATSON:** Certainly. I can take that matter on board.

**The Hon. IAN WEST:** Can I ask then, how many work sites have you got in New South Wales that the 301 inspectors look after?

**Mr WATSON:** The number varies a little bit depending which statistical data base you use but it seems to be in the vicinity of 400,000.

**The Hon. IAN WEST:** And in looking after those sites they have a regimented regime of visits to undertake and over what period of time would they visit their total number of sites?

**Mr BLACKWELL:** The detail of that I might refer to John Watson. You know, we have a range of activities in relation to the work of the inspectorate. They visit unannounced from time to time. They certainly follow up all complaints that they receive, all of those are followed up. The inspectorate has a range of roles, including the education on the prevention side of things, as well as the inspection of workplaces, as well as blitzes that we have on particular issues, so we might have a blitz on construction sites in relation to falls prevention, for example, and inspectors also respond to complaints. They respond to every single complaint that we get and they will issue a range of penalties of course which – or actions which inspectors can take in relation to those.

**The Hon. KAYEE GRIFFIN:** Mr Chairman could I perhaps ask if some, given that there are seven groups, seven teams, could we get some further information of those different teams?

**Mr BLACKWELL:** What sort of information?

**The Hon. KAYEE GRIFFIN:** Just how they're broken up in terms of industries?

**CHAIR:** Like an organizational chart of groupings.

**Mr BLACKWELL:** Yes.

**CHAIR:** You take that on notice?

**Mr BLACKWELL:** Yes.

**The Hon. IAN WEST:** Could I ask on notice, could we get a copy of the job allocations of the inspectors?

**Mr BLACKWELL:** The what, sorry?

**The Hon. IAN WEST:** The job descriptions, what they are required to do, in a week. I don't mean –

**Mr BLACKWELL:** You don't mean a job description, you mean what they would – their work sheet. What they would be expected to do within a week?

**The Hon. IAN WEST:** What they would be expected to do in a day. I assume you have a forward work plan?

**Mr WATSON:** Yes we do. I guess we probably should, if I may just provide a bit of an overview of how the inspectorate work is undertaken and I think that might give some clarity. Depending on the industry, we have the inspectorate broken up into various, I guess, activities, that the inspectorate as a whole would undertake. For example, in the construction industry, we have an investigation arm in the construction team which undertakes investigation of incidents, accidents that occur in the workplace. We don't like referring to them as accidents, we think that it really isn't an accident, it is preventable. So, we undertake those investigations, quite detailed investigations.

We have a response team that deal with – within the construction sector – deal with complaints that we receive about workplace activities, where people might wish to raise a complaint with us, that a particular site is unsafe or particular issues have been uncovered or they're concerned about the activities of their neighbour – if they've got an owner/builder beside them or whatever – so we would deal with those sorts of matters through the response arm.

The third component of the inspectorate in that particular industry is the intervention arm. We develop particular programmes to address particular hazards and Mr Blackwell has already referred to the prevention programmes and blitzes and those sorts of activities and it is in that area which those are developed and then rolled out by that part of the inspectorate to address particular hazards within a particular sector, and that's expanded into the country areas, regional New South Wales, through the country north and country south team and they have regional offices and the inspectors do the same process of running a blitz and looking at the same issues and having a consistent response to those issues.

**Ms LEE RHIANNON:** I want to return to some of the issues that you have already covered. Yesterday when Mrs McGoldrick spoke she gave evidence about how she was unaware that the fine had not been paid until a representative of the CFMEU told her and she explained how that added to the distress that she went through.

So, I think some of us were left with the impression that there could be many fines that could be unpaid. Do you have any information on, say over the past twenty years, how many fines have been paid and what amount has been paid?

**Mr BLACKWELL:** We can provide the – not over twenty years, but we can certainly provide information going back about five years and in relation to that, as I said earlier, 85 per cent of fatality fines have been paid, and 88 per cent of other fines have been paid. So, we are happy to provide more detailed information to you.

**The Hon. PETER PRIMROSE:** May I just ask, when you say paid, does that mean resolved? I am just thinking about those who declare themselves bankrupt. I mean a company that declares itself bankrupt, is that included in the settlement?

**Mr BLACKWELL:** The 88 and 85 relate to the dollars collected.

**Ms LEE RHIANNON:** Just going back to the issue of yesterday, what is the name and the position of your representative who was here yesterday?

**Mr BLACKWELL:** Ryan Fletcher, and if I can just, if I may deal with his presence or otherwise, I have been informed that the earlier statement that he was here for the whole part of the hearing is not correct. Apparently the Committee broke and reconvened. He was unaware that it had reconvened and he did miss the evidence presented by Mr Keenan, Mr Jardine and Mr and Mrs Reece.

**Ms LEE RHIANNON:** Thank you for clarifying that. What is his position?

**Mr BLACKWELL:** He is the same position as manager of state and national policy unit but he is currently, what we have done is seconded him to work full time at the moment in relation to co-ordinating our response to the inquiry.

**Ms LEE RHIANNON:** Do you think his position has got a seniority that warrants the importance of this Committee in terms of workplaces, in terms of the information he can feed back to you and just also to reflect your response to this Committee?

**Mr BLACKWELL:** Mr Fletcher's responsibilities in relation to this Committee, as far as I am concerned, are to attend the meetings of this Committee, to listen to the evidence and to accurately report back to myself and the executive what evidence has been given and it's up to myself and the executive to determine our response to that, to any issues that are raised during the evidence that is given.

**Ms LEE RHIANNON:** I would like to move on to the case of the death of Mr Jardine. Mr Geoffrey Jardine died at Mt Ku-ring-gai on 3 July 2002. Do you have a WorkCover report into his death? While we are just waiting, if you do have that report, can it be made available to the Committee?

**Mr BLACKWELL:** The investigation has been completed into that death. The file has been received in our legal branch with a view to prosecution. I am unaware at the moment as to whether the coroner actually held an inquest or decided not to hold an inquest and therefore we are awaiting that information at the moment, but an investigation into that death has occurred.

**Ms LEE RHIANNON:** Hasn't occurred?

**Mr BLACKWELL:** Has occurred.

**Ms LEE RHIANNON:** The WorkCover investigation?

**Mr BLACKWELL:** Yes.

**Ms LEE RHIANNON:** So is it possible for the Committee to receive a copy of that report?

**Mr BLACKWELL:** That is the report which has gone to our legal branch and I would have to take advice on whether we could provide that or not because it could constitute a legal document.

**CHAIR:** It could be subject to privacy you mean?

**Mr BLACKWELL:** Yes.

**Ms LEE RHIANNON:** Are you are aware that there is evidence that there was tampering at the scene of the incident, by placing a hard hat and a vest near the deceased's body?

**Mr BLACKWELL:** That is something we have to take on notice. John might –

**Mr WATSON:** Yes, I would have to take that on notice. I'm not aware of that.

**CHAIR:** Just referring back to the previous point of the report, you can supply a document to us which are, on the basis that they remain confidential, only to members of the Committee. So you've got different categories, when you consider that. It does raise a problem though that if there was no representative from WorkCover when some very important evidence was given at that point.

**Mr BLACKWELL:** Yes, it was my intention that there would be a representative of WorkCover here the whole of that, the whole of your deliberations yesterday. Unfortunately, that didn't occur.

**CHAIR:** We do have a schedule of our timetable for each day, which is a public document. It means you'll have to study the transcript so if we make that available.

**Ms LEE RHIANNON:** Sorry, I missed that Mr Chairman, did they say they will put the report in?

**CHAIR:** He is considering under those categories whether it's made public or confidential or not at all.

**Ms LEE RHIANNON:** When would you be able to tell us your decision on that?

**Mr BLACKWELL:** Within twenty four hours.

**Ms LEE RHIANNON:** Thank you. There is other specific questions on the Jardine case but certainly I will consider putting those on notice. Mr Primrose has already indicated he will do that.

**CHAIR:** He has listed a number of questions. Have you seen those?

**Ms LEE RHIANNON:** Yes.

**CHAIR:** That may have traversed some of the matters you wanted to raise.

**Ms LEE RHIANNON:** Yes, I think that that is appropriate. I would just like to go to the case of Mr Hampson at Gosford High School, that you spoke about briefly when you started.

**Mr BLACKWELL:** You talked about what happened when the accident occurred. Did WorkCover inspect the site prior to the accident at any stage?

**Mr BLACKWELL:** We would have to look at our records to determine that

**Mr WATSON:** No we did not.

**Ms LEE RHIANNON:** Is that surprising for you considering it is a public work site. I understood it was a fairly large site?

**Mr WATSON:** No, it's not surprising.

**Ms LEE RHIANNON:** Can you explain please?

**Mr WATSON:** The way, WorkCover doesn't have a role to inspect a construction site before it commences or to give approval for that site to commence, and the way in which the legislation is framed, employers have responsibility for workplaces in New South Wales and for providing safe systems of work to carry out that workplace.

It may be that that site could have come under our notice if we were carrying out a blitz or a preventative programme that I spoke about earlier, but that particular site did not come to our notice.

**Ms LEE RHIANNON:** When your inspectors go onto a site, and I'm talking here obviously because many of the cases we have heard have concerned people falling off roofs. Do your inspectors actually go onto the roof or do they look from the ground?

**Mr WATSON:** It depends on the nature of the investigation that we are conducting at the time but we certainly wouldn't want to be placing our staff at risk as we are an employer who is responsible under the Occupational Health & Safety Act as well, so we wouldn't be placing ourselves at risk but where it's appropriate, yes, they would proceed onto the roof but that would again be governed by the nature of the investigation they are conducting.

**Ms LEE RHIANNON:** So do you see that would be a limiting factor, and I appreciate you have difficulty sending your own employees up onto these roofs? For instance, Mrs Exner, the mother of Joel Exner yesterday described how her son was delivered by a cherry picker and he had to jump from the cherry picker onto the roof. So, how the team – I obviously don't have any expertise in this but from listening yesterday it would seem that this would obviously confront you with a problem. How do you inspect sites when your own inspectors can't get up to look at them? Have you discussed this? How do you handle it?

**Mr WATSON:** Where access is an issue we would seek access through the cooperation of the employer, or New South Wales Police, or indeed by us actually hiring the equipment to make that necessary. That is a very unusual situation, I should say. Usually the employer would provide the necessary equipment under the direction of the inspector.

**Ms LEE RHIANNON:** To quantify this, how often do your inspectors go on to roofs to inspect them? We have a clear problem with people falling off roofs. How often do they get up to on roofs?

**Mr WATSON:** I couldn't answer that question, how often, what the frequency is.

**Ms LEE RHIANNON:** Is this something you have discussed? Clearly we have people falling off roofs. Have you discussed it internally how you handle it as an organisation?

**Mr BLACKWELL:** When inspectors do visit work sites, clearly one of the things they would look at on construction sites is whether there is safe working at heights. That is something that we are aware is a very dangerous issue and sensitive issue as well. Certainly the inspectors would be looking at whether there was safe working conditions, if you like, and processes in relation to working on roofs and that would include properly documented processes, proper equipment being provided and, if you like, a visual inspection as to whether those working on the roof at the time of the inspector's visit were wearing the correct harnesses et cetera.

**Ms LEE RHIANNON:** To move on to another matter, when you do your inspections I would

imagine that you would often find that it could appear to your inspectors that a number of laws have been broken. What brought to this mind was again the evidence yesterday from Mrs Jardine and her daughter, when she spoke that they understood that the driver of the machinery that was resulted in the death of her husband was from overseas and could have not had a work permit.

When you find out information where there could be illegal immigrants working, or where the tax laws may be broken, do you inform the other departments like the department that looks after taxation, the Department of Immigration, that the laws have been broken, or you have suspicions that it could have been?

**Mr BLACKWELL:** We have in the past undertaken joint operations on investigations with the Department of Immigration, for example, in relation to possible illegal immigrants working, and if it is quite apparent that there may be a case where immigration laws have been breached, or whatever, we would make a referral to the necessary department in those circumstances.

That is not our prime responsibility in relation to visits to workplaces. Our primary responsibility is around the Occupational Health and Safety Act, as opposed to any federal legislation.

**Ms LEE RHIANNON:** I appreciate that, but you are saying your default position if you believe there is illegal immigrants there, or the tax laws are being broken, that the information would be passed on. Is that the default position, that your inspectors know that is part of their job?

**Mr BLACKWELL:** I would not say it is part of their job. If they have a reasonable suspicion then they should be alerting management to that and we should be contacting the other agencies concerned. It is not part of our job to be policing immigration laws.

**Ms LEE RHIANNON:** I was not suggesting that.

**Mr BLACKWELL:** We have undertaken joint investigations with the Department of Immigration in the past and if there is something that comes to our notice which we believe should be brought to notice, then it is.

**The Hon. DAVID CLARKE:** Mr Blackwell, getting back to the question of payment of fines, I think you have indicated that the collection rate is something between 85 and 88 per cent, depending on the category. Is that in dollar terms or the number of individuals and companies who have been convicted?

**Mr BLACKWELL:** That is in dollar terms.

**The Hon. DAVID CLARKE:** So theoretically in dollar terms you could have in dollar terms 85 per cent of fines collected, but only 30 per cent of those who have been convicted, companies or individuals, have paying their fines.

**Mr BLACKWELL:** I very much doubt that.

**The Hon. DAVID CLARKE:** Do you have any figures one way or the other?

**Mr BLACKWELL:** Not to hand, but certainly I would be happy to have a look at that issue and find out the percentage of employers, if you like, where the fines have actually been collected from.

**The Hon. DAVID CLARKE:** You would agree that would be a matter of some importance?

**Mr BLACKWELL:** Yes I would.

**The Hon. DAVID CLARKE:** There could be a discrepancy between the dollar percentage collected

and the number of individual corporations who have actually paid their fines?

**Mr BLACKWELL:** My own view, and without any data to back it up, is it is possible but not probable.

**The Hon. DAVID CLARKE:** Would you take that on notice and get the figures for the past five years?

**Mr BLACKWELL:** Five years.

**The Hon. DAVID CLARKE:** Just on the question of these fines, what is the situation where you have an individual who, through a company structure, has been repeatedly fined for breaches, and then the company has closed down, he goes on and he sets up another company. Have you had situations where that occurs?

**Mr BLACKWELL:** We are clearly aware that companies do go into liquidation. There is, I think, a supposition that companies will go into liquidation to avoid paying their fines. That may be true. We do not have any direct evidence of that. I would have thought that given the percentage of fines which actually are collected, that that does occur, but that is in a very small number of cases. We do not have any evidence that that has in fact occurred.

**The Hon. DAVID CLARKE:** We had an indication yesterday that the company that was responsible was prosecuted in respect of the death of Mrs McGoldrick's son, that company went into liquidation. What I am getting at is the individual who was behind that company, whether he went on and is continuing in the industry in his own name, or under some other company name.

Do you think that would be a matter of some importance if someone was continually breaching the regulations and was convicted, and then was able move from company to company and continue with these very bad practices?

**Mr BLACKWELL:** It is obviously an important issue and those people will still be subject to the law, of course, and still subject to fines and prosecution wherever they go, and certainly in relation to prosecution, if they are prosecuted again, then the magistrate or whoever is hearing the case will take into account their previous record and their previous prosecution.

**The Hon. DAVID CLARKE:** Except that record may not become apparent if that person has in fact been operating under different company names and the company has been prosecuted, rather than the individual.

**CHAIR:** We would be happy, if it would help you, to swear in the person responsible, if you would like that person to answer the question.

**Mr BLACKWELL:** I might ask if we can swear in Bernadette Grant, who is the director of our legal branch.

**BERNADETTE JUNE GRANT,** solicitor, director of the legal group of WorkCover, sworn and examined:

**CHAIR:** Just clarify your role in WorkCover?

**Ms GRANT:** I am director of the legal group in WorkCover. In terms of companies and directors, we have a policy of actively prosecuting directors and such that if a company does go into liquidation, we would have a conviction against the director recorded on their prior convictions and prior to sentence hearing

we actively search the data base and have that information available to the court both for companies and directors.

**The Hon. PETER PRIMROSE:** Therefore WorkCover, when a financial penalty is imposed, has no difficulty in identifying the person or people responsible for the performance, or the responsibility for that crime?

**Ms GRANT:** We record convictions and the conviction will be against the defendant for a particular action, against the company and each of the directors who have been prosecuted.

**The Hon. PETER PRIMROSE:** It is the directors of the company who WorkCover believes are responsible?

**Ms GRANT:** There is a deeming provision under our legislation. If a company contravenes a provision in the act, the directors and other persons concerned in the management of the corporation are deemed to have committed the same offence.

**The Hon. DAVID CLARKE:** Is that always the case? Is it always recorded that there is a conviction against the directors?

**Ms GRANT:** If the directors are prosecuted and assuming the matter proceeds to finality and there is a conviction, that record will be recorded on our database.

**The Hon. DAVID CLARKE:** Do you always in every instance prosecute the directors as well as the company?

**Ms GRANT:** I cannot say it happens in every instance but there has been a policy of doing that where possible, but there have been instances where directors have not been recommended for prosecution.

**The Hon. DAVID CLARKE:** Theoretically you could have a situation where an individual has been a director of a number of different companies that have been prosecuted and he has never been personally prosecuted?

**Ms GRANT:** That in theory is possible. In practice it is unlikely.

**The Hon. DAVID CLARKE:** Do you have in place or do you agree that there should be a register kept to keep a check on this, that you do not have a situation where an individual is going and setting up companies, and they are prosecuted and they go into liquidation?

**Ms GRANT:** We are conscious that in the construction industry that is a practice and that is why there is an active policy of prosecuting directors.

**The Hon. DAVID CLARKE:** Do you keep a register of the names of directors of the companies that have been prosecuted?

**Ms GRANT:** We have a prior convictions data base. It records all convictions against corporations and directors.

**The Hon. DAVID CLARKE:** Do you also have a register of the directors of companies that have been prosecuted where the directors have not been prosecuted?

**Ms GRANT:** No.



**The Hon. DAVID CLARKE:** Do you think that would be a wise addition?

**Ms GRANT:** You could set that up but there must have been, I would say, a very good reason why we would not have prosecuted a director because we would look to that generally as being the case. If we have not prosecuted a director for a particular matter I suspect there would be a good reason for that.

**The Hon. DAVID CLARKE:** If you did not have a register there would be no way of you knowing that there was a director of five companies that have been prosecuted that have all gone into liquidation rather than pay fines, because you would have no record of that person, would you?

**Ms GRANT:** Not unless they are convicted.

**The Hon. DAVID CLARKE:** I am talking of those who have not been convicted. Would it be appropriate for you to keep a register of directors of these corporations that have been fined, but they personally have not been fined, to see whether there is a pattern of behaviour?

**Ms GRANT:** It is certainly something that we could look to doing.

**The Hon. DAVID CLARKE:** You will actively look at that?

**Ms GRANT:** Yes.

**Mr BLACKWELL:** There is an issue on that, in the sense that somebody has not been convicted therefore there are some other issues, I believe, in relation to whether even though we would have prosecuted them, or attempted to prosecute them, if we believed it was possible to get a conviction. If we have not undertaken that it means we do not believe, for whatever reason, that the directors were culpable or whether we could prove that they were culpable.

Holding a register of directors who may or may not have been involved in other companies is something we have to look very closely at before we agree to do that. We are clearly aware where directors have been convicted, and we do know from our records that that has occurred, and so we will raise that in the court if necessary.

**The Hon. DAVID CLARKE:** What do you do in a situation where an individual has a series of convictions against his name? Can there be any restrictions placed on him operating in that industry? Power do you have any power?

**Ms GRANT:** Not as such. I suppose it is a risk that they take if they offend again. The penalties under the legislation for previous offenders do provide for a gaol sentence.

**The Hon. DAVID CLARKE:** What I am getting at is, that is fine, they can serve the gaol sentence and they are out. What do you do if you have an individual who may have 10 convictions for breaches of safety regulations and he continues to operate in the industry? He might be running an electrical business. People have been electrocuted. Is there any restriction on him continuing in that industry?

**Mr BLACKWELL:** We have no powers in relation to that.

**The Hon. DAVID CLARKE:** Are you aware of any other authority that has power in this area?

**Mr BLACKWELL:** No.

**The Hon. AMANDA FAZIO:** I just wanted to ask, you keep this information about incidents that occurred in New South Wales. Do you share this information with other States and do they give you

information about people who might have been convicted of unsafe work practices a number of times, say in Queensland within companies that have moved to New South Wales. Is that information shared?

**Ms GRANT:** No, our data base is concerned with offences under the New South Wales legislation, because each State has their own legislation. I have heard of a proposal to have a national data base established but the difficulty would be that because we have different pieces of legislation in place that you might have a conviction in one State which doesn't necessarily translate into a sort of culpability in another State.

**Mr BLACKWELL:** I think there are all sorts of privacy issues surrounding this as well which I think would preclude some of that information being transferred from State to State.

**The Hon. AMANDA FAZIO:** But if you look at some of the border areas, say the Tweed area, Gold Coast, where people regularly work in one State and live in the other and companies in, you know, Tweed Heads and Queensland. The same thing happens down in Albury/Wodonga. Surely it would make some sense to have some sort of information sharing with other agencies, similar agencies, trading agencies do have the information of companies that have been convicted and police certainly swap information – apart from privacy concerns, are there any other good reasons why we are not doing that now?

**Mr BLACKWELL:** Perhaps John Watson could answer that.

**Mr WATSON:** If I could just comment about our interactions with our brother and sister jurisdictions either side of the Queensland and Victorian borders. We have run both in the Queensland border and on the Victorian border, joint activities with inspectorates from Queensland and Victoria respectively were we have had inspectors from New South Wales and inspectors from, for example, Victoria, working together in the construction industry in those border areas who deal with exactly the nature of the companies that operate on both sides of the border, so there is an understanding, a shared understanding about the provisions of legislation in both States and the requirements that are in New South Wales are similar to those requirements in Victoria, so that particular employers actually deliver safe places of work in those border town areas.

We do the same thing up in the Queensland border, where the inspectorates actually operates together and has regular interactions with each other. For example, we have just done a programme in the cotton industry with Queensland, we have a joint project dealing with the cotton industry up in the Queensland/northern New South Wales border area.

So we do have that interaction in the field with the inspectorates, as well as with the heads of jurisdictions, we meet formally across Australia with all jurisdictions at least three times a year and we discuss issues related to how enforcement and how compliance activities can be carried out to deal with issues that emerge.

**CHAIR:** Just a moment ago you mentioned the director could have been gaoled. Are there any records of any employer being gaoled for, say, a fatality in the workplace?

**Ms GRANT:** I'm not aware of any director being gaoled. We can check our references.

**The Hon. CATHERINE CUSACK:** Can I just clarify on the interstate issues. If I got a parking ticket, the authorities in the other States would be entitled to that information I had a parking ticket. If I was running a company and somebody was killed and I have breached sections of the Act which led to the death of that person, authorities in other States would not be entitled to that information. Is that the case?

**Mr BLACKWELL:** I am not sure of that. That is an entitlement and I will have to take that on notice I guess.

**The Hon. CATHERINE CUSACK:** If I didn't pay my fine for my parking ticket my driver's licence would be cancelled by the RTA and every other State in Australia would recognize the fact that I don't have a driver's licence. If I didn't pay my fine for breaching parts of the Act that led to the death of a person, there would be no restriction on my ability to operate anywhere in Australia. Is that the situation?

**Mr BLACKWELL:** That is the current situation.

**The Hon. CATHERINE CUSACK:** Can I ask, how many people have been imprisoned as a result of prosecutions by WorkCover?

**Mr BLACKWELL:** We don't believe any have.

**CHAIR:** He just answered that.

**The Hon. CATHERINE CUSACK:** How many fines have been issued in the last twelve months?

**Mr BLACKWELL:** We would have to take that on notice.

**The Hon. CATHERINE CUSACK:** How many breaches of the Act have there been that you have identified in the last twelve months?

**Mr BLACKWELL:** In all industries?

**The Hon. CATHERINE CUSACK:** Yes.

**Mr BLACKWELL:** Yes, okay, we would have to take that on notice.

**The Hon. CATHERINE CUSACK:** The number of cases that are actually contested once you have identified a breach?

**Mr BLACKWELL:** Again, we would have to take that on notice. Sorry, what do you mean by contested?

**The Hon. CATHERINE CUSACK:** Well, surely you have got the situation where WorkCover has identified a breach of the Act, it doesn't have to go to court to be protected – or does that not happen?

**Mr BLACKWELL:** I am sorry I don't understand what you are asking.

**The Hon. CATHERINE CUSACK:** If you enter a workplace and you identify a breach of the Act.

**Mr BLACKWELL:** Yes.

**The Hon. CATHERINE CUSACK:** And fine the company.

**Mr BLACKWELL:** And what, sorry?

**The Hon. CATHERINE CUSACK:** WorkCover fines the company. The company has the

option of contesting that in court?

**Mr BLACKWELL:** Correct, yes.

**The Hon. CATHERINE CUSACK:** So, I am trying to get a feel for how many are being contested in court, not a percentage because I am actually looking for actual numbers. The figure of 85 per cent fatality fines are paid, how many fines are you talking about overall?

**Mr BLACKWELL:** Yes, we have already that on notice.

**The Hon. CATHERINE CUSACK:** Can we have the numbers?

**Mr BLACKWELL:** Numbers as opposed to percentages?

**The Hon. CATHERINE CUSACK:** Yes.

**Mr BLACKWELL:** Yes.

**Ms LEE RHIANNON:** I would like to take up the case of Mr Gregory John Reece, who died at the Newcastle BHP former Steel Works in September 2002. I understand WorkCover has finished its investigation into this tragedy and I also understand that Inspector Steve McMartin was the inspector supervision the demolition site but that he went on leave at the end of August in that year and he didn't return to work until the end of September and in that intervening time this accident occurred. Who was supervising the demolition site for WorkCover when he was on leave?

**Mr BLACKWELL:** We will have to take that on notice.

**Ms LEE RHIANNON:** Also, there was a previous demolition, there was all that demolition going on after BHP moved out of Newcastle. There had been a previous demolition at a place called the Ore Bridge, BHP No. 5 Ore Bridge and that had been, I understand, deemed as quite unsafe and many people have said that these incidents were quite similar.

It took you 23 months to begin that investigation into the demolition of the No. 5 Ore Bridge and that actually coincides your commencement of your investigation with the fatality that occurred at this next demolition. Why did you take so long to commence your investigations?

**Mr BLACKWELL:** I will have to that that on notice. I don't have that detail.

**Ms LEE RHIANNON:** I will ask you a couple more questions and then hopefully we can get some information. What sort of concern – we had the relatives here yesterday speaking about how their son was killed and they explained that there was a video that was leaked to the Newcastle television that showed this early demolition. Not the one where their son was killed but at the Ore Bridge and again that was just prior to you commencing your investigation into that first demolition. So, their question to us was, was it a coincidence or was it because it became public, this video information was released and shown publicly and our son's death that prompted WorkCover to at last take action?

**Mr BLACKWELL:** Again, I will have to take that on notice.

**Ms LEE RHIANNON:** Well, maybe you can talk in the general, because it has been clear that WorkCover would appear to be over worked at times. Do you judge, do you determine the actions that you will take according to what is going on publicly with regard to scrutiny of WorkCover?

**Mr BLACKWELL:** No. Investigations of serious incidents which lead to serious injury or in

fact death should commence immediately, regardless of what's occurring in the media or in the public perception.

**Ms LEE RHIANNON:** Both Mrs McGoldrick and Joel Exner's mother yesterday said that in the past week they have had an approach from WorkCover and they felt that that wouldn't have happened if this inquiry wasn't being held. What's your response to those comments?

**Mr BLACKWELL:** That is not the reason that Mrs McGoldrick and Joel Exner's mother were contacted. The reason was we were about to commence an advertising campaign in relation to falls from heights. It was our view that that would be a sensitive issue for the relatives of those two boys and we wanted to alert the relatives to the fact that that was going to occur. Also I believe that updates were given to Joel Exner's mother in relation to the prosecution, which was going to the press, and so it was indicating to people what was occurring at the time.

**Ms LEE RHIANNON:** Just to go back to the case of Gregory Reece, that is the young man who died up in Newcastle, BHP demolition. Are you aware of a Terry Perkins who used to work for WorkCover, a specialist safety inspector?

**Mr BLACKWELL:** We are aware that he did work for us. He wasn't a specialist inspector, he was an inspector.

**Ms LEE RHIANNON:** Are you aware of the comments that he has made about the stress that he was under because of the – he felt that he was put into an area of responsibility where he didn't have sufficient training. Are you aware of those comments that he has made?

**Mr BLACKWELL:** Could I ask John Watson to respond to that.

**Mr WATSON:** I am aware of Terry Perkins and his employment with WorkCover and his departure from WorkCover under a medical retirement. Terry had made that claim that he had not been – I am aware that he made the claim that he had not been appropriately trained to carry out the work that he had been asked to do. Terry had extensive experience as an inspector. He commenced his employment as a specialist in plant but later in his career he moved into more general field activities based at that time at our Toronto office and I am aware that he made that claim repeatedly. He was provided with one on one training to up-skill him in the areas he believed he needed to be up-skilled where he felt that he didn't have adequate basis for carrying out the duties of an inspector.

**Ms LEE RHIANNON:** Mr Chair, I have more questions on that but it appears that Mr Blackwell has not got the information, so can I place them on notice?

**CHAIR:** Yes. Mr West?

**The Hon. IAN WEST:** Can I ask firstly, have you got any information, can you provide the community with any information in regard to Industrial Relations Commission action that has taken place in regard to the death of Mr Dary Haines in a train crash in 1999?

**Mr BLACKWELL:** I have no information with me in relation to that.

**The Hon. IAN WEST:** Can you take it on notice?

**Mr BLACKWELL:** Yes.

**The Hon. IAN WEST:** Could you advise us as to how many CEO's there has been in WorkCover in the last ten years?

**Mr BLACKWELL:** I have to take that on notice.

**The Hon. PETER PRIMROSE:** Up to the present time.

**The Hon. IAN WEST:** Would you be able to provide us with a detailed report as to which WorkCover inspectors and on what dates there were visits to the Australand site prior to the death of Joel Exner, and can you provide copies of all infringement notices and prohibition notices that were issued prior to the fatality?

**Mr BLACKWELL:** Yes we can.

**The Hon. IAN WEST:** Are you able to advise us as to why did not WorkCover deal with the issue of harnesses before Joel's death?

**Mr BLACKWELL:** Are you talking specifically with regard to the Australand site?

**The Hon. IAN WEST:** Yes.

**Mr BLACKWELL:** We will take that on notice.

**The Hon. IAN WEST:** Yesterday a widow, Mrs Jardine, was extremely distressed at the lack of support and information that she received from WorkCover. She made reference to a photocopied brochure that was sent to her by WorkCover. I was wondering has WorkCover run out of brochures, and is there a need for additional funds to ensure quality material is provided to the next of kin?

**Mr BLACKWELL:** That is the brochure that we were discussing earlier on, which was sent with a letter from the general manager and sent for information for the families of deceased workers, and that is the one that is currently under review.

**The Hon. IAN WEST:** It is out of print, is it?

**Mr BLACKWELL:** Yes.

**The Hon. IAN WEST:** Photocopies of it be being done and sent out?

**Mr BLACKWELL:** Nothing is being sent out at the moment.

**The Hon. IAN WEST:** Are you aware of the serious injury to a Mr Fuller, who I understand was employed on the same site as Joel Exner and Anthony Hampson, and Mr Fuller, I understand, was seriously injured prior to the injuries to Joel Exner and Anthony Hampson?

**Mr BLACKWELL:** I will have to take that on notice.

**The Hon. DAVID CLARKE:** I think you indicated that you are not aware of any successful prosecutions for manslaughter in respect of deaths in the workplace. Is that right?

**Mr BLACKWELL:** Correct.

**The Hon. DAVID CLARKE:** Are you aware of any prosecutions at all for manslaughter for such deaths?

**Ms GRANT:** There was one. The DPP - I cannot remember the exact year, I think it was about

1998-99.

**The Hon. DAVID CLARKE:** How many years are you going back?

**Ms GRANT:** From now.

**The Hon. DAVID CLARKE:** There has been one prosecution?

**Ms GRANT:** You were talking about a manslaughter?

**The Hon. DAVID CLARKE:** Yes

**The Hon. PETER PRIMROSE:** That is why we need industrial manslaughter legislation.

**The Hon. DAVID CLARKE:** Does the WorkCover Authority have any power to refer these matters to the police for investigation for possible prosecution?

**Ms GRANT:** Matters have been referred to the DPP for consideration over the years. Records disclose four such matters have been referred. One actually went for trial, but the judge decided that there was insufficient evidence to go to a jury and dismissed the charge.

In respect of other referrals, the DPP have a process in place where they only accept instructions from the police, and that is reflected in the current protocol that was signed in January.

If we become aware of matters that cause us concern, we refer those matters to the police and they will refer them to the DPP for consideration.

**The Hon. DAVID CLARKE:** You have referred a total of four matters?

**Ms GRANT:** I have not personally.

**The Hon. DAVID CLARKE:** I am talking about the authority.

**Ms GRANT:** Yes.

**Ms RHIANNON:** I have been surprised how many questions that you have taken on notice. Mr Blackwell, you would have known for some time you were coming to the inquiry today. You, yourself, have explained to the inquiry how one of your representatives was here yesterday and would have reported back to you about the comments made by the mothers of Joel Exner and Dean McGoldrick.

Do you not think that for the families and for this inquiry that you should have been more prepared to actually give us answers here, rather than just taking so many questions on notice.

**Mr BLACKWELL:** I think it was extremely unfortunate that we were not represented here for the whole of yesterday's hearing. I will be following that up immediately after this hearing.

**CHAIR:** That brings us to the end of this hearing. We need to make it clear that the answers to these questions you will provide them, if not before, certainly on 2 March when you appear.

**Mr BLACKWELL:** Yes.

**CHAIR:** You will send the answers to us as you progressively collate them.

**Mr BLACKWELL:** Certainly.

**CHAIR:** Certainly be prepared to answer the questions on 2 March.

**Mr BLACKWELL:** Yes.

**CHAIR:** We will be looking forward to those answers and other matters to be raised by other witnesses. We have not gone very far yet. There will be a lot more other issues raised and we will keep forwarding those to you straight away so you can have them to hand and consider your response for 2 March.

**(The witnesses withdrew)**

**(Short adjournment)**



**ANDREW JAMES FERGUSON**, Secretary, Construction Forestry Mining Energy Union, representing the construction union and building workers and their families, affirmed and examined:

**MAUREEN MARY-ELLEN BUCHTMANN**, OH&S Consultant and owner and director of M and J Buchtmann, consultants, appearing as a private person, sworn and examined:

**CHAIR:** Andrew, do you wish to make an opening statement?

**Mr FERGUSON:** Firstly in relation to the attendance of our safety representatives this morning, that was arranged about 9 o'clock this morning. The metal detector has been going off. That is steel cap boots setting that off, nothing untoward. I guarantee the staff here and the committee members about the behaviour of our safety delegates. They are passionately committed to workplace safety. They are here to show their respect to this institution and this process taking place, and we are very appreciative of that.

I do want to say that we welcome the Parliamentary inquiry. There are probably others that would prefer a Ministerial inquiry, but we have no apology for supporting a Parliamentary inquiry. We believe it provides an opportunity for more transparency and accountability and, equally importantly, healthy public debate and an opportunity for working people and the families of workers that have been killed, to come to Parliament House and put a point of view to Members of this Committee that are going to look at these issues and, more importantly we hope, bring down some recommendations that will help address a crisis in terms of workplace safety across New South Wales and in particular for building workers.

In this country we have one building worker every week being killed on a building site, and we are desperate for greater effort by politicians, by Government, and in particular WorkCover to address our concerns and that of our families.

**CHAIR:** Do you wish to make an opening statement Ms Buchtmann?

**Ms BUCHTMANN:** I would like to thank the Committee for the opportunity to address this issue. Nobody wants to see anybody killed or injured in any workplace.

I believe it has to be a team effort. We have the toughest laws in New South Wales of any State and I believe the world from the research that I have done. The court system does not do it justice and I would like to think we are all on the same side, that we all want a safe workplace and everyone to go home safe at the end of day.

**CHAIR:** As you well know, one of the reasons this inquiry was set up was the dramatic increase in workplace deaths, almost 100 per cent increase in the past year. Do you believe there is a reason for that, or reasons?

**Mr FERGUSON:** I will not comment on the actual statistics, or the number, or percentage increase, but the level of fatalities and serious injuries is unacceptable. I want to say at the outset that I do not want to denigrate the performance of WorkCover, the inspectors, or the staff. I have got nothing but admiration for the professional and competent work done by a lot of people inside WorkCover, in particular inspectors who are required to visit workplaces.

From our point of view we want to see a culture of zero tolerance towards bad safety. Rather than people visiting a site, talking to people, we want to see more action and more enforcement in relation to non-compliance of safety laws. We want to see a greater effort by WorkCover in terms of prosecutions and we also want to see some legislative change to ensure there are effective and meaningful sections, so it is no longer cheaper for employers to break the laws than to pay fines.

I know cases where it might cost \$100,000 to provide scaffolding to a site, but it costs \$20,000 if someone is killed, to pay for a fatality. So we want to see effective sanctions that act as real deterrents, to provide for safer workplaces.

I would like to present some more petitions if I could, Rev. Nile. As you are aware, the young teenagers around Doonside collected these petitions. They went and door knocked. I hear a lot of people criticizing young people but I am extremely impressed by those teenagers, thinking about the issue of workplace safety participating and trying to get a resolution to the issue and bringing those issues to your attention. They have collected several thousand and they intend to collect more, to try to get a better outcome in terms of workplace safety. I formally hand over those petitions.

I do want to say at the outset that I was extremely disappointed at the non-attendance by WorkCover yesterday. I expected a senior person of WorkCover to be here to listen to the families that have had workers killed, their sons and their husbands, and I am very hopeful that they will change their approach in terms of further proceedings here.

Those families often suffer in silence, but they have got the right to be heard and it is a requirement for people to listen to their stories. I think we can comprehend some of the suffering, but I do not think there is a realisation of the extent of the suffering.

I frequently talk to these families. I am aware of the marital break-ups, the collapse in family fabric, the problems with teenagers with all sorts of issues that arise when people are killed, and I do not think generally speaking people in Macquarie Street are sufficiently aware of that human suffering, so I hope WorkCover does attend future proceedings.

I listened to one woman yesterday, Mrs Jardine and her daughter. Mr Jardine was killed. I do not think WorkCover performed very well in terms of that prosecution or that investigation. Apparently there was a forgery, that a worker completed a safety induction when there was no safety induction completed.

It appears there was an Irish backpacker driving the machinery that collapsed, who left the country within 14 days. I do not know whether WorkCover studied where that individual got his ticket from, whether it was one of the ones subject to the current ICAC inquiry, where people have paid money in pubs to get tickets.

There is no doubt in my mind that that person was not experienced to drive that type of machinery, and then spreading personal protective equipment around the site to pretend the worker had his gear when in fact he did not have it, these are very serious allegations and I would like to know what happened in relation to that fraudulent behaviour.

I spoke to Mrs Jardine after her evidence. I have never met her before. She told me that she had to bury her husband with no financial compensation whatsoever from WorkCover. That contractor - and it did not come out yesterday - did not have any workers compensation insurance for the worker killed, for any of the casual workers employed by that company, nor any of the permanent workers employed by that company; no workers compensation insurance.

Mrs Jardine has been through the system. One would have thought she would have been provided with some assistance from WorkCover, or some Government agency, to help her. The Government actually helping people who are greatly traumatised by the loss of a husband or a father. She had buried her own husband with her own money. She and her daughter have been going to counselling for the trauma at their own expense.

They were not aware of the uninsured workers liability scheme, where if an employer does not have a workers compensation policy, a family can pursue a claim for workers compensation where there is dependency and WorkCover pays for the funeral and for compensation.

She was not aware of that two years later and she was told yesterday by myself. I do not regard that as my job, to run around looking after every family who has had this sort of trauma. I expect a performance from WorkCover. The performance, quite frankly, in relation to that is zero. I give it zero out of 10 in relation to Mrs Jardine and I am hopeful that WorkCover will pay attention and give that issue some priority.

Mrs Jardine will be seeing a union solicitor tomorrow. She will be getting some expert legal advice, and we are seeking to assist her financially, but also provide her with some human support which has been greatly lacking.

Anthony Hampson worked for the same company as Joel Exner. Anthony was badly injured three years earlier. As you are aware, the insurance company did not notify WorkCover of the accident. I suppose we could sit and blame the insurance company, but I put the responsibility on politicians and WorkCover for not having a system three years ago to deal with that, rather than looking for scapegoats here.

Anthony Hampson's accident should have been investigated when it took place. The accident didn't happen on some shonky developer's job in the bush. It happened on the Central Coast where WorkCover's head office is currently. It happened on the site of Gosford High School, a State Government building site. I would like to know why the State Government, or the high school, or the Deputy of Education, or the Public Works Department did not notify WorkCover of this accident. If this contractor was tackled three years ago, perhaps young Joel Exner would still be alive now.

I notice that the CEO of WorkCover was questioned about another worker working for the same company that was also injured. He was unaware of the name of that worker or what happened. I am aware of it. Mr Hampson has advised WorkCover of the worker who was previously injured. His name was Mr Gary Fuller. He is buried in Womberal Cemetery.

I do not have the powers to access the death certificate, but I would assume this Parliamentary Committee or WorkCover does. That particular worker was working for the same contractor, Denson Roofing. He had a serious accident in a scissor lift. He was working by himself, unsupervised, the same story as Anthony Hampson.

Anthony said he never worked on any site where there was supervision. As the scissor lift was going up Mr Fuller got his head caught under some steel, which crushed his head and ripped his jaw bone. He subsequently committed suicide. I do not know whether the suicide was related to the workplace injury, but that is another accident with the same contractor, not investigated. I assume the employer did not notify WorkCover.

These are issues that should have been addressed a long time ago, to make sure we have an effective system to address these issues.

**Mr FERGUSON:** I will go back to the issue of Gosford High School. I do expect better performance from government than the private sector. I think the community at large expects that. The government high school, no notification from the principal or the Public Works Department from WorkCover. I'd like to know why not.

The most recent worker killed was a guy called Ron Tabak. He was killed last week. 47 years of age, family. He was killed on a Sydney Water project last week. I'd like to know what the State government does in terms of supervising their building sites to make sure the contractors they engage are performing in terms of workplace safety. It's not the first fatality for Sydney Water. There was one a couple of years before that where a guy drowned in a water tank on a sewerage treatment works at Woronora. There is another fatality for the same client, a government department. I'd like to know what the government department did about the first accident, the first fatality and what they did about the

second one. I expect a bit more performance from the State government in terms of monitoring their building sites.

I want to raise some other fatalities where I'm not convinced WorkCover's done their job. I have actually taken the opportunity to raise it with the Minister for Industrial Relations. That relates to a young apprentice, 20 years of age, painter. He was killed with 11,000 volts of an electric shock. He was working at TAFE College in the Hunter Valley. Once again, not some backyard building site being built by some shonky developer, a TAFE College. I would like to know why there wasn't government supervision of that building site. That happened on May 25 2001. Fourth year apprentice painter fatally injured as a result of receiving 11,000 volt electric shock. No prosecution by WorkCover. Insufficient evidence to establish a breach.

I have spoken to workers on that site. I've spoken to our union organiser. You'd have to be Blind Freddy not to find any breach of safety, let alone not pursue a prosecution.

I want to raise a few more. Some of them relate to members of the public. I think there is an expectation WorkCover performs, not just for workers at the workplace but I think the public expects protection from WorkCover as well.

April 19, 2000, a Taiwanese university student from overseas, walked around the corner adjacent to a building site at the University of New South Wales on the campus, another government building site, and was struck by a Daihatsu truck. The deceased received fatal crushing injuries as the Daihatsu truck crushed her against a concrete wall. The matter was referred to the DPP for prosecution of an indictable offence. Not considered to be a workplace issue warranting prosecution under the safety legislation. I don't accept that. I regard it as an issue that arises from the workplace. I've been to the workplace in question. No safety barriers to protect the public, specifically the staff and the students at the university. Clear breaches of safety rules.

Now I might be wrong, I am a lay person. Perhaps there is greater opportunity for the DPP in terms of a conviction here. I don't know if you can pursue that one there and also do the safety breaches. It is very clear to me there are safety breaches here and I would have thought there's opportunity for a prosecution under safety legislation.

Another one was January 15, 2001. Not too long ago. The deceased was a young boy attending Fox Studios on 15 January. He was found 8.30 am the next day by a Fox Studio security officer underneath panels of temporary chain mesh fencing on the ground. The night before there had been severe wind gusts. That is not uncommon in Sydney. We've all seen temporary fencing around building sites. I frequently get complaints from the public about temporary fencing collapsing on the footpaths and roads. Fencing has got to be erected correctly. In that particular case the panels weren't erected correctly. They were simply stacked, not on the ground but upright and the response was "not considered to be a workplace incident". It did take place at a workplace warranting prosecution under OH&S legislation but rather one within the area of public safety. I do not fully comprehend this issue. I expect when a member of the public is killed and it relates to bad safety at a workplace, I expect there to be a role for WorkCover. I don't know if they have got a policy that if it is a pedestrian they do nothing or hope someone else is going to address the issues. Where there are breaches of safety legislation I think it is reasonable and fair that these issues are addressed.

I just want to get one document if I could Reverend? I will pass around the documentation if I could. This also relates to a member of the public, an elderly woman.

**CHAIR:** We need to just identify the document for the record. Is it just about one case or is this a –

**Mr FERGUSON:** One particular case.

**CHAIR:** Can you identify the name of the person just for the record.

**Mr FERGUSON:** The woman killed was a Mrs Welch, killed adjacent to a building site at Mona Vale Road, St Ives.

**CHAIR:** We will table that document.

**Mr FERGUSON:** It was an elderly woman walking adjacent to a building site. The issue in fact was taken up by a Member of Parliament, I think it was Barry O'Farrell, at the time. There was no traffic control on that site. You need to have people that are qualified, they have got traffic control to deal with the issue of movement of vehicles into and outside of building sites. This site had no traffic control, didn't have qualified people and we've got a truck that shouldn't have been on the site in the first place in terms of its size, and what it was was a large truck with a further carriage to the truck, if you know what I mean, two parts to the truck and the woman stepped out after the truck come out of the site she thought, didn't see the second part of the carriage and was crushed and they had to take her fingerprints to identify the body.

This issue was taken up by her husband. He was desperate. He contacted WorkCover for over twelve months and got no satisfactory reply. He eventually contacted the union. We clearly regard it as an issue of workplace safety. We worked very hard to get appropriate, qualified staff dealing with the issues of traffic control on building sites. I eventually got a response from WorkCover, which is attached to the documentation, it's four pages signed by Kate McKenzie, General Manager. It's a response to representations that we made, the union.

The actual fatality occurred on June 30. WorkCover went to the site on July 3. I don't know why not earlier. And the second paragraph says:

I am able to advise that a WorkCover inspector attended the scene of the accident on July 3 and 6 but did not, in the course of those visits, observe any work activities that warranted WorkCover's intervention.

I find it incomprehensible when a member of the public is killed, clear breaches of safety legislation on the site, and the comment from the general manager is that WorkCover didn't observe any activities that warranted WorkCover's intervention. There was still blood on the ground, the stain of the woman's blood, and after the fatality there still wasn't any traffic control on the site or the issues addressed. There's another example of an issue that I'd love to see some satisfactory performance in terms of. Another issue I think in terms of prosecution there is some reference to a two year limit. I'm a lay person, as I said, I don't know why there's a two year limit. In other areas of law there is no two year limit. I don't see a need for a two year limit anyway. I would like a better understanding of the issue of the two year limit.

I just want to make a brief reference to a fatality yesterday that was raised by one of our Maori members, that was Stephen Keenan raised it. The name of that worker that was killed was Norman – was Selwyn Wano Subritsky. His dad was Norman. His dad was working on the site where his son was killed and had to carry the body off the building site. You saw the photograph yesterday of the father. You don't really understand the suffering that he and his wife have had since that fatality and the enormous damage to their health caused by that fatality.

That young boy was seventeen years of age. He was killed in Foley Lane at Darlinghurst. I'm not satisfied with the prosecution or the investigation of that fatality. The contractor that was eventually fined didn't pay the fine also. So we've got the two youngest workers that have been killed in recent years, Dean McGoldrick – the boss paid \$1,800 and then we've got Selwyn Wano Subritsky, seventeen years of age – that boss also didn't pay the fine.

It doesn't send a very good message to the building industry that can simply kill people, don't comply with the laws, perhaps pay a fine or pay part of a fine and expect there to be improved performance of safety in terms of this industry.

I want to say, the majority of building contractors do the right thing. The majority of them, but there is extreme competition in the industry and unless WorkCover starts hitting the ones that don't comply, we have the good contractors put out of business by the people who cheat to get the contracts because their prices are cheaper. One would think if you kill, you're penalised, our costs go up – that's not the case. You fold your business. WorkCover doesn't track it. You set up another company. I know one building company that's had twenty companies. They used to be the directors. Then they used their wife as the director. I think they're now using their grandkids as the directors of the building company. They don't pay the fines. They don't pay the taxes. They don't pay the worker's compensation premiums. They rip off the system and it becomes a spiral where the cheats are rewarded with contracts, survive and grow in the industry and good companies don't survive.

So we're not satisfied with the performance of WorkCover in terms of prosecution. I don't have all the answers. We haven't had a lot of accountability in the past and hopefully this process will ensure that we do look at some particular fatalities, study them. I'd like to see some independent legal advice to deal with this issue where there's insufficient evidence or it's not regarded as a workplace issue. I'd like to see some good quality legal opinion to test these decisions made by people.

Very high turnover in WorkCover. I frequently ring WorkCover looking for someone and find the person is no longer there or been moved to a different position. I don't know how many CEO's there have been in the last five years. I heard a question here this morning, there's been lots. I've got a good regard for all of them but I would like to see a bit more continuity in terms of personnel. I'd like us to study the prosecutions unit about the number of staff, the qualifications of staff, the turnover of staff and have that issue subject to some public accountability rather than be told, we've got lots of solicitors down there, don't worry about it.

The final issue I want to raise is about the issue of non-English speaking workers in the building industry. We're told there's been a decline in the accident rate by people. I'm not certain about that. I see statistics but I want to say to you there is thousands of workers from a non-English speaking background in the building industry. Very large sections of those workers speak no English whatsoever. They are desperate for employment. Not keen on employment, they're desperate. They've got no other option but to work in unsafe situations. I know of many cases where workers are injured. They're not reported to WorkCover. They use Medicare rather than worker's compensation.

I'll give you one example of a worker injured at St Leonards' building site. He was taken off the site in an ambulance. I actually looked at the first aid report and it said "a visitor to the building site" – this is a worker we're talking about – "a visitor to the building site was injured from an unfamiliar ladder." This is a worker on the site injured because their safety wasn't in order. Taken by an ambulance to the local hospital. Then the worker is confronted with all the bills in the world from the ambulance and medical treatment. He was unlawful. He was from South Korea. The boss simply said "Get out of the country before they get ya to make you pay all the bills and put you in gaol."

He contacted the union through a church group in the Korean community. We assisted him getting justice before he was deported. A lot of unlawful workers in the building industry. They don't speak English, they don't report accidents, let alone casual workers. If you're a casual in the building industry, you don't complain about worker's compensation or put in a claim because you don't get the phone call the next night, because you don't have any security, you don't have any permanency and you simply cop it, keep working or go on Medicare and do the best you can.

I have raised some issues here. I have worked for the union for 25 years. I have been a member of the Labor Party for 32 years, but will not be allowing my party membership to interfere with my obligations here.

I see a lot of issues of non-performance by the Labor Government and WorkCover and I want the issues addressed and I want a bit more accountability from WorkCover and politicians here in Macquarie Street.

**CHAIR:** Thank you for presenting that so clearly and strongly as well. Do you want to make a statement Ms Buchtmann?

**Ms BUCHTMANN:** Yes I do. For the last few years I have had the privilege of working under the guidance and the late Brian Miller. Most of you will know Brian Miller, state coordinator for the CFMEU. Brian and I worked daily on construction sites throughout Sydney and the country areas conducting safety assessments.

I am also the OH&S adviser for the Penrith Chamber of Commerce and there are some 600 small businesses there, so I am an independent consultant in OH&S across the board.

Brian and I had almost daily dialogue with WorkCover regarding OH&S issues. We believed we had a good working relationship and I think that was demonstrated by those who went to Brian's funeral, and the commendations WorkCover gave, so I believe we had a very good working relationship with them. With the majority of them we had meetings and forums with the levels of CEO, a right the way down.

What concerns me is a lack of OH&S compliance in the middle level of construction at the moment. There you have apartments and commercial buildings. I have attended many of these sites following accidents on the sites, and I am appalled at the employers who have a blatant disregard for workplace safety.

I have been on the Australand site since young Joel died. That is subject to prosecution at the moment. I was on the site for 11 hours last Friday. I have a fair bit of experience on that site. It is not a big site. It is big warehouses, not a multi-storey site at all.

The building of multi-storey apartments is one of great concern. There does not appear to be a WorkCover presence in the suburbs as there is in the CBD. This particular type of construction, the walk-up apartments, the commercial buildings, employs a lot of non-English speaking background workers who are exploited by employers and as Andrew has indicated, a lot of them are casuals and a lot of them will not complain or they will not have a job at the end of the day.

They have no understanding of English or no understanding of OH&S. They have no training and definitely do not have any supervision.

Some of them are large sites with large cranes and equipment and plant. When an incident happens I am asked to contact WorkCover to attend. Unfortunately it does not always happen even on the same day. In the city you have a fairly good response because of the location of the WorkCover offices.

I understand workloads are tough, but construction is a tough industry to work in. It is a very unsafe industry. These types of projects are popping up in every suburb you want to look at. These builders have come into the suburbs. They have built cottages, houses one day, and now they are into walk-up apartment with no safety precautions whatsoever.

Employers have certainly been taken to local hospitals and certainly have been put through the Medicare system. They are not reported as a workplace accident. We have evidence of that happening. I believe that if WorkCover could attend more promptly to suburbs, that probably would not happen.

The larger construction companies I work with have OH&S problems. They have a lot of employees and a lot of unsafe practices but they are certainly willing to address the subjects much better. They accept their responsibilities, their duty of care, and appear to foster a good working relationship with WorkCover and the unions most times. The larger companies do.

I have encountered some problems on these larger sites with what I consider a lack of understanding of the OH&S laws regarding construction from a small number of inspectors. We certainly get inspectors out there who are fighting to understand the OH&S legislation themselves.

In the CBD it can normally be addressed through senior WorkCover officials in a speedy manner. It is not a great problem in the CBD to get another inspector out or a phone confirmation.

In the suburbs the same cannot be said unfortunately. It is very, very difficult and some of the inspectors we get to the suburbs are not qualified in areas, as in the country. They are multi-skilled inspectors.

The response varies when you ask for a WorkCover inspector. In the CBD you get a quicker response. Some inspectors know how to address the problems but others cannot even see the problem. They all have a different idea of what the intent of the legislation is. I have had inspectors tell me it is an optical illusion, that the man is not standing as close to the edge as I think he is. I will say: Well, I can see his ankles and he is three storeys up. I can see that he is fairly close to the edge. It is not an optical illusion. You get a bit of a hassle about them wanting to put a notice on that particular person.

There were numerous times when Brian Miller and I had arguments with WorkCover inspectors and that is unprofessional in front of workers when you are supposed to all be on the one side out there. It is not a good feeling when you are arguing over the law when it is written the way it has to be.

I have certainly seen some inspectors who appeared to support unsafe employers. They duck and weave and go around every corner they can, rather than serve a notice. I know from my experience that employers will never take responsibility unless they are made to.

Employers have stated to me that they have no fear of WorkCover at all. They are a toothless tiger. They have said we do not care, they can come out, they will not serve notices on us. Unfortunately that is true. When you look at the prosecutions, they do not pursue.

The asbestos demolition industry is one that presents a lot of problems. I work in that industry. We have a lot of non-English speaking background people. I sit on several WorkCover committees and we have an asbestos demolition one which has been going for about 12 months now. It is an area that is not addressed properly at all.

The cottage demolition industry, out in the suburbs, you all live there and you have all seen cottages knocked down around you. That is the area out there where it is lawless as far as any policing goes from WorkCover. Knocking down of anything with asbestos in it, or synthetic mineral fibres, brings fatal injuries, fatal illnesses and long-term medical problems.

WorkCover inspectors do not respond at all to the suburbs most times, but if they do, by the time they get there the cottage is gone, down, gone in a truck. Goodness knows where it has all gone to.

This type of demolition subjects the neighbourhood, including children, to exposure to asbestos and other hazardous chemicals and dust.

I have found an amount of buck passing that goes on between WorkCover and the local government regarding who is responsible. It is a workplace. WorkCover is responsible. Local governments do not have the mandate that WorkCover inspectors have. They are limited in what they can do to stop the work. They are not experienced in the asbestos field. There is no doubt who is responsible. It is certainly WorkCover's.

My concern is that while they argue the public, including children and babies get exposed to life threatening dust and many years later these children might contract asbestosis or mesothelioma, all because the regulator, WorkCover, is arguing about whose responsibility it was, so it is a big area.



I have spent many hours with the families of people who have died in the workplace. I spent 12 months as a volunteer in policing when the position was first out, so I have had a fair bit of experience dealing with traumatised people.

As far as comparison, and I probably should not compare them, the Police Department look after their victims much better than WorkCover look after their victims. They provide people to look after them and they get counselling by whatever counselling group comes in.

Any sudden death is hard to take. When there is a law to say their loved ones should have been protected, it becomes a bigger burden for the family. The loss and grief is forever. Time does not heal. You have seen that evidenced yesterday. Time does not heal at all for people for people.

These families, the hope they have is that the person responsible for their loved one's sudden death will be made accountable and the results published accordingly. WorkCover's prosecution notices do not reflect this. If they decide to prosecute at all, the result is normally very, very poor.

The lack of natural justice is another blow to the families. The employers responsible for the death of their loved ones continue on with their lives and the grieving families will never be the same. Their lives are never the same.

The construction industry is growing. The number of unsafe and inexperienced builders is also growing. Some builders were building cottages in the suburbs last year and now they are building high rise apartments on the edge of the city. The demolition industry is facing the same problem.

These builders have no concept of OH&S, nor do they want it. They just want their money, do not appear to care if a worker gets killed or injured, they just want to finish their projects. WorkCover must address this level of employer. They are not doing it at the moment. The CFMEU is addressing it every day. Every single day it comes across the problem.

Dean McGoldrick and Joel Exner both fell to their deaths on these smaller sites, even though Dean was in the city. Joel's employer was a subcontractor to a larger company. The actual site was a commercial warehouse not a high rise.

I believe that the costing of these contracts must be looked into. To get some of the work at the cheapest rate, something has to give and it is always safety.

There are responsible companies and there are very good WorkCover inspectors out there. I sit on seven or eight of WorkCover's committees and they fight really very hard to get legislation through to get things done. There is a good lot of WorkCover people out there.

A responsible company accepts their duty of care to ensure a safe workplace and has implemented a safe system of work, which includes supervision to protect their employees. Such a company does not have a chance financially against these unscrupulous builders when they tender. They are out of the ball park. They cannot get the work.

I believe until this area is addressed we will continue to see deaths and injuries caused by unsafe workplaces. That means loss to the families, all you people here, and the community in general.

**CHAIR:** Our objective is to seek the truth and make positive recommendations to the Parliament.

**The Hon. PETER PRIMROSE:** Mr Ferguson, at this stage I have just one question. In his evidence this morning the CEO of WorkCover referred to police involvement at sites where there had been a

fatality and I asked him if he could give as a rough figure, say to the nearest dozen, how many employers have been successfully prosecuted in New South Wales for murder or manslaughter in relation to a fatality in the workplace, and his answer to that was none.

Could you comment also on that issue about what needs to happen in relation to prosecutions in relation to workplace injuries and fatalities.

**Mr FERGUSON:** In relation to the evidence it is accurate. There have not been any employers who have been imprisoned arising from fatalities or a reckless disregard for human life at the workplace. We do support appropriate legislative change in this area.

We have recently had the ACT deal with this issue. I have already got anecdotal information back from our organisers in the ACT that it has had an impact on behaviour in the industry in terms of the attitude in particular of employers.

We are very clear and specific about this issue. We would like to see industrial manslaughter legislation, not for the purpose of having people imprisoned, but for the purpose of having some consistency in terms of other crimes in the community and also, most importantly, to act as a deterrent. There is not a fear of WorkCover in the workplace.

I want to give you two examples if I can. We are all aware of the site where young Joel Exner was killed, October 15 last year. Even after the fatality, and quite extraordinary public exposure of what happened there, on the same site there are people continuing to work 45 feet above the ground with no safety harness, no perimeter scaffolding, no guard rail, no protection, and WorkCover went out again and issued an infringement notice. That is not adequately dealing with the issue, because the breach takes place on the same site where a young worker was killed.

I made reference to the pedestrian killed. On that same site, after that fatality, the gates of the job were left open at night time and weekends and apparently a dog went into the site, got wedged in between some walls and was howling and the ambulance had to come to the site to assist the animal. We are very lucky it wasn't a child killed on that site.

People do not learn the lessons from a slap across the wrist or a little fine which is cheaper than complying with safety laws. We do need some real change in this area, not to lock up employers, as I said, but to have a more effective sanction for people who have a reckless disregard for the welfare of workers and also for members of the public.

**Ms LEE RHIANNON:** You just spoke about the need for legislation on industrial manslaughter. Have you talked to the Minister about this and what has been his response?

**Mr FERGUSON:** There has been discussions with the Minister. As you are probably aware, the ALP State Conference unanimously adopted a resolution supportive of appropriate legislative change in this area, so there has been discussions prior to that debate at the party conference and since then.

It is an issue that I believe the Minister is looking at, and the Government. I know that the Minister has spoken to some of the families of workers killed. We facilitated that meeting because we want a Minister for Industrial Relations - we would also like to see a shadow Minister for Industrial Relations - who sits down with families of workers killed and has meaningful dialogue and listens to what they are saying.

All of them yesterday said they want to see manslaughter legislation, so the issue is on the agenda and we are hopeful that the Government will address the issue and we are hopeful of support from other political parties in Macquarie Street.

**The Hon. DAVID CLARKE:** Mr Ferguson, I just want to touch on this area of individuals who've come up for prosecution for breaches of safety regulations and they have repeated violations. They are either directors of companies that are prosecuted, the company goes into liquidation and that move on and they set up another structure, even though they may not be the director, they are the defacto proprietor of that company, is there much of that going on where you've got these individuals operating in the industry and they've got repeated violations, either themselves or under company names and they still continue out there?

**Mr Ferguson:** I wouldn't say it occasionally occurs, I'd say it happens every day of the week in the building industry and some other industries where there's fraudulent behaviour taking place where companies are constantly rolled over, often leaving debts in group tax, payroll tax, worker's compensation premiums. I'll give you one example of an issue I raised with WorkCover recently. The biggest building site on the central coast near the WorkCover office, the largest contractor on the job is a form work contractor, hadn't paid his worker's compensation premiums, about \$50,000. The builder didn't know about it. WorkCover didn't know about it. The Minister didn't know about it, but I knew about it. It's not very hard to find out if you're passionate about the issue.

There has been all sorts of malpractice and leaving behind debts and when they tender for jobs they're often 50% cheaper than legitimate operators that comply with the laws. I don't know any specific knowledge about companies that have had safety prosecutions and have rolled over companies, but I know they roll over companies to leave behind debts. I know of companies that when they've got increased worker's compensation premiums, if you pay the base premium and then if you've got a hopeless performance because you've killed and maimed workers and injured workers, the theory is your premium goes up for a thing called experience rating.

All they do is fold the company down, set up the next day and they don't even use a fictitious - have bogus directors, they're often the directors again and again and eventually they become disqualified, so it's widespread and I'm very certain it happens in terms of safety and I'm extremely disappointed this issue has not been tracked by WorkCover.

**The Hon. DAVID CLARKE:** That being the case, do you believe that there is an area that there should be a register kept of these individuals who seem to pop up as directors of companies that are prosecuted and then go into liquidation to avoid their responsibilities, so that they can be tracked to see whether there is a record of such individuals who can be dealt with appropriately under the law?

**Mr FERGUSON:** Most definitely. This should have happened decades ago and in addition in terms of looking at the issue in terms of enforcement, there should be a look at the issue of their builders licence, their subcontractors licence. Then we've got a State government whose got enormous bargaining power in this industry that should be making sure that people that have got a fallen track record don't get rewarded by getting State government contracts.

**The Hon. AMANDA FAZIO:** I just have two questions, one for each of our witnesses. Andrew, you said in your opening statement about casual workers, you know, that they don't apply for worker's compensation because they won't get a referral for another job. What impact do you think the increase in use of these labour hire companies has had on workplace safety?

**Mr FERGUSON:** Most definitely it's a negative impact. The workers are casual and I don't think anyone here has probably worked for a labour hire company. In terms of the building trade, you register, they check you out very thoroughly. If you have had any worker's compensation complaints or claims, you don't go to the top of the list, you simply don't get a phone call for a job. You get a job for a day or two days, or maybe a week on a particular site and if you're very submission and don't complain and you don't have any worker's compensation claims, you get a phone call each night and go to another site the next day.

The lack of job security has a very big impact on the behaviour of these workers and their rights and they often don't put in claims, and what they'll do is they'll suffer injuries and then the claims will go in at a later stage against another company that has got more job security, good companies that comply with the laws are hit with extra worker's compensation premiums and costs. The workers don't have confidence about their claims, about raising issues of job safety. If you put in a complaint about job safety, the builder will say to that company "I don't want that individual working on my site tomorrow. Send him to a different site." That's generally it and that deals with the issue of never putting in complaints about workplace safety and that's not conducive to encouraging workers or empowering workers to help make the workplace safer.

**The Hon. AMANDA FAZIO:** Maureen, I want to ask a question, you mentioned in your opening statement, the issue of their being no clarity between local government workplace, who's responsible for home demolitions, because I have been advised by sectors in the housing industry that some of the major home builders in New South Wales are now doing nearly 50% knock down and re-build and that's becoming more widespread in all areas of Sydney. Given that there is a lack of clarity, what would you like to see put in place? What would you like to see WorkCover doing to try and make sure that workers doing this knock down of family homes are doing it safely?

**Ms BUCHTMANN:** Well, there has to be some liaison between WorkCover and local councils. I have been given an estimate from WorkCover that there's one WorkCover inspector for every 30,000 employees in New South Wales and that's on a good day. So there's no way in the world WorkCover can be in every suburb at every time there is a knock down, so I believe it has got to be joint between local government, some liaising, like country council inspectors be given the same mandate as some WorkCover inspectors. They have to be trained of course. So I mean a way for me to look at it would be may council inspectors could undergo some kind of training. I don't think WorkCover can ever address the issue, they simply can't get out there in time.

Local government are in every suburb. They do have inspectors. They would certainly need a lot of training and some sort of authority but it has to be dealt with because every day in every suburb we've got clouds of asbestos dust over children and over Sydney, so I think probably liaising with local government, you know on a two party level, unless they are going to employ another 1000 WorkCover employees, and I don't think that's going to happen, so definitely consulting with each other.

**CHAIR:** Could I just clarify something. Andrew, you have your own union safety officers on site. Are they effective, are they getting co-operation from the employers in carrying out their duties? You mentioned sometimes if a worker makes a complaint, what about the safety officers?

**Mr FERGUSON:** We employ one full time safety officer dedicated to workplace safety, that's Richard Whitehead. Richard worked for the union movement for probably twelve years, thirty years experience in the building industry. He worked for WorkCover for nine years and he has recently been engaged by the union because we're very keen on people with expertise and training in the industry. In addition to that we have a comprehensive programme of union education to better equip our union officials. We regard safety as union business. It's not the business of an employer or politician, it's an integral part of union work so we put a lot of effort into training our officials. We're also involved in training our job delegates. Often we have resistance from employers actually allowing them to leave the workplace to get better training but we do the best we can in that area and we also operate a not for profit training company with the Master Builders Association. It's easy to adopt a non-adversarial approach to workplace safety. We do a lot of safety training but I can't say the response from the employers is positive because unfortunately we have this extreme competition – not healthy competition – extreme, and it's those that cheat the most get the reward in getting contracts and even government contracts and so people are cutting corners left, right and centre and it's like trying to put your fingers in the dike, it's a never ending battle in terms of trying to address the crisis in terms of workplace safety.

We have got one worker dying every week on a building site in this country, it's a crisis. So, we can't address the issues. We do need legislative change. We do need more resources via WorkCover and better effort in terms of prosecutions.

**The Hon. IAN WEST:** I understand you to be saying, correct me if I am wrong, that because the employers are viewing WorkCover as being a toothless tiger and the employers appear to be playing the percentages as to the dollars and cents in regard to costs versus what they might be penalized. Am I understanding in saying it's just squeaky wheel approach and pro active safety has gone by the board?

**Ms BUCHTMANN:** Yes, I believe what you said is true. They do a lot of band aid reactive treatment. A lot of complaints come from employers to say that WorkCover aren't pro active, they don't tell you how to fix a problem, if you've seen some of the prosecution results you just see the part of the legislation you breached, you breach section whatever it is. They're very well aware of that but not how to implement that into the workplace and WorkCover do maintain it's hard to be the educator and the penaliser at the same time but you know, there certainly is a reaction to accidents from WorkCover rather than pro active treatment to get out there and do something about it.

I mean, without jeopardizing the inquiry at Australand, we were out there the other day, we had four WorkCover inspectors on that site. Now, a young boy has died on there, notices were serviced on there, the notices were not complied with, and that is public record and then on the day – it was a very hot day, it was 40 degrees – we had senior management from Australand and they were all a bit flagged by the end of twelve hours on the site, and WorkCover was still ducking and weaving, they almost knocked each other over, the four of them, ducking and weaving, why they wouldn't serve a notice, and they down graded a notice.

So, you know, this is the battle and you've got a deceased boy on that site and that's only one of many sites, so I think something needs to be looked at in the education, maybe if they can be more helpful to people when they do have problems.

**CHAIR:** Do you think some of the inspectors are acting in a way they don't want to upset the employer, that they're playing it soft?

**Ms BUCHTMANN:** It's a hard call. There are no ministerial directions I guess and there's some tremendous inspectors and we're very fortunate. I have a lot to do with some very good inspectors from WorkCover who just go out and do their job. The others, whether they don't know the job, whether they don't want to do the job or the paper work, I don't know the answer. All's I know is that union officials have no problem identifying the problems, faxing them into WorkCover with a list of problems they found and then WorkCover say, I didn't see it happen. You know, the man's not on the roof now. He's not going to be on the roof an hour after. You've got to take the word that he was on the roof without any protection.

**CHAIR:** Has there been any evidence of any corruption?

**Ms BUCHTMANN:** No, I'm unaware totally. I think a lot of them work very very hard and it's the system that seems to work against them at times. I haven't seen any corruption at all.

**The Hon. CATHERINE CUSACK:** Andrew, you referred to government projects that should have a high degree of accountability. Can you outline how in practice that would work, what would prevent supervision of the site actually manned?

**Mr FERGUSON:** I have seen truck loads of pieces of paper from the government about all the great work that they're doing but in terms of the outcome at the actual workplace, I've seen a lot of

workers that have been killed and maimed and many that will never work again, so there's something wrong. I think they should be paying less attention to shuffling paper and actually having a system of face to face supervision of actually what's happening at the workplace.

I know they do all these risk management statements. They get consultants, they pay a fee, tax deductible, then they photocopy it. Job done. No real effort to address the issues of looking at the workplace hazards and trying to address it. I actually think that the government departments, be it Sydney Water or Public Works or Department of Education or a TAFE College they have to have systems to check that the pieces of paper are being complied with.

It might sound a little bit old fashioned, but having some person go out there and actually look at it, check it, audit it, would I think make a good contribution to improving the safety practices. I know where there has been workers killed in different government departments. I actually don't think the government departments look at the issues and follow through to actually improve their performance.

**CHAIR:** I am just wondering, where do you think that those companies that have a bad record, even if they tender the lowest price, should not be given the contract by the government. The government itself should have some way of assessing their work practices?

**Mr FERGUSON:** Most definitely but the killings are taking place not by the principal contractors that get the government contracts, they're often squeaky clean with well paid employees, with all sorts of personal equipment and safety training but the mass of the workforce aren't employed by the principal contractor, they are engaged by subcontract companies who then, often unbeknown to the builder, let alone the government department, sublet work to another contractor, who sublets work to another contractor, to a labour hire agency – you've often got illegal immigrants working on sites unbeknown to anyone on the site.

It is an issue of looking at your subcontract companies and then you have got the issue of companies that fold up and simply re-invent themselves the next day and we are told that is a separate legal entity and there will be legal issues if you seek to raise an issue relating to a previous director.

There are lots of issues here that need to be looked at more thoroughly in terms of Government contracts. It is pretty straight forward. It is a bit old fashioned according to some bureaucrats, but I reckon that getting out there and checking the sites and when we find problems that are not in order, perhaps a fine being issued by the State Government department, or dragging WorkCover out there to do the job. It is not taking place from any of the Government agencies with any satisfaction to the workers in the industry.

**The Hon. CATHERINE CUSACK:** I do understand the dimensions of the problem, I am just trying to understand what it is that you would be specifically asking of the Government. Obviously the teachers at the school at Gosford, you do not mean for them to be in any way responsible. Are you talking about public works as the construction authority for the Government and do they have to be physically on the site? How does the Government do that?

It sounds like a complex and difficult problem with different subcontractors coming in on a daily basis.

**Mr FERGUSON:** They are very complex issues. There are no simple solutions. I do not know if the public works department has jurisdiction over every government contract or whether some are issued by Sydney Water, or a TAFE college. We have to look at which Government departments have responsibility here.

I think that if you are the client and you are going to have something built, you need to make sure that it is built safely, not just put it in your contract and hope for the best, or say a prayer, or whatever it is, but

actually go and supervise what is taking place on your Government building site.

If it is large site it requires greater effort and greater resources. If it is a small site one would assume that is lesser resources, as opposed to somebody being full-time there.

If you look at the most recent Government building site where there were two workers killed at Lake Cargelligo. Two workers were killed on the site and we had two workers badly injured on the site. There was no supervision from Government whatsoever on what was taking place on the site.

I know it is geographically remote from the Central Coast, but you need to have systems where you check the building work and have some systems. I do not agree with outsourcing everything and paying someone to do the job. Some of these Government departments should employ effective safety people to do audits on their sites.

**Ms LEE RHIANNON:** Ms Buchtman, when you were talking about the Australand site you used the term "Ministerial direction". Can you elaborate on that? Were you referring to the Minister directing WorkCover people in general, or is there something specific which has happened in regard to the Australand site?

**Ms BUCHTMANN:** Not particularly the Australand site, but I have been told by WorkCover people there has been a Ministerial direction and sometimes finances go to different areas at Ministerial direction, but not at the Australand site in particular, no.

**Ms LEE RHIANNON:** What you mean by that is that the Minister might be directing WorkCover to concentrate on certain other areas of work, so they have not got enough people to be on site?

**Ms BUCHTMANN:** From my understanding resources go to different areas. They have a falls protection advert at the moment which started yesterday. I understood that that was not to start until the end of March. It did start yesterday.

From my understanding they cannot put money into every area. That is what they say. We are very much into construction and they say that they are going to do demolition intervention, and we are doing this and we have manufacturing as well. They say that the Ministerial direction is that they have got to put money into this. There are other industries other than construction in life. There are other industries where the money has to be spent.

We are in an industry where there is lawlessness through it. It is not a controlled environment, construction, but nothing definitely about the Australand site.

**Ms LEE RHIANNON:** We have been hearing you speak very admirably of many WorkCover staff, but there is a problem with WorkCover. Is it a problem with a lack of resources, a problem with senior management? What would you identify the problem to be?

**Mr FERGUSON:** Part of it is the quality or extent of training. There are some inspectors who are not qualified to do the job. They might be good in a factory environment or a retail environment, but do not have the knowledge or expertise to deal with very complex issues in the building industry.

Maybe it is looking at the background of the various inspectors to make sure that they are appropriately qualified for different industries where there are unique situations. Having the theory and knowledge of safety laws is a pretty poor substitute for dealing with the actual problems of machinery and scaffolding and so on, on the workplaces.

I think I put a lot of it down to the culture. I think it is not unreasonable to expect a culture of zero

tolerance towards bad safety. I think it is a reasonable expectation from workers at the workplace, that if you go to a workplace and it is dangerous, we are not asking for the whole workplace to be stopped but for the WorkCover inspector to identify what is unsafe, to stop workers working in that particular unsafe environment, to transfer them to another safer part of the job and address the issues, but I do not think the culture of zero tolerance is there.

We would like to see the culture change. We would like to see a bit more passion from the top in terms of inspectors, to get them out there in terms of an effective blitz. We have seen media releases about blitzes here or blitzes there, but they are not done in a meaningful way with the cultural backup that is required to get results in this industry.

When it is unsafe, people do not work until it is fixed up.

**Ms LEE RHIANNON:** Is there any issue with funding? Is there a need for more funding, or the emphasis is just on what you have said?

**Mr FERGUSON:** I know that there would not be a problem with funding if they actually collected the fines that have been awarded by the courts and then some other appropriate fines being issued to other people who break the laws as well.

I do not know the issue of funding and who gets paid what wages there. I want to see more inspectors and a culture of zero tolerance towards bad safety.

**CHAIR:** How many more inspectors? When you say more, there is only 301. There are five vacancies. Should it be doubled, 1,000?

**Mr FERGUSON:** I want an outcome where we do not have workers being killed at the workplace and maimed. I think that is a reasonable expectation. I regard it as more than just a goal. I think that until these issues are addressed there should be appropriate resources allocated to get the outcome.

If it was the sons and daughters of the rich and powerful being killed at workplaces you would have a different response from the powers that be. It is the sons and daughters of workers that do not have university degrees, often they are poorly educated, they are battlers, and desperate, and we are not getting an appropriate response from WorkCover in terms of their needs to have a safe work environment.

I think that whatever resources are required should be made available to bring to an end the fatalities and bloodshed in the workplace.

**The Hon. DAVID CLARKE:** How many more inspectors do we therefore need for the job to be properly done?

**Mr FERGUSON:** I cannot quantify it. I could say 50 or 100. I do not want to do that. All I want to see is not one building worker being killed every week and I want to see the cultural change required to get there. If it requires more inspectors, so be it. I think there should not be the bloodshed that is taking place with workers being killed and in particular young boys being killed, and including members of the public as well, from bad safety.

**The Hon. AMANDA FAZIO:** Do the inspectors now work across all range of industries?

**Mr FERGUSON:** Yes.

**The Hon. AMANDA FAZIO:** Do you think it would be preferable to have inspectors allocated to certain types of work so that you have WorkCover construction inspectors, WorkCover factory inspectors?



Do you think that would be better in terms of specialisation, or do you think that would not solve of problem?

**Mr FERGUSON:** To the best of my knowledge inspectors are multi-disciplined and they visit a variety of different industries and workplaces. In the past we had specialised units that were closed down. For example, there used to be a specialised unit for civil construction, and there are some very major civil infrastructure projects taking place at the moment in Sydney, with tunnel projects, and I do not think the expertise an available to audit those sites appropriately.

When there is a safety problem that occurs on any of those infrastructure projects, there is going to be a collapse. There is going to be more than one worker killed. A lot of that expertise does not exist in WorkCover. I have seen people who visit workplaces in the building industry - no disrespect, many of them are very fine professional competent people, but they should not have been allocated to industries where they have no knowledge or expertise to deal with the issues that they are confronted with at the workplace.

There was a decision a while back to close down the asbestos demolition unit. We have been making representations to the Government, trying to address that issue. I do not know where that is up to.

The issues of asbestos impacts workers. They do not get killed overnight. It might take 20 years so perhaps there is less urgency in terms of politicians on the issue. They die an agonising death from mesothelioma or asbestosis. I think there need to be a specialist unit also for asbestos demolition with appropriate resources, not just for the safety of workers, but for public safety.

I am sick and tired of being rung up by members of the public complaining about some demolition site where the asbestos is blowing in the wind all around the local neighbourhood. So we do need specialist sections of WorkCover, despite all the theory that some multi-disciplined person can address all these very complex issues in different work situations.

**Ms BUCHTMANN:** WorkCover was restructured probably three years ago. I cannot remember exactly when WorkCover restructured these teams. Everyone got shaken up and put into multi-discipline teams. We had before an asbestos demolition unit, an electrical unit, with specialists in that field.

We have been calling in our second year of meeting to have it reinstated because we have some inspectors who are exposing themselves to danger. They come out to a demolition area, now knowing demolition and walk into the exclusion zones, or walking into the asbestos, or touching the asbestos to see if it is asbestos. When you had the specialist unit they knew what it was and we knew what it was.

The restructure of WorkCover, I am told, cost a lot of money. It might have but it did not work. You cannot multi-visit and you cannot be looking at a McDonald's site one day and a construction site the next.

We do have construction specific inspectors. On a good day we only have about six available because the rest are doing something else, so unfortunately we do not always get one of those inspectors out. To the big jobs you will, but the other jobs you will. Their restructuring needs to be looked at again. The multi-skilling has not worked. They just have a little bit of knowledge and that is to their disadvantage.

**The Hon. DAVID CLARKE:** Was lack of finance the reason given for these specialised units being closed down?

**Ms BUCHTMANN:** I do not know that answer. I can state that we had a meeting with Kate McKenzie on the reinstatement of the demolition asbestos unit and it was stated by the Demolition Contractors Association that they would be willing to put some funds up to help reinstate the unit. Kate did state in the meeting that funding was not a problem, it was just that they did not want to reinstate those units because they had multi-skilled all these people.

The demolition contractors did say that they would put some money toward it and Kate did say that funding was not a problem in this area, it was just where their resources had to go to, and they did not believe we needed reinstatement. That meeting is still going and we may be winning in that area.

**CHAIR:** We are running out of time. I was wondering if we have other questions whether Andrew and Maureen would be happy to take those on notice. Andrew, we would be very happy if you would like to make some recommendations to the Committee as to what action should be taken into the future, or what recommendations we should be making to the Parliament and to the Government. I know you have lots of ideas, so do not hold back.

**Mr FERGUSON:** I will not hesitate. I welcome the opportunity. I would beg your indulgence on one very specific issue that was highlighted yesterday with Mrs Jardine. I think it was a disgrace that that woman had to bury her husband herself.

**CHAIR:** I agree.

**Mr FERGUSON:** If our union knew about it - it was not one of our union members - we would have taken a collection up on a building site to pay for the funeral. It is a public disgrace. I have raised this issue with the Government for three years now. I have not been shy about it. I have raised it with the Minister.

I have raised it with the advisory council about contractors who are operating at workplaces who do not have workers compensation policies. I have been asked by inspectors to raise the issue privately. They do not have the power to stop any employer at any workplace from working because they do not have a workers compensation policy.

There might be an unsafe work practice. You can stop them doing the unsafe work practice. They can continue to work without having workers compensation insurance.

I am told that the system will eventually catch them up, that there will be an audit, they will get caught and they will have to pay double the premium. Fantastic theory. We heard yesterday that that company has gone into liquidation or is going into liquidation, so they won't be paying any fine for anything.

When we successfully pursue this claim for workers compensation taxpayers will be paying for that funeral eventually and for her counselling and medical support, and I think it is reasonable that WorkCover inspectors have the power when they have find a contractor who does not have a workers compensation policy, to stop that contractor from working until they get a policy.

I am being begged constantly by companies who have policies to say well, I have a policy and I am paying 10 per cent of my wage bill, why is that contractor working on site as he does not have a workers compensation policy.

There is one very specific thing that I would seek your support for, to try and get workers compensation policies so we do not have widows running around with begging bowls two years later not being aware they have any rights whatsoever in terms of workers compensation support.

**(The witnesses withdrew)**

**(Short adjournment)**

**WAYNE DAVID HOWELL**, disability pension recipient, private individual, sworn and examined:

**CHAIR:** Would you like to make an opening statement?

**Mr HOWELL:** Yes please. This is just a summary of what has happened over the thirteen years, so if I get a bit muddled or if I'm not chronologically in order I apologise.

Firstly, I would like to thank the honourable member of the Committee for giving me the opportunity to express my views into the inquiry of serious injury and death in the workplace and my dealings with the WorkCover Authority of New South Wales.

In 1987 at the age of 24, I started by employment at a well known cemetery and crematorium in New South Wales. My employment at first was in the crematorium. This involved the lifting of coffins into ovens and the turning of bodies once inside the ovens.

This was hard, heavy work with a lot of bending and lifting. Whilst I was performing these practices and more, I believed that the work I had been doing was honest and ethical. That is, until I was told by my leading hand that the manager asked us not to say anything about the practices being performed in the crematorium, as he did not want to get caught doing what I believe was inhumane and illegal.

I was furious with what they had me doing for four and a half years and found myself transferred to the cemetery section. I had refused to sign a confidentiality form to prevent me from disclosing the activities that were happening.

As a result of not signing the confidentiality form I was made to do extremely heavy work of lifting large granite slabs and landscaping, which required carrying heavy loads.

In October 1991, at the age of 28, my first injury occurred to my back and legs. I notified my employers and it was reported to WorkCover. After this incident I asked my employer for machinery to help lift the heavy loads. This never happened. I was never told to go on light duties and I didn't hear anything from WorkCover.

In May 1992, at the age of 29, I suffered a major injury of two disc ruptures. I had a laminectomy, discectomy, spinal fusion with plates and screws inserted. As a result of my injuries I now have deterioration in the spine on the levels above and below. I also have permanent nerve damage in both legs. Both injuries were reported to the employer and I was told by the employer that both WorkCover and the insurer were notified.

I have not been approached by WorkCover under any circumstances. If I had of been, if I had been I would not be standing here right now addressing the Committee inquiry. I would also not be suffering a permanent debilitating spinal injury if you, the WorkCover Authority had of investigated. You would have found the reasons behind it, from my refusal of not signing a confidentiality document to not to disclose the activities in my former workplace, to the punishing physical work I was put through.

My former employer had no respect and complete disregard for my safety in the workplace, even after I approached them on countless occasions for assistance with te tasks I was performing. To my knowledge the employer has never been prosecuted.

The WorkCover Authority says, and I quote "We are watching out for you". Well, it's time to remove the blindfold and to see what is actually happening in the work environment and to start enforcing all of your policies, whether it's the Acts, Standards, Codes of Practice, initiatives, legislation and more

importantly, your compliance and prosecution policy. Because behind every death or serious injury in the workplace, there are facts, not fiction, relating to each and every incident.

Since my injury I have suffered each and every day from chronic pain, depression, hurt, anguish, misery, suffering and anger. Even the simplest things that we take for granted like walking, sitting driving, sleeping and bending affect me. It torments me that I cannot do these things without pain.

I'm tired of medication. My legs jump when I'm trying to sleep and I wake up in pain constantly. My back is stiff and painful all the time. My legs go numb, pins and needles come and go. I'm tired of living like this, and to be quite honest, I don't want to be here anymore.

I, as a person, do not function. I sit and look at four walls, swallow fourteen tablets a day, which after thirteen years is causing liver impairment. Tablets ranging from pain, depression, irritable bowel and severe reflux and ulcer medication. I should not have to live like this, impoverished, whether physical or psychological, emotional, social and the like.

I am a parent, and as a result of my circumstances I have not seen my five year old daughter for two years. How do I explain to her why her Dad has not seen her, why her Dad is so unhappy? I will tell you why, because my thought processes have been consumed continuously by this accident and the treatment shown to me.

I am supposed to be there watching my little girl grow. We should be learning from each other. I should be nurturing, protecting, teaching and giving my daughter all the love she needs, but you, the WorkCover Authority, are not allowing me to do so, as I cannot focus on anything else.

Even as I speak to you right now, the WorkCover Authority of New South Wales still refuses, even after numerous letters from my lawyer to investigate not only the employer but also the insurer. They will not reply. So where do I go from here? I think in thirteen years I have had to wait to get the justice I and others deserve is long enough. You are supposed to be there for us. To protect, not neglect.

We as a nation try to help ease the suffering of others in other countries, rightly so, yet we can't seem to get it right in our own backyard. Not only does Workcover leave a lot to be desired, so does the Worker's Compensation Commission. A place where I get told my future will be decided over a few drinks in front of a fire, to other patronizing remarks and incompetent behaviour from the ones who are supposedly there to help us.

In other aspects of law, whether it is motor vehicle accidents or victims compensation, they seem to follow the necessary procedures. Why is it that you, the WorkCover Authority, don't investigate all matters concerning myself and many others in similar or far greater circumstances. Why are we being denied a natural justice? We are people, not numbers. We are not of monetary value and if we do not give people restitution letting them know that we are actually doing something, we are headed for a social disaster, not only in health terms but the costs associated with it will far outstrip WorkCover's costs threefold.

I am asking the WorkCover Authority today to please not let us live in self destruction, suicidal depression. Give us hope and not let us, our families and friends suffer than we have to. People should not be dying or seriously injured in the workplace.

Unless you have had personal experience with the above, you may understand but you cannot comprehend what I and others are put through. You cannot change what this has done to me. Give me at least some peace and comfort in knowing that you would show some decency and actually investigate and not ignore me.

How do I explain the effect this has had on me for the last thirteen years to the Committee? I

can't. I can only give you a summarized version, even though there is much more.

And in closing, I would like to thank the Committee once again, to all those present here today and other interested parties, thank you for listening to me and for caring enough to be here.

To those, to the people who have suffered the loss of a loved one through a workplace accident and to those seriously injured, I pray that you at least get some comfort that you so deserve from the findings, recommendations and legislation that should be passed through by Parliament from this inquiry. Thank you.

**CHAIR:** Thank you for appearing before the Committee and for such a good overview of your own situation. We sympathise with you, you certainly have a very tough time.

Are there any questions?

**The Hon. AMANDA FAZIO:** What was the actual incident at your workplace that caused you to end up with two ruptured disks?

**Mr HOWELL:** I was lifting granite slabs.

**The Hon. AMANDA FAZIO:** For headstones and things?

**Mr HOWELL:** Yes.

**The Hon. AMANDA FAZIO:** And your workers compensation claim was that processed okay?

**Mr HOWELL:** As far as I know through the employer.

**The Hon. AMANDA FAZIO:** And have you ever been offered any rehabilitation?

**Mr HOWELL:** When I first - in the second injury I was, and that was for only four times over a period of five years, they come and saw me four times at home but that was it.

**The Hon. AMANDA FAZIO:** So there was no offer of any sort of change of duties, or graduated return to work, or lighter duties, nothing like that?

**Mr HOWELL:** Nothing.

**The Hon. AMANDA FAZIO:** You have been left as is. What is the income that you are surviving on these days?

**Mr HOWELL:** \$272 a week.

**The Hon. AMANDA FAZIO:** Where is that paid?

**Mr HOWELL:** Disability support pension.

**The Hon. AMANDA FAZIO:** From Centrelink?

**Mr HOWELL:** Yes.

**The Hon. DAVID CLARKE:** Mr Howell, did you institute proceedings in the Workers Compensation Court?

**Mr HOWELL:** No, I went to the common law. That was for the second injury, which was settled out of court in 1996.

**The Hon. DAVID CLARKE:** And was there a monetary compensation from that settlement?

**Mr HOWELL:** Yes.

**The Hon. DAVID CLARKE:** Was that a substantial settlement?

**Mr HOWELL:** From what I was told first up in my opinion no, but they said it was.

**The Hon. DAVID CLARKE:** You were represented by a solicitor?

**Mr HOWELL:** Yes, and a barrister.

**The Hon. DAVID CLARKE:** What is the breach of the safety regulations that you say that WorkCover should be acting upon?

**Mr HOWELL:** From its compliance and prosecution, they have response levels and from what I am told they have response levels at what they actually investigate to whether they issue prohibition notices and that.

**The Hon. DAVID CLARKE:** What did the employer do that was, in your opinion, a breach of the safety regulations for which they should have been prosecuted?

**Mr HOWELL:** From, you mean, like confidentiality agreement, from not signing that, to putting me down into the cemetery and putting me through a lot of harder physical work and not offering me any mechanical assistance and they knew I had already been injured. That is how I look at it. I do not know what you talk about breach-wise.

**The Hon. DAVID CLARKE:** You are saying there should have been some assistance in lifting these headstones?

**Mr HOWELL:** Yes.

**The Hon. DAVID CLARKE:** What did WorkCover Authority say to you? How did they respond when you raised this with them?

**Mr HOWELL:** I did it through the employer and I was told nothing after that.

**The Hon. DAVID CLARKE:** Did you ask your solicitor to approach WorkCover Authority for the purpose of a prosecution?

**Mr HOWELL:** Back then, yes.

**The Hon. DAVID CLARKE:** What was the result of that?

**Mr HOWELL:** Nothing.

**The Hon. DAVID CLARKE:** What does your solicitor say was the result of that?

**Mr HOWELL:** The solicitor from them?

**The Hon. DAVID CLARKE:** Your solicitor?

**Mr HOWELL:** Now?

**The Hon. DAVID CLARKE:** Yes.

**Mr HOWELL:** He still has received no answer from them.

**The Hon. DAVID CLARKE:** How long ago did your solicitor complain to WorkCover Authority that there was a breach?

**Mr HOWELL:** The current solicitor I have now, I think it was two or something years ago, and the one before that was from 1992, so I have two different ones.

**The Hon. DAVID CLARKE:** When did your solicitor complain to WorkCover Authority and allege that there had been a breach of regulations?

**Mr HOWELL:** Current solicitor, two years ago. The one before back in 1992.

**The Hon. DAVID CLARKE:** The one in 1992, did he get a response from WorkCover?

**Mr HOWELL:** No, she did not.

**The Hon. DAVID CLARKE:** Did she write again? Did she write once or several times?

**Mr HOWELL:** To be quite honest I do not really know if she did. At that stage in my mind I had other things to think about. I left it in the hands of the barrister and solicitor.

**The Hon. DAVID CLARKE:** Did you ask the solicitor?

**Mr HOWELL:** Over numerous occasions I did.

**The Hon. DAVID CLARKE:** Did the solicitor say I have had no response?

**Mr HOWELL:** Yes.

**The Hon. DAVID CLARKE:** Did you ask how many times she had written?

**Mr HOWELL:** Not back then I did not.

**The Hon. DAVID CLARKE:** What about the present solicitor?

**Mr HOWELL:** Yes, and I see him on a regular basis and he tells me he has heard nothing back from WorkCover.

**The Hon. DAVID CLARKE:** When did you first instruct him to approach WorkCover?

**Mr HOWELL:** Back in March 2002.

**The Hon. DAVID CLARKE:** You have asked him for copies of the correspondence?

**Mr HOWELL:** Yes, he has all of those letters. There is a legal thing going on at the moment. I did

not know if I needed that sort of evidence.

**The Hon. DAVID CLARKE:** You say there has never been any response from WorkCover to his letters?

**Mr HOWELL:** Not one.

**The Hon. DAVID CLARKE:** You have no doubt about that?

**Mr HOWELL:** No doubt. He has no reason to lie to me.

**The Hon. DAVID CLARKE:** Has your solicitor therefore complained to the Minister?

**Mr HOWELL:** I do not know if he has complained to the Minister. He keeps complaining to WorkCover, sending them letters, but he is still getting no response.

**The Hon. DAVID CLARKE:** It seems very unusual that WorkCover Authority would not respond to numerous letters that were sent. It is possible, but it would tend to be unusual.

**Mr HOWELL:** I understand that, but I can only say what I have been told.

**The Hon. DAVID CLARKE:** It is possible but it would be unusual.

**The Hon. PETER PRIMROSE:** Can I suggest, Mr Chairman, that what we should do, unlike my colleague here I do not know what the formal practice is with WorkCover and dealing with solicitors. It would seem to me that your case and what you have outlined today as your evidence, we should put that to the WorkCover Authority and when they come back here we should ask them to explain to us in detail if you are satisfied with that, what your circumstances are, why they have not responded.

**The Hon. DAVID CLARKE:** Since 1992?

**Mr HOWELL:** Since 1992.

**CHAIR:** It gives the impression that WorkCover denies any responsibility for you or your injuries. Someone must be reading the letter at WorkCover and deciding they are not going to enter into communication with the solicitor.

**Mr HOWELL:** I just get told by the solicitor that they still will not respond and he does not understand why. He has sent them other letters and they will not respond.

**CHAIR:** We will put these questions on notice to WorkCover on your behalf and insist that they provide answers. You mentioned at the very beginning you were transferred from the crematorium.

**Mr HOWELL:** Yes.

**CHAIR:** You believe there were wrong work practices there, or illegal?

**Mr HOWELL:** After being told, I was there for four and a half years in the crematorium and then was told not to say anything about what was happening.

**CHAIR:** What were actually the illegal activities?

**Mr HOWELL:** Are there any members of the public in here? I am a bit concerned.



**CHAIR:** It will not affect you. You are under Parliamentary privilege. If it does relate to criminal activity, if it is that serious, we may have to have that in camera with no members of the public in the room.

**Mr HOWELL:** I do not know if it was illegal. I am not sure.

**CHAIR:** You are not expected to know. You are a member of the public. Just in case it is, just so we understand what started your circumstances and maybe there is some reason for the attitude WorkCover has taken to it.

**The Hon. AMANDA FAZIO:** I now move that we go to an in camera session.

**(Evidence continued in camera)**

**The Hon. AMANDA FAZIO:** When you first went to work in the cemetery part were you given any training or guidelines on heavy lifting and the weights that you were not supposed to try and lift on your own?

**Mr HOWELL:** Never. No training. We only ever got trained in our certificates in how to use Roundup, weed killer. That was it.

**The Hon. AMANDA FAZIO:** You said that you asked for mechanical assistance to help you carry these heavy slabs of stone. Were any of the other workers able to access mechanical assistance to help them?

**Mr HOWELL:** They used to have the backhoe to lift them off the back of the truck. That is how they used to take them off the back of the truck. They said for me you do not need the backhoe today to lift them off on the pallets, just carry them, and that is how it happened.

**The Hon. AMANDA FAZIO:** Were you aware of any other workers who were doing this heavy lifting of slabs of stone who had back injuries?

**Mr HOWELL:** Not that I am aware of, as people lifting them all the time. Most of the time they had two people doing that.

**The Hon. AMANDA FAZIO:** You think in the circumstances you were being asked to do more difficult and heavy work on your own as a way of getting you to leave that place of employment?

**Mr HOWELL:** I do.

**CHAIR:** For the benefit of the members of the public and WorkCover representatives, the in camera evidence had nothing to do with WorkCover.

You have mentioned solicitors and barristers. Who is actually meeting all your legal expenses?

**Mr HOWELL:** No-one. There was no talk involved in cost because they said within the Workers Compensation Commission I am protected at the moment from costs. That is what I was told.

**CHAIR:** No-one is actually forcing you or giving you a bill?

**Mr HOWELL:** No.

**The Hon. DAVID CLARKE:** You do not have any proceedings in the Workers Compensation Commission?

**Mr HOWELL:** I have had proceedings in the Workers Compensation Commission.

**CHAIR:** They are covering your costs then?

**Mr HOWELL:** I guess they would be, I am not sure. Out of my pocket I am not paying for anything at the moment.

**The Hon. DAVID CLARKE:** Your solicitor cannot charge you under the law for acting for you in the Workers Compensation Commission?

**Mr HOWELL:** That is what I mean. There is no cost. I was protected within that thing.

**CHAIR:** Who meets his costs?

**The Hon. DAVID CLARKE:** His costs get met if he succeeds against the insurer, but if he loses the solicitor does not get paid.

**CHAIR:** No win no pay. Thank you for giving us your time and sharing with us your story. We hope somehow that your health can improve and you can have your time with your daughter and so on. It is very important.

**Mr HOWELL:** All I actually need is for them to investigate and give me an answer, a reason as to why this happened, and they still will not investigate and there has been still no investigation after numerous letters from my solicitor to the WorkCover Authority. I am able to produce those and send them to you if you like. It is the truth.

**CHAIR:** It may help us to have at least one of those letters as a document that was sent to WorkCover and we can do a paper trial to find out what happened at WorkCover, why it was not responded to.

**Mr HOWELL:** It was investigated by an investigator who investigated other former employees who corroborated my story of what was happening at the cemetery.

**CHAIR:** If you can see the clerk when you have finished and arrange to get copies of those letters, it would help us.

**(The witness withdrew)**

**(Luncheon adjournment)**

**MARY LOUISE YAAGER**, Occupational Health and Safety and Workers Compensation Officer, Labor Council of New South Wales,

**PETER JAMES REMFREY**, Secretary, Police Association of New South Wales, representing the Labor Council and the Police Association,

**DAVID ANDREW HENRY**, Occupational Health and Safety Officer, AMWU, representing the Labor Council of New South Wales and the AMWU,

**KEITH JOHN MCGUCKEN**, Occupational Health and Safety Officer, Transport Workers Union of New South Wales,

**ALISHA LOUISE HUGHES**, Industrial Research Officer, National Union of Workers, New South Wales, representing the Labor Council and the National Union of Workers,

**LINCOLN JAMES LLOYD KINELY**, Industrial Officer, Shop Distributive and Allied Employees Association of New South Wales, representing the Shop Distributive and Allied Employees Association of New South Wales, and

**MATTHEW JAMES THISTLETHWAITE**, Assistant Secretary of the Australian Workers Union New South Wales Branch, representing the Australian Workers Union New South Wales Branch, sworn and examined:

**CHAIR:** I understand, Mary, that you are starting off with a presentation.

**Ms YAAGER:** What we have decided to do today with the oral submission is to provide you with basically a snapshot of the Labor Council's submission. This is not our formal written submission. We will be providing the Committee with a full written submission, with a number of recommendations within that submission, but just the time we have had to do this and the research required it will take a little longer.

Most of the issues we will be talking about today are in the oral submission and the presentation. There are some issues that we are still yet to research that we would like the opportunity to talk to.

I have handed everybody a copy of the presentation. Firstly the Labor Council and the unions welcome this opportunity to make this oral submission to this inquiry today. There are a number of unions here today that I have invited so we can give a broad perspective, a broad industry perspective, of different industries and as I have just said to you, the Labor Council will be making a formal written submission to the inquiry.

There has been a plethora of inquiries into workers compensation and occupational health and safety as you and I know, Fred, having been on many of these inquiries. The unions are very skeptical about a number of these inquiries. It took me months to write a submission to the Productivity Commission, arising out of the Federal Government wanting an inquiry into workers compensation and occupational health and safety.

We went to a lot of trouble and made a lot of recommendations. We see those inquiries as wanting to water down good occupational health and safety concerns and we have concerns about inquiries, particularly in workers compensation.

However, leaving that aside, the New South Wales Government appears to have a good track record in terms of implementing recommendations at previous inquiries that have been before this Parliament and I refer to the McCallum review of the Occupational Health and Safety Act and also the standing Committee on

Law and Justice, of which you were a member, Fred. They have actually implemented a number of those recommendations, not all of the recommendations. We are going to look at some of the recommendations that they may not have implemented and we are going to review some of those recommendations.

The union movement believes as a result of some of those inquiries, and particularly the McCallum review of the OH&S Act that we do have superior laws in New South Wales to any other State in Australia and our Act clearly recognises the role of unions to investigate breaches of the Occupational Health and Safety Act and also to prosecute.

The good thing about the legislation that we have is that the unions were consulted all the way through the reform process of the Act, and particularly with the occupational health and safety regulations, the unions actually sat down with WorkCover and the Government and has major input into the new legislation.

We also believe that the Government's communication strategy that they are funding through a WorkCover legislative assist program is an excellent initiative of the Government and certainly we believe has raised awareness amongst employers and employees out there on the new occupational health and safety laws.

I myself have not only briefed unions but have also briefed breached a number of employers in the occupational health and safety laws.

The Government has provided funding to unions and employers to educate their constituents. This has been helpful and has seen the development of practical programs and tools for employers and unions to use. It is very effective in terms of below the line marketing.

I remember the Law and Justice Committee recommended a high level awareness campaign at the time about an advertising campaign, but you cannot have an advertising campaign by itself. You have what is called below the line marketing and the legislative assist program has given a below the line effective marketing strategy and we believe and we hope that this Committee will recommend to the Government that those type of programs continue.

**Mr REMFREY:** From the Police Association's perspective we have been recipients of two and we hope the third grant will be made available by the Government. That has allowed us to conduct work place training of occupational health and safety committee members under the changes to the legislation. We see that as absolutely crucial. To confirm Mary's view that employers have benefited from those arrangements, we have done a considerable amount of training of Police Service managers, both civilian and senior police officers, and that is contributing to enhancement of a safe culture within New South Wales police. We would endorse continuation of the WorkCover Assist program.

**Ms YAAGER:** While the unions do recognise the good of occupational health and safety legislation we believe it needs to be strengthened. We need to send a clear message to people out there about compliance. We believe that the same standard should apply in OH&S as does in other jurisdictions when there is fatalities. I can think of a number of things that have happened lately. A case that springs to mind is the Pan Pharmaceuticals where there were no fatalities. However, had there been a fatality, the community expectation would have been that somebody would have been punished as a result of that negligence. We are asking that the community expects the same standards to be applied in OH&S.

We have called on the Government to introduce industrial manslaughter legislation and we ask this committee to recommend that the Government introduce industrial manslaughter legislation. I know a number of governments in Australia are contemplating industrial manslaughter legislation and the ACT has actually passed theirs and the same with Canada. Canada has recently passed this legislation. The ACT industrial relations Minister, Katy Gallagher, said at the time the bills were passed they never had so many calls from employers trying to say, "What do I have to do to comply

with OH&S legislation?" Even though they thought they had great safety laws this was a thing that sent a clear message to employers. It is about sending a message to employers.

**Mr HENRY:** Just to reiterate on the point that Mary brought up in regards to applying standards as per other jurisdictions, we currently have problems in New South Wales where companies enter into receivership leaving workers who may be affected by diseases or be killed or seriously injured on the work site without recourse. I draw to your attention Pasmenco on the central coast. Recently I have been getting a number of calls from workers and workers' families who have been suffering from poisoning from lead and zinc. That poisoning has also poisoned their children. There have been a number of deformities in the children and still births directly attributed to the exposure these workers got while working at Pasmenco. Pasmenco has now gone into receivership and these workers and families have no ability for any recourse or any financial retribution for what they have been through.

So it is important that in the laws that we put in place we are able to follow and actually capture directors, sometimes more so than these laws being established for companies, because certainly companies do come and go and unfortunately we have also seen where companies Phoenix and Pasmenco, again, are good examples of this. My understanding is that the two directors of Pasmenco are now again operating on the central coast but their assets have been transferred into their partners' names. The workers are still left without any recourse. I would also draw the Chair's attention to James Hardie and Amica and Acaba, which are two shelf companies that were established. James Hardie is well known for the asbestos related disease that not only workers but the families of workers and people still today are exposed to. James Hardie has corporately restructured in an attempt to be able to avoid future legal action by people dying of asbestos related diseases and certainly that needs to be rectified through some clear legislation.

**Mr THISTLETHWAITE:** In relation to the introduction of industrial manslaughter laws in New South Wales, from our perspective we see this very much as a process of evolution towards fair and reasonable industrial and occupational health and safety laws in New South Wales. There are two points that I want to make in relation to OH&S and the effectiveness of prosecutions and in turn the effectiveness of workplace safety laws in New South Wales.

The first is that we have got some serious questions about WorkCover's ability to investigate and prosecute serious injuries and deaths in New South Wales. From our perspective WorkCover simply do not have the resources, in terms of their prosecutions branch and the necessary skills in terms of forensic and investigative issues, to be able to meet the needs of society in relation to work place deaths and injuries. We have been calling for a number of years on a collaborative approach between WorkCover and using some of the skills that exist in the DPP, that exist in the coroner's office and working collaboratively with those organisations to improve the investigative side of workplace death in New South Wales. We believe that is leading to some downfalls when it comes to prosecutions of corporations, and in some cases directors, where there is serious death and injury in the work place.

The second point I wanted to make relates to the monitoring of payments and penalties. It is well known that it is quite easy to avoid the payment of a penalty under the Occupational Health And Safety Act and I noticed in the terms of reference the case of Dean McGoldrick was mentioned. It is a well known example of an employer abrogating their responsibilities in relation to the payment of a penalty. I also want to raise for the Committee another case which we say could easily occur in New South Wales under the current laws. It is a case that occurred in Victoria, but it quite well highlights the inadequacies of the laws when it comes to prosecutions and finding people liable and having those corporations and people pay their debt, so to speak, in relation to the penalties that they have committed.

This is a case of a boy named Anthony Gorrick: Anthony was 19 years old when he was killed on the second day on the job at work. He was crushed to death when a five and a half tonne slab of concrete fell on him while it was being transported on the tines of a forklift. Only three weeks earlier

Dry Bulk Pty Limited was issued with an improvement notice by WorkCover of Victoria because another slab had fallen in the exact same circumstances. A couple of weeks earlier this company was put on notice that the work method they were using was unsafe. Despite that, they continued to work in that manner and unfortunately this poor boy was killed. The company was prosecuted under the Victorian OH&S Act and they were fined \$50,000 and the directors were fined \$10,000 each but not a cent was ever paid by the company - not a cent was ever paid. The company went into liquidation. In an ultimate act of hypocrisy the parent company continued to operate at that site. They continued to operate at the site where that boy had been killed and no one ever paid a cent to the Government in relation to that particular death. We say that can happen in New South Wales. Unfortunately there are cases where that does occur. That is why it is important, we say, that there needs to be a legislative response to these issues and fatalities that are occurring in the work place.

There are a number of options that we would like this Committee to look at in terms of sentencing options, up to and including industrial manslaughter. One of those options is the possible deregistration of companies and parent companies where there have been circumstances where a company has been found to have breached the OH&S Act and caused serious injury and death in the work place, and, secondly, the disqualification of directors, up to and including bans from holding directorships where those companies are found to have been negligent and caused death or serious injury in the work place.

Our unit is an advocate of some form of industrial manslaughter law in New South Wales. We are of the view that such a law should be one that is similar to culpable driving where it is a strict liability offence. If you commit the crime the mental element is not so important but you are guilty of the offence where there are circumstances where the Act has been breached and that breach directly leads to a death or serious injury in the work place. In that respect we are calling for the creation of a new offence and in line with that we believe that this Committee should have a look at some of the defences that are available to companies and directors currently under the Act, in particular the defence under section 26 of the Act which is often used by directors to avoid any penalties in relation to serious injury and death in the work place.

I just want to highlight one thing for the Committee in finishing. We all would have seen WorkCover's ads run over the last 12 months over workplace safety, in particular the ad where there was a young worker on a roof, directed to go on to a roof by his employer. You see the footage of the employer telling him to go up on the roof. No harness was worn or anything like that. You hear the cry as the boy falls from the roof. Very similar circumstances to what happened in the case of Joel Exner. You see the boss and his off-sider at the hospital where they are informed that the poor boy has died and they walk out of the hospital heads down, all that sort of stuff. Then the ad comes up with the importance of workplace safety.

Compare that to the ads that we see in relation to driving on our roads. Similar sort of circumstances, drink driving or something like that, speeding, similar footage, someone is out having a good time and then they have an accident. The difference between that and the ad in relation to WorkCover is that goes a step further. The next point in the ad is them being prosecuted in court and being found guilty of the offence and being sentenced to a gaol term. That does not happen in a work place accident, even though there may be negligence on the behalf of an employer.

That is the reason why we say there are still these problems, and the statistics show it, that workplace deaths are not falling at the level they should be and are not responding in the same way that campaigns on the road have. I will leave my comments at that.

**Ms YAAGER:** All of the unions share Matt's view and he was very articulate in expressing it.

The last point I want to make is that the Government has set up a process to look at the issue of manslaughter legislation and we actually support the process. However we do recommend to the Committee that they recommend to the Government to introduce industrial manslaughter.

Even though we have just touched on that, we have good occupational health and safety laws. The problems are with implementation and enforcement and there is a real problem in the area of duty to consult, the election of OH&S representatives. We have had legislation for quite some time now, yet very few workplaces have occupational health and safety representatives and I have not seen any campaign by WorkCover or any enforcement in this area.

Basically what we are finding and what the unions across the board are finding is occupational health and safety in workplaces are fundamentally flawed. We recently reviewed the structures in rail. We had a meeting on Friday with a number of occupational health and safety committees in rail and we were just appalled to find out how appalling those structures actually were and how dysfunctional the committees are in the rail industries and with occupational health and safety committees the minutes actually sat there for a number of years.

Dave Henry, who was at the same meeting as me, would say some that issues sat there for four years and were not dealt with. These are the areas that we have to start getting a major focus on.

The other area is that OH&S is just not given the priority by employers that it should be and obviously that is because of our enforcement arm. As Matthew was explaining, like the community, and there is that expectation of everybody out there in terms of other legislation that we have to comply with, but the same compliance is not with occupational health and safety.

We need to dramatically review our current strategy in terms of occupational health and safety.

We might actually now address the terms of reference and I might ask my colleagues to do is I will make some broad comments and they will give their industry and their own perspective in terms of reference.

The first one obviously, and the Committee has heard quite a bit about the death of Dean McGoldrick, and obviously everybody acknowledges that that fine was inappropriate and the matter should never have been pursued before the Chief Industrial Magistrate.

I am glad to hear that WorkCover's policy in terms of that has changed, but that should never have occurred. Again the fine was \$20,000, a minuscule fine and only a small portion of that has been paid, \$1,800 of that has been paid.

The CFMEU were the only support for Robyn McGoldrick and her family and I witnessed that personally at Labor Council. Brian Miller, their safety officer, used to ring Robyn constantly or take her telephone calls to council all through this traumatic ordeal and even went to the court hearing with Robyn.

The thing that sticks in my mind about this case is that Robyn actually said to me "I rang the employer before my son started on that job. I rang him and asked him to assure that my son was going to be safe working on this site" and the employer, who was a family friend I am led to believe said "I promise you there will be safety training and safety harnesses". We all know the outcome. There was not any.

This is one prime example, one good case study of why that penalty had no impact on the negligent party, absolutely no impact whatsoever and surely in these cases the Committee must think industrial manslaughter is justified in these cases where there is complete disregard for human life, a young person who is inexperienced. You have an absolute duty.

In terms of the prosecutions division in WorkCover, the Labor Council is very concerned that a number of fatalities are not being pursued and I know that the CFMEU in their submission has handed up a list of prosecutions that they do not believe have been pursued by WorkCover. We are actually in the process of asking WorkCover for a full explanation.

During my research for this submission they actually said that some of those matters were being pursued but I will let the Committee, in my submission, know the outcome.

We believe that the prosecution division, and Matt Thistlethwaite touched on this, does not have enough solicitors. The workload on the existing solicitors is enormous. It needs to be reviewed and a ratio system needs to be established, probably similar to what happens in other jurisdictions.

We have said that the training of inspectors in the collection of evidence needs to be reviewed and Matt highlighted the need for training in forensic and other sorts of areas to really help the inspectors thoroughly complete their investigation and do a proper job so that we can have everything that we need for a prosecution.

We believe that WorkCover inspectors should be provided with enough investigative solicitors to assist them in gathering this information and evidence.

One of the problems that we have is the two year time limit. I have heard that actually prosecutions, they just get in the day before the prosecution, the summons is actually laid and it is almost a second last day and I think Peter wants to give an example of that.

**Mr REMFREY:** An example of that, and it is a little dated, the deaths of our members Addison and Spears at Crescent Head resulted in the first prosecution of the New South Wales Police Service, as it was then known, by WorkCover. The information was laid the day before the two year time limit ran out and there was a tremendous amount of discussion between ourselves and WorkCover about that prosecution.

At one point we had agreed amongst ourselves that we would undertake that prosecution, which we estimated would have cost the union something in the order of \$300,000. That is obviously unacceptable. It is an example of problems that existed in WorkCover. We have seen some improvement but the other unions indicate that that problem still occurs.

One of the issues raised by the unions is the time it takes for WorkCover to make a decision about whether or not they are going to prosecute. Obviously that leaves very little time for the alternative prosecutor, which is the union secretary under the Act, to undertake the relevant investigative processes and prosecute if that is the ultimate outcome.

We are a little concerned about the two year timeframe, particularly in terms of if WorkCover makes a decision not to prosecute, the union has to have an opportunity to make a considered decision whether they would, on behalf of the injured or killed member.

**CHAIR:** Do you have a recommendation as to how long it should be?

**Mr REMFREY:** It probably needs to be considerably longer, particularly if we are successful in getting the industrial manslaughter issue raised.

**CHAIR:** Five years?

**Mr REMFREY:** We would be happy to see that time line, although we wouldn't like it delayed. There needs to be procedures put in place to accompany an extended timeframe, to ensure that the relevant WorkCover Authority makes a decision in good time. There are some reasons why prosecutions get delayed with injuries being able to settle down and investigations taking longer than they ought, but we would like to see a scenario where somebody who is guilty of an offence under the Act is not prosecuted by the dint of the passage of time. That would be absurd.

**Mr McGUCKEN:** In relation to the Transport Workers Union I would like to endorse everything



said so far, but I would like to make the point in relation to prosecutions and in relation to WorkCover prosecuting people in the transport industry, it is basically unheard of primarily because in WorkCover's fatalities statistics, transport workers numbers are not included.

I would like to tell you that from 1998 until 2002 there were 953 transport workers killed on the road in Australia.

**CHAIR:** Just repeat that again, the date?

**Mr McGUCKEN:** From 1 January 1992 to December 1993 there were 968 people that passed away and can I say--

**CHAIR:** Two years?

**Mr McGUCKEN:** One full calendar year. I beg your pardon, two. Can I say also last December in New South Wales, according to the Roads and Traffic Authority statistics, 20 truck drivers, drivers of articulated vehicles, were killed on the roads in New South Wales. There is no prosecution, there is no investigation. The only time an investigation takes place into a fatality in the transport industry is when the TWU contacts WorkCover and drives them and hounds them to do something about it and then the response we get from them is really the police should be looking at it because they are the lead agency, the police and the Roads and Traffic Authority.

Quite clearly under New South Wales legislation a truck is deemed to be a place of work. WorkCover being the regulator, the safety regulator of work places is very, very reluctant to get involved. Whether it be through a shortage of resources to be able to carry out appropriate investigations or not, does not help those people that are working and might I say through legislation are able to work 14 hours a day, and I do not know of any other group in any industry that has that type of legislation before it.

What I am referring there to is what they call the transitional fatigue management program that employers are able to go into and people have to work 14 hours a day.

We have many of our members being forced into working 80, 90 and 100 hours a week. There are many, many numbers of people who do not report their injuries, primarily because they are owner drivers and if they take the time off, when they report those injuries then it is going to cost them a lot of money. Many of those people have paid \$300,000, \$400,000 or \$500,000 for their rigs. They cannot afford to be off the road.

Whatever we do with WorkCover there is absolutely no support and the whole system of investigation clearly needs to be looked at. There needs to be appropriate measures put in place for those employers, the clients, the consignors, the receivers who make unrealistic demands on the supply of goods or on your drivers or transport operators, to ensure if they do that and there happens to be an accident, or it happens to be reported, that there is appropriate penalties placed on those people.

**The Hon. IAN WEST:** Do I understand you also to be saying innocent bystanders might be injured?

**Mr McGUCKEN:** Absolutely. The Roads and Traffic Authority statistics, when you have a good look at them, paint a frightening picture. More information on this will be coming through to the Committee through our written submission. You should have it by the end of this week.

The statistics paint a terrible picture when WorkCover claim X number of people have been killed in workplaces in New South Wales. I am sorry, that figure is incorrect.

**The Hon. IAN WEST:** That figure you referred to of 900 or whatever. Referred only to drivers, not to others who may have been killed?

**Mr McGUCKEN:** These were drivers.

**The Hon. CATHERINE CUSACK:** A test case on this issue is being run by WorkCover at the moment.

**Mr McGUCKEN:** One.

**The Hon. CATHERINE CUSACK:** When you say nothing is being done, I understand there is a test case and a lot is being done.

**CHAIR:** That is the vehicle in the mine.

**The Hon. CATHERINE CUSACK:** The crash at Grafton. This is a huge test case about the vehicle being the workplace. It involves the death of a truck driver at Grafton, I think a couple of years ago. It is a truck run by a couple who live somewhere on the south coast.

**Mr McGUCKEN:** You are referring to Hitchcock?

**The Hon. CATHERINE CUSACK:** Yes.

**Mr McGUCKEN:** That is a case that is still ongoing. It has been run for a little while. Can I say out of 958 deaths that is one.

**The Hon. CATHERINE CUSACK:** It is a test case, is it not?

**Mr McGUCKEN:** That is one.

**Ms YAAGER:** What Keith is saying is that those fatalities are being investigated to see if there has been negligence under the Occupational Health and Safety Act. I think that is where Keith is coming from.

**Mr McGUCKEN:** Can I go back and clear up the dates for you and the numbers and I apologise if I have made a mistake here. This was accidents between 1998 and 2002 and there were 958 fatalities.

**The Hon. AMANDA FAZIO:** There has been an inquiry into the long haul trucking industry.

**Mr MCGUCKEN:** Quinlan inquiry.

**The Hon. AMANDA FAZIO:** Did they make any recommendations for the long haul truck drivers?

**Mr MCGUCKEN:** They will be articulated through the written submission. The TWU would be requesting that this Committee recommend to the Government that the Quinlan inquiry recommendations are implemented in full.

**Ms LEE RHIANNON:** You said in your opening remarks that WorkCover were reluctant to investigate. Do you have any understanding why that is the case?

**Mr MCGUCKEN:** Primarily because they claim the RTA and the police are the lead agencies.

**Ms LEE RHIANNON:** It is as simple as that?

**Mr MCGUCKEN:** That is their view.

**Ms LEE RHIANNON:** My question was: That is what they say. What do you believe is the reason? Do you believe it is a Ministerial directive?

**Mr MCGUCKEN:** I believe it is because of lack of resources.

**The Hon. DAVID CLARKE:** Those 958 deaths, is there any information as to what percentage died as a result of speed, alcohol?

**Mr MCGUCKEN:** Or fatigue.

**The Hon. DAVID CLARKE:** Is there a break-up?

**Mr MCGUCKEN:** We will supply that for you in the written submission.

**The Hon. CATHERINE CUSACK:** The police initially need to identify it and refer it to WorkCover?

**Mr MCGUCKEN:** Yes.

**The Hon. CATHERINE CUSACK:** I cannot see how WorkCover could become involved without the agencies referring the accident.

**Mr MCGUCKEN:** The truck is deemed as a place of work, a truck cabin is a place of work. The safety regulator of this State is there to look after workplace accidents.

**Ms YAAGER:** The legislation we have, quite clearly employers have to do things about fatigue, it is specified in our legislation. Fatigue is a big factor. It is almost half the road fatalities now, 45 per cent of all road fatalities. It will be interesting to see how many truck drivers died as a result of fatigue. It is the occupational health and safety component or system that the employer does not have in place that we want investigated. That is where we are coming from. We believe that is not happening and it is WorkCover's primary role.

**MR THISTLETHWAITE:** If I may? Ms Rhiannon asked a request about why WorkCover do not investigate many of these incidents. It is a policy on behalf of the WorkCover. I can give you a classic example. It is in the horse racing industry, arguably one of the most dangerous professions that anyone can undertake in New South Wales. If you look at the accident and fatality statistics you will find that they are very much under valued because the industry is a self insurer. It is so dangerous, and the history of claims is so poor, that no private underwriter will go near it and will insure it. The industry has a form of self insurance through levies on participants in the industry.

In August 2003 there was a race meeting at Kempsey racecourse and there had recently been some work done on the track at this particular racecourse. They had laid some new turf. The first race occurred and at the position where the new turf had been laid a number of the horses, when they ran over it, slipped and lost a bit of footing. No-one fell. The jockeys managed to stay on and the race was concluded. The jockeys got together in the jockey's room and informed the stewards and told them that the particular part of the track was unsafe and that something should be done about it. The stewards contacted the track staff and the person who was involved, the curator of the track, said, yes the work had not consolidated as they thought and he offered to put a false rail in place that would divert the horses out and they would have to run around the work done. The stewards rejected that. They went out and had a look at the track and they said, "It is not as good as it possibly could be but take care going over that part of a race track". How you take care with a 500 kilogram thoroughbred under you, I don't know. What do you know, in the second race there was a fall at that part of the track and two jockeys were seriously injured. Beau Aglin, an apprentice, was out of riding for six months. He suffered a number of fractures in his back and was transported to hospital via the Westpac rescue

helicopter. The second jockey, Barry Courtney, a very experienced jockey, riding for almost 30 years, he was knocked unconscious and suffered some minor brain injuries. He will never ride again. His career is finished.

Because an individual was knocked unconscious, under the occupational health and safety regulation, there are what are called "non-disturbance occurrences" whereby if certain events occur at a workplace the area is not to be disturbed and WorkCover called and asked to investigate. I rang WorkCover and asked if they were called in to investigate. The response I got was that WorkCover considered it to be a sporting event similar to a rugby league match or a cricket match and it was not considered a workplace, so they could not and would not investigate this particular accident, despite the fact that probably the occupier of the premises was negligent and indeed, arguably, the Thoroughbred Racing Board stewards could have been negligent, and may have been prosecuted under the Occupational Health and Safety Act.

There are a number of policy decisions that WorkCover make in relation to the investigation of accidents and injuries in a particular workplace. We have written to WorkCover and asked them to review a lot of those policy decisions.

**Ms YAAGER:** We are recommending that WorkCover be more strategic in terms of targeting industries such as the racing industry and long haul transport and poor performing industries such as rail.

**CHAIR:** There has not been a clear definition of what a workplace is.

**Ms YAAGER:** The unions were very concerned with WorkCover and were very vigilant about the number of prosecutions that WorkCover were actually pursuing and you can see that there was a substantial drop in 1999 and 2000 and they have actually increased prosecutions in the latest data. They are up to 905. We believe that that is only because the unions are ever vigilant and are on the case. There should be a policy that they have in terms of their prosecution and it should be clear in terms of every single case should be investigated in terms of whether there is a prosecution. They should keep the union briefed, as Peter expressed, because we are the alternate prosecutors if WorkCover do not want to go down that path. There should be some communication between us and WorkCover.

**The Hon. DAVID CLARKE:** Was there vigilance by the unions in 2001? You say the reason why the prosecutions went up is vigilance by the unions. What do you say about vigilance by the unions in 2001 when prosecutions were half the number?

**Ms YAAGER:** The data is not given to us until later. The data is often behind.

**The Hon. DAVID CLARKE:** The data would be available in 2001 for 1999; the same question would still apply.

**Ms YAAGER:** The unions have been asking WorkCover for this data. We sit on the advisory council and we look at prosecutions on an ongoing basis and we had concerns that numbers of prosecutions were declining and we have often brought this up in the advisory council. We notice in the recent data that there is an increase of prosecution and we say that is the unions.

**The Hon. AMANDA FAZIO:** Say the prosecutions in 2000/2001, that is when the prosecutions commence, that would not necessarily reflect when the incidents happened?

**Ms YAAGER:** No. Are you talking about the year that something occurred?

**The Hon. AMANDA FAZIO:** Are these graphs based on the year of the incidents or when the prosecution started?

**Ms YAAGER:** When the prosecution started. This is one of the areas we have had great difficulty in compiling data. We have had to go down to the Industrial Relations Commission and go through their records. We are still in the process of doing that and we will provide more data.

**The Hon. DAVID CLARKE:** The increase in convictions, is that because there are a larger number of field staff out there on behalf of WorkCover? Does that have more to do with WorkCover having more staff out there than anything else?

**Ms YAAGER:** The increase in prosecutions is the increase in convictions, is that what you are saying?

**The Hon. DAVID CLARKE:** Are we getting the increase in prosecutions because we have more staff from WorkCover being made available to go out there?

**Ms YAAGER:** I think it is the unions on the advisory council having this watching brief and continuing to be vigilant in this area.

**The Hon. CATHERINE CUSACK:** Do those prosecutions in 2001/2002 relate to the previous year? Has the conviction rate halved or the convictions come in a year later after the prosecutions?

**Ms YAAGER:** I think they were the summons laid a year later.

**The Hon. CATHERINE CUSACK:** Are they the prosecutions?

**MR REMFREY:** I suspect you are right. The high number of 905 relates to information that was laid in previous years and sometimes these matters can go on.

**The Hon. CATHERINE CUSACK:** And are picked up the next year.

**MR REMFREY:** I sit on the advisory committee as well. It is as much, I think, pressure from the unions represented on there to get a greater focus within WorkCover on the prosecution side of the equation. My experience goes back only a couple of years, but there has been a tremendous focus; we get a report about workplace fatalities and we keep pushing WorkCover to prosecute. They have, in my experience within my own union as well, improved their focus. It requires the unions to push the barrow, as it were.

An example for us was today, where we had a tragic incident over the weekend at Redfern and we have asked WorkCover to investigate a range of issues for us but they did not do that off their own bat, that was a request by the union to do that. That is typically the way most of these things are investigated and subsequently prosecuted. That is the way the system is currently working. I am not sure it is the best system. In fact, I would have thought that WorkCover should be initiating themselves, once notified of a workplace incident, which does not necessarily have to come from the union to investigate those matters without being prompted.

**The Hon. IAN WEST:** Those figures refer to what definition of prosecution?

**Ms YAAGER:** Workers compensation, as well as occupational health and safety, we have got there from the industrial relations.

**The Hon. IAN WEST:** The word "prosecution" could mean anything.

**Ms YAAGER:** For breaches of legislation.

**The Hon. IAN WEST:** An infringement for not having a whatever, to death.

**Ms YAAGER:** It is when a summons is laid in the Chief Industrial Magistrates Court or the IRC.

**Mr REMFREY:** Generally death and serious injury.

**The Hon. DAVID CLARKE:** All relating to safety issues?

**Ms YAAGER:** Can I say at this point in time I am not 100 per cent sure. This is why we need to do more research on the data, and given the time, we have not had time.

**The Hon. DAVID CLARKE:** The figures could be misleading, because they could include prosecutions for failure to provide a safe workplace.

**Ms YAAGER:** They are summons laid.

**CHAIR:** I think the best way would be for us to question WorkCover and send this to them straight away and they will send information back to us on the number of prosecutions.

**Ms YAAGER:** Some of those could be worker's compensation prosecutions as well.

**The Hon. IAN WEST:** I would be surprised if they were for serious injury.

**Mr KINELY:** I did some work on trying to get some of these statistics together. In terms of what those prosecutions represented it was difficult to do that. We went down to the Industrial Relations Commission and had a look through their court lists and annual reports, and while not all the information was there, the vast majority of those cases related to the breach of the general duty of care which results in serious injury or death.

You are right that some of those prosecutions were in relation to workers' compensation issues but they were by far in the minority. In terms of getting those exact figures, we did attempt to get the figures through the WorkCover Authority and we tried very hard to do that, to have that information here today. As Mary said that information will be supplied to the Chair.

**The Hon. DAVID CLARKE:** The bulk are safety issues?

**Mr KINELY:** The bulk.

**Ms YAAGER:** The bulk are section 15.

**Mr KINELY:** And section 8 under the old Act.

**Ms YAAGER:** The role and performance of WorkCover in liaising with victims and families, it is basically the union movement that has provided support to families of those killed in industrial accidents and I know that the Committee heard from a few families yesterday, and they probably told you about the union's role and their support right throughout from the time of the fatality to helping them get compensation, right to when the matter got to court for prosecution.

The unions also provide legal assistance. One of the most common complaints by families and unions and work colleagues, who are often have witnessed a traumatic event in the workplace, there is no follow up or counselling that is offered by WorkCover, so the Labor Council is recommending that WorkCover actually fund a unit within the Labor Council so we can look at providing some of those counselling services and support to families.

**Ms HUGHES:** I just wanted to add in regard to the workmates, obviously we support the submission put by the Labor Council, but we have had in our industry some of the main injuries are through forklift truck accidents. In the last two years we have had two major accidents on our work sites which are still currently being investigated by WorkCover.

One involved a man falling to his death from a high reach forklift truck and another was pinned by the forklift up on the Central Coast.

With regards to that happening at the workplace, there were quite a few witnesses who did see what happened. It would be something of a benefit to see those people able to access counselling and talk to people, but they would like to find out what is going on with the prosecutions and investigations process at WorkCover.

That is something that is quite hard to get information about constantly and if we could have some kind of liaison, either through the Labor Council or WorkCover with the union directly, that would assist a lot of people who witness accidents, or work in a workplace where a serious incident or fatality has occurred, to find out what is going on.

**The Hon. IAN WEST:** Can I ask the Labor Council what their views are as to the view put this morning by WorkCover that they want to go contract out their counselling to the Salvation Army?

**Ms YAAGER:** I think the union would like to control that all the way through, as we have been and we are appropriately liaised with area health services, particularly where Robyn McGoldrick was from, up in Tamworth, so that we could access those facilities where required, and we would like to monitor it from whoa to go and we provide that service already.

All of the unions have welfare officers and they provide that service, but to complement what we already do.

The method and monitoring of payment penalties, even though we have noticed and we were looking through some of the fines in the IRC when doing some of our research, they were starting to increase and they seem to be mainly on Government departments. They are the ones who have received the highest fines. We still believe that the penalties are not enough. We have these huge fines and we do not think that they are using them appropriately.

We also believe that penalties alone are not sufficient. You need something else as well as penalties and we have spoken about industrial manslaughter and other mechanisms. We obviously know there is a problem with the recovery of fines and we refer in particular to the Dean McGoldrick case that you are all well aware of now.

We believe that prosecutions need to be brought against both the company and the individual responsible, so that the individual is responsible for paying the fine. We believe that WorkCover has a responsibility to monitor the recovery of that fine. We were quite shocked actually when we found out that only a portion of that fine in the McGoldrick case had been paid.

We are were actually appalled and again the unions are being vigilant in terms of how many other fines have not been fully paid. WorkCover should have a special device that does that from whoa to go.

We also think perhaps the procedures in the State Debt Recovery Office need to be reviewed so that when you are pursuing an individual to get the fine, you are looking at a number of measures like people's licences can be cancelled and things like that.

**The Hon. DAVID CLARKE:** To pursue it with the same vigour they do with drivers?

**Ms YAAGER:** Absolutely. If I do not pay a parking fine, not that I have had one, they cancel my licence. In all seriousness, yes.

In terms of compliance notices we are still doing research on this and I need to drill down into this information and I just have not had the time. These are the overall compliance notices, but we can see there are deteriorations certainly if you look at 2001-02. Back in 1998-99 there seemed to be 17,000 but there is different data on this as well because at the time the Law and Justice Standing Committee looked at fines and compliance notices it was 13,700, so there are different sources of data as well.

We are really disappointed to see the decrease in compliance notices. They should be certainly up there. We want to do a breakdown of that and give the Committee some further evidence.

**The Hon. DAVID CLARKE:** Why are they down?

**Ms YAAGER:** They are not issuing notices. WorkCover are going out there in an advisory capacity, trying to advise employers what they should be doing instead of issuing notices. When a police officer pulls you over doing 130 instead of 110, they do not give you advice.

**CHAIR:** That is one of the problems we have, this education role.

**Ms YAAGER:** We are against that, and we have raised this issue on the advisory council with the new general manager, to say we want to meet with you and review the policy in terms of your enforcement and advisory role.

**The Hon. DAVID CLARKE:** What did they say in answer to that?

**Ms YAAGER:** He wants to sit down and meet with the unions. He obviously says the employers have a different view. However, we certainly want to see their compliance policy totally reviewed. On a number of occasions you are only issuing a provisional improvement notice. It is only to say that you have to fix something. It is not even a stop work notice.

**The Hon. CATHERINE CUSACK:** Is it possible there is an inverse relationship between going hard on a few cases, hence the number of prosecutions increase, which therefore means resources are being taken away from the compliance notices?

**Ms YAAGER:** They are separate areas. The prosecution division is completely different to the inspectorate but are you saying in terms of the inspectors doing it?

**The Hon. CATHERINE CUSACK:** Between the two and they somehow have to balance up the two uses of their resources.

**Ms YAAGER:** The real problem is I do not want to be too critical of WorkCover because they do work very hard and I do have a good relationship with WorkCover. They are definitely under-resourced. It is a resource issue but it is also the policy issue. You cannot go out giving advice all the time. It is not a good compliance policy.

**Ms HUGHES:** In regards to the specific example, we had a workplace late last year, an abrasive and abusive manufacturing company. They employ about 80 workers in Lidcombe in New South Wales. They had not complied with any part of the Occupational Health and Safety Act to identify hazards, risk assessment, eliminate and/or control any of the hazards in the workplace. They also had implemented no form of consultation in the workplace, no occupational health and safety committee or occupational health and safety representatives.



As we had taken the issue up directly with the company as well, when we contacted WorkCover to come out, they simply advised the company that they should do something about it but they did not issue any fines or notices, nothing. They just told them that it should be done in the future and if it wasn't they would think about coming back out.

That is a specific example where they are taking more of an advisory and educational role, rather than actually using the powers that they are given to enforce companies to comply with the legislation.

**The Hon. AMANDA FAZIO:** In that case did WorkCover say "we are going to come back in two or three months to make sure you have put these procedures in place" or did they leave it up to the organisation to decide that they should comply?

**Ms HUGHES:** The union organiser was out there quite regularly and did make sure that an occupational health and safety committee was established and hazard identification work commenced. I know WorkCover did go back out.

As to your question whether or not they actually said they would be back in two weeks, I would have to check with the relevant organiser, but I know they really did not really do too much about this. There were blatant breaches of the Act. It should have been in force a year prior and nothing had been done and they refused on that day to do anything specific about it.

**The Hon. IAN WEST:** Is it the case that the incentives for WorkCover to prosecute are not sufficient enough? When they do prosecute, what happens? The money goes into consolidated revenue. They do not see anything from it. The victims do not see anything from it. What incentive is there for WorkCover to prosecute other than, from their point of view, from a resource point of view, is it not just as much an incentive for them to go out on this advisory role as opposed to a prosecution role? Is there a need for us to be looking at the incentives for the victims and WorkCover?

**Mr KINELY:** I think I can answer that for you through the chair. I understand that with prosecutions - I know from prosecutions that the prosecutor can claim part of the fine. Half the fine is payable to the prosecutor if the prosecution is successful. Where that money goes, my understanding is if WorkCover is the prosecutor that goes back into consolidated revenue. That is my understanding. I would not be able to tell you where the money actually goes.

**The Hon. IAN WEST:** Consolidated revenue.

**Ms YAAGER:** It is the same with road compliances.

**The Hon. IAN WEST:** I am thinking from an operational point of view. If I am working WorkCover and I am getting nothing back from the prosecution, I wonder whether it is advantageous for me administratively, operationally, to proceed with the prosecution. Is it as mercenary as that?

**Ms YAAGER:** It is something we might take on board. It is a very good point.

**Mr KINELY:** What we are saying is that there is a conflict of interest in terms of the inspectors' roles, because in terms of the definition of their roles under the Act, they are required to be not only workplace policeman who go out there and enforce legislation, but they are also required to play the advisory role, so they have to wear these two hats and when you have one issue that involves both those roles, there is obviously a clear conflict of interest there and it creates difficulties in respect of how the inspector chooses to resolve that issue and that is the point that is being made.

**The Hon. CATHERINE CUSACK:** Do you have a recommendation on that? We heard this from

the victims yesterday that WorkCover wears too many hats.

**Ms YAAGER:** WorkCover is an enforcement agency and that should be their primary role.

**Mr KINELY:** There should be a separation of conflict of interest.

**Ms YAAGER:** They should have been able to provide information through assistance services but not through the inspector going out.

**Mr McGUCKEN:** Just in relation to the issuing of improvement notices and the question was asked over this area, what sort of timeframe are they looking at, when do the inspectors go back out. Usually it is a seven or 14 day period that they give the employers a chance to rectify the issue and put the processes in place.

Unfortunately our experience in the transport industry has been, and we are assuming this is because of a lack of resources, it can take up to seven months for a WorkCover inspector to get back to that site to see if the employer has complied with the improvement notices. That is not in every case but it certainly happens frequently. There certainly is a problem there.

**The Hon. DAVID CLARKE:** Mr Chair, could I ask you whether there is a representative here today of the Employers' Federation?

**CHAIR:** No.

**The Hon. DAVID CLARKE:** Was there one here yesterday?

**CHAIR:** No.

**The Hon. DAVID CLARKE:** Would they be aware this was on? They were invited to put submissions. Was any submission received?

**CHAIR:** No.

**The Hon. DAVID CLARKE:** No submission was received.

**CHAIR:** You were on data collection.

**Ms YAAGER:** The compliance strategy: We need to look at a number of measures to increase compliance. While we have prosecutions and we support them, they are four years down the track before they happen. We need an immediate impact similar to the fines that you have on the road for breaching the road rules. We need to look at increasing upon the spot fines as a measure. We think that there should be these sorts of measures, like a number of measures in place. Obviously you have to increase the inspectorate numbers and resources, I mean technical support to the inspectors, hygienists and ergonomists, because occupational health and safety is so broad and I think that they have lost that.

**The Hon. AMANDA FAZIO:** Can I ask you, because I naively asked a question before lunch about the WorkCover inspectors, whether they were specialists in their field or generic inspectors and we were advised by the CFMEU representatives that they used to be specialists and now they are multi-skilled generic workplace inspectors. I would be very interested in getting an opinion from the panel members here whether specialist or multi-skilled inspectors are better or would be more efficient. What is your opinion?

**Ms YAAGER:** We made a recommendation that you refer the criteria for inspectors, particularly now that WorkCover has gone down the industry path, they should have access to technical support such as ergonomists, hygienist, whatever. The industry experience is vital. The unions have noticed that often the union organiser has more experience and more knowledge than the WorkCover

Inspector and it is embarrassing on occasions because they have to call them over to show them things they have overlooked.

**The Hon. AMANDA FAZIO:** If an individual employee was concerned about some workplace issue and they did not go to their union rep, they went straight to WorkCover and WorkCover came out and saw the employer and manager of the work place on their own, perhaps that concern of the employee would not be given due consideration because the inspector did not have the detailed knowledge.

**Ms YAAGER:** That is happening out there. The other one that we hope that the Committee will recommend is to increase the powers of union and safety representatives to issue pin notices. We think that this would be an effective strategy given that WorkCover do not have the resources and the inspectors have to concentrate on high risk industry. It is a way of having that more on the ground. When we talk about issuing pin notices, we are meaning improvement notices, not stopping a job or fining them.

There is another area that seems to be grey and that is the ability to cease work when something is unsafe. We know the Victorian Occupational Health and Safety Act has these provisions but we do not. We want to have similar provisions in our Act.

**Mr HENRY:** What we are referring to here is the Victorian Occupational Health and Safety Act where the health and safety representatives are able to issue a cessation of work instruction where a piece of machinery or the way a job has been done is deemed a risk to workers. Currently in New South Wales the only laws that workers can stop work in dangerous situations are under the Federal Work Place Relations Act and we would be seeking that there needs to be a commitment in New South Wales, if we are going to have occupational health and safety laws, we should not be relying on Federal industrial Acts to look after the safety of workers. Workers in New South Wales need to feel a hundred per cent confident that when something is unsafe they have a right to turn around and deem that no job will be done until it is made safe for themselves and other workers.

**Ms YAAGER:** I think the next we have actually touched on. I think we have said that we have to review WorkCover's compliance policy and there has to be certainly a split in their roles in terms of enforcement and education. There needs to be a review and quality of training of inspectors.

**CHAIR:** I remember us saying this year after year after year in this inquiry.

**Ms YAAGER:** Is this déjà vu? The review of the criteria: Again, we need to review the criteria for selecting inspectors. They definitely need industry experience to ensure that high risk industries have appropriate inspectors. Some industries have only 12 inspectors for how many thousand workers or workplaces. Obviously that is not adequate. We think there needs to be a blitz on the new OH&S legislation. We have not seen prosecution about the new OH&S regulation. Every one is aware of that new legislation. There is not that activity around that. As we have said before, we have need to have a total review of the current enforcement measures.

**The Hon. KAYEE GRIFFIN:** Can you give an explanation of what you meant by the review of the premium discount scheme?

**Mr HENRY:** Just to answer the question, the AMWU, and certainly the unions, have a concern with current performance of the premium discount scheme. Whilst earlier we have spoken about the success and praised the WorkCover assist scheme the premium discount scheme to my knowledge is paid or employers have gained \$65 million of WorkCover's money in premium discounts by being involved in the scheme. The reason the scheme was set up was to primarily fulfil two key functions. The first function was to introduce and have operational consultation mechanisms as set out in the Act. The second reason was to develop and introduce occupational health and safety management systems in to the workplace.

It has been the experience of the unions, particularly through workplace investigations, that quite often companies that have been through the scheme and have received the discounts, it does not appear apparent where they have consultation mechanisms or where they have management systems in place. It brings into question, well, how are these discounts being paid? The discounts are being paid on the advice of consultants. The problem we see here is that the consultants are there to advise the employers on how to comply with the consultation and the OH&S management systems, but there is a further motive for the consultant to recommend to WorkCover that the discount be passed on because there is the objective of having a long term relationship between the consultant and the company. It is very rare that you find a consultant turn around and advise to WorkCover that the company should not receive the discount.

On that basis and on those grounds there needs to be a review of how the relationship works between a consultant and the companies. There needs to be some strict auditing of companies going through the premium discount scheme. As I said earlier, there have been some clear examples, and certainly I have been involved with some, where companies who have been through the scheme are just not compliant with the Act, particularly in the areas that the scheme was set up to achieve change.

By way of note, and it is one that is on transcript in the Australian Industrial Relations Commission, in 2002 HPM was runner-up in the premium scheme and second best company in New South Wales in safety, or that is what we were being told. Near the end of last year I was called down onto the site to investigate a suspected breach of safety and the primary reason for the breach of safety, when I came down and did my investigation, the conclusions I came up with, was that there were fundamental breaches in the consultation provisions on the site. There was no consultation with the workers. It raises the question how could the runner-up in New South Wales for the premium discount scheme then turn around and have massive failures in its ability to abide by the OH&S Act in having meaningful consultation with its workers when making important decisions about the way the workers on that site were operating.

**The Hon. IAN WEST:** Can you confirm for us again, or clarify for me, you are saying that the consultants are employed by the companies?

**Mr HENRY:** Yes. The way it works, WorkCover has a number of consultancy companies who you can get off the WorkCover web site and how it works is an employer will ring up one of these consultancy companies and say, "I would like to go into the premium discount scheme". There are some pretty substantial benefits. The first year is a 15 per cent or maximum \$75,000 discount to your premium, the second year it is ten per cent and in the third year it is five per cent. What we are looking at is a substantial savings for companies but if that is what it needs to attract companies to introduce good health and safety that is not what the main gripe is.

**The Hon. IAN WEST:** Does it apply to self insurers?

**Ms YAAGER:** No.

**CHAIR:** The consultant also would benefit from that relationship, obviously, in his fee?

**Mr HENRY:** Exactly. And the purpose - this is where there needs to be some serious thinking about the way you run the scheme - is it is not just about a three year term introducing consultative mechanisms and OH&S management systems, it is about having an ongoing relationship into the future with this firm in assisting to move with the times. That is creating a problem because the small consultancies do not want to jeopardise an ongoing financial relationship with these companies that they are working for.

It is my belief that that is primarily why I am finding that I am going into companies that have been through the premium discount scheme and finding that they are noncompliant. It is quite often

that the consultant said, "That is close enough to, I don't want to rock the boat too much, I do have a long term relationship to think about."

**Ms YAAGER:** In South Australia there was a similar type of thing but they found there that it was manipulated by employers.

**Mr MCGUCKEN:** Can I make a comment on that? Quite recently I visited a work site of a very large organisation. That organisation was a participant in the premium discount scheme but they had this rather strange method of reporting worker's compensation accidents. They had what they call an "incident pay scheme" where the actual injury was not reported. There were no reporting mechanisms at all. The company simply paid that employee his wages for the two or three weeks that he might have been, or she might have been, incapacitated and there were no reporting mechanisms to WorkCover or the insurance company whatsoever, yet this employer was benefiting handsomely from the premium discount scheme.

The documentation I received, as the employer quite proudly showed me the processes that they had for this incident reporting system, I forwarded that to WorkCover. Nothing has happened from that at this stage, but there are certainly ways that employers are able to manipulate these schemes.

**The Hon. DAVID CLARKE:** That process was illegal under the legislation?

**Mr MCGUCKEN:** I believe so, from the advice I received from WorkCover. I have sent a copy to WorkCover.

**The Hon. DAVID CLARKE:** How long ago was that?

**Mr MCGUCKEN:** Six weeks ago.

**The Hon. DAVID CLARKE:** You are waiting for a reply?

**Mr MCGUCKEN:** Yes, I have asked them to get back to me.

**CHAIR:** We are going to run out of time if we are not careful. You had better work out a priority for these overheads.

**Ms YAAGER:** Obviously there are major problems with the data. The Committee is aware of that. Even the Standing Committee found problems with data.

**Ms LEE RHIANNON:** Is there any information coming through about a greater proportion of people with workers from non-English speaking backgrounds coming through in the fatalities and injuries? We have been hearing a lot of examples. I was wondering if that was showing up in the data.

**Ms YAAGER:** At this point in time I cannot tell you. It is something we will take on board.

**The Hon. CATHERINE CUSACK:** Profiling of victims would be very useful.

**Ms YAAGER:** It is an interesting point. Certainly young people I have noticed. I have the number of fatalities male, female and age groups. We will present that in a future submission.

**The Hon. AMANDA FAZIO:** It is a particular interest of mine, the labour hire companies. They grow like mushrooms. Could you expand on the labour hire?

**Ms YAAGER:** We will. In terms of the data we can see the fatalities are certainly decreasing. However, they are grossly underestimated and I think Keith has flagged some figures today about the 500 per year not reported in the WorkCover deaths, but also in the rural sector they have grossly underestimated

fatalities.

Worksafe did a fatalities study. They found we had two deaths per month on Australian properties. They are not coming up when you look at the industry statistics. Workplace deaths are grossly underestimated. We need to look at a proper database where you are integrating all of the data, like the coronial, the motor accidents, so that we have one clear set of data.

**CHAIR:** I gathered there was actually an increase, that that 139 figure follows through.

**Ms YAAGER:** That is just one data source which is workers compensation. It doesn't cover self-employed. There is a number of motor accidents, subcontractors.

**CHAIR:** Is not the trend up again after that 139? Did not it go back up? That was my understanding.

**Ms YAAGER:** 2001?

**CHAIR:** 2002, 2003, which was the main reason we are having this inquiry. It is a dramatic increase.

**Ms YAAGER:** Not only that, it is grossly underestimated.

**The Hon. CATHERINE CUSACK:** Can I ask that the Labor Council look at giving us your definition of workplace death and the case for that definition?

**Ms YAAGER:** Yes.

**CHAIR:** When do you think you would be able to give us your submission? If we keep giving you more jobs it will be 12 months.

**Ms YAAGER:** This is a mammoth task. A couple of us spent two days down at the Industrial Relations Commission going through their data. All the data is not available.

**CHAIR:** WorkCover should have that. That annoys me. Their legal branch should hand you a file.

**Ms YAAGER:** That is very important to us. We would want to have a proper submission, probably in the next couple of weeks hopefully, given that it is quite resource intensive to do some of this.

**CHAIR:** If you could do an interim submission by Wednesday or Thursday of next week, and perhaps additional material, rather than get a whole document finished. You could call it an interim submission with some of the other more difficult material to come later.

**Ms YAAGER:** We have an interim submission with a number of case studies in it that I can give you now.

**CHAIR:** So we can feed it into questioning of other witnesses and the questioning of WorkCover. They are coming back on 2 March. It would help us to have some of that before 2 March.

**Ms YAAGER:** Certainly we would have it before then.

**The Hon. CATHERINE CUSACK:** It would be helpful for the Committee to understand what is a workplace death.

**Ms YAAGER:** In terms of how they are recorded.

**The Hon. CATHERINE CUSACK:** I am talking about the definition, the racetrack, the road, the kid killed in Redfern.

**Ms YAAGER:** Like a workers compensation claim, but it should be reported under the new reporting submissions, but they are not reported as workplace deaths. We need to explain all that.

**The Hon. CATHERINE CUSACK:** I am trying to work out what is captured by this inquiry, if you can see what I am saying.

**Ms YAAGER:** We will try to do that.

**Ms HUGHES:** I am going to deal with the labour hire employees, which is was the question asked by Ms Fazio. In regards to our point, there has been a problem with data collection, for example, labour hire statistics, there are no set statistics by WorkCover as to how many serious incidents or fatalities that goes through labour hire agencies.

I can speak on behalf of my industry and the industries that the NUW actually covers. We are talking about warehousing, milling, pet food, food manufacturing, commercial travellers and the rubber industry. Approximately 90 per cent of the sites covered that have casual workers out there, 90 per cent of those casual workers are employed by employment agencies, so you might have a site that may have a number of casual workers on that site. They are all actually employed through an employment agency.

You would then have, if there is an injury at the workplace, not the host employer dealing with that injury, it would be the employment agency itself who is technically the real employer of that person recording that as a workplace injury.

There are no statistics held by WorkCover that actually state that the labour hire person that was injured was actually injured in the warehousing and distribution industry, the transport industry, the manufacturing industry, or anything like that. There is just nothing.

You are talking about a large percentage of the workforce and it is a growing workforce in New South Wales, people being employed as casuals by labour hire companies that are not captured in industries or WorkCover statistics. Also by a host employer using an employment agency, it allows them to manipulate a lot of figures in regards to workers compensation claims that they have at their workplace.

For example, you would put a casual from an agency, say in my industry, storemen and packers, you would have them on a line picking heavier items than you would have a full-time permanent employee of the company. You would have them on lighter duties because there is a higher risk of injuries in a picking and packing role than what there is in say forklift driving.

Therefore the risk of an injury is more likely to occur where there is a casual employee employed by a casual employment agency in that scenario, therefore if there is any injury it is not reported in the host employer's workers compensation claims, it is actually recorded through the employment agency's compensation claims. I have hope I made that a little bit clearer.

**Ms YAAGER:** We can elaborate on that in submissions.

**Ms HUGHES:** It allows for workers compensation premiums to be altered by a host employer simply by employing casuals through an employment agency. That affects their premiums through their workers compensation claims and also industry claims which are taken into account when a company's insurance premium for a year is set up. You are missing a lot of the industry and a lot of claims from the

industry because they are hidden through labour hire statistics, or the lack thereof.

**Ms YAAGER:** The lack of claims experience from that industry.

**The Hon. AMANDA FAZIO:** It has been put to me by people who have been employed by casual labour hire companies, by casual labourers, they will go to a site which is very unsafe and are told to front up in steel capped boots, given no safety instructions at the place, whether it is a warehouse or metal working place, or anywhere else. They have a few supervisors who are permanent employees. Everybody else is from a labour hire company so there is no union representation on that work site and it has been put to me in that case these places probably never meet their OH&S guidelines and there is nobody there to check on them. Casual employees are not going to put their hands up because they will get the rocket.

**Ms YAAGER:** And they will not put in workers compensation claims either. They are terrified.

**The Hon. AMANDA FAZIO:** And there are no supervisors who are union members, the unions do not go to the workplace and they do not know how bad it is. Do you think that is an accurate assessment?

**Ms YAAGER:** Yes, definitely. The other thing we have tried to do in our submission is try to provide you with as many case studies as we can, particularly in relation to the hire industry. Quite a few of my colleagues have members in labour hire industry.

Probably to finish off on, the last graph is the high risk industries. People think that workplace fatalities take place in mines or construction sites. That is not actually the case. There is a number of high risk industries where fatalities occur. That is not just construction sites or mines and I think a lot of the unions would like to comment on that. These are grossly underestimated.

**The Hon. AMANDA FAZIO:** You tell us what the 17, 15 and 16 industries are.

**Ms YAAGER:** 17 is agriculture, forestry and fishing, the highest, followed by construction, transport and then I think retail is number four.

**Ms LEE RHIANNON:** 15 is transport, is it?

**Ms YAAGER:** Transport and storage.

**Mr McGUCKEN:** We do not agree with that figure obviously.

**Ms YAAGER:** What we will try to do is show you where there are other statistics that we may add to these, like in terms of motor accident statistics.

**Ms LEE RHIANNON:** Where do these statistics come from?

**Ms YAAGER:** These are workers compensation data from WorkCover.

**CHAIR:** You said 17 is the highest one, agriculture.

**Ms YAAGER:** Agriculture, forestry and fishing.

**CHAIR:** 16?

**Ms YAAGER:** Manufacturing.

**CHAIR:** And 15?



**Mr KINELY:** That is transport.

**The Hon. IAN WEST:** This only refers to fatalities.

**Ms YAAGER:** We have a pie chart on industries as well.

**CHAIR:** Which is construction?

**Ms YAAGER:** 19 is construction

**Ms LEE RHIANNON:** Let us not worry about that now. Let us do it when we get the coloured charts.

**Ms YAAGER:** Construction is 19. We will not worry about it now.

**CHAIR:** Construction is 19.

**Ms YAAGER:** That is not up there.

**The Hon. CATHERINE CUSACK:** I think the point you are making is there is a spread across industry.

**Ms YAAGER:** That is the point we were making but we will certainly correct this.

**Mr KINELY:** I wanted to make a few remarks. I am conscious of the time. In relation to the point that Mary made, most people think that workplace deaths and serious injury only relates to high risk industry and blue collar industries. This is not the case. My points relate to the determine of reference 1D, which was a question as to the compliance by WorkCover with statutory requirements relating to serious injury and death in the workplace.

I will try not to repeat what has been put by the Labor Council, which obviously our union supports. In relation to retail there have been 12 workplace deaths in that graph as detailed. There has been an additional seven deaths of customers and people in the workplace who are not considered to be direct employees, of people who have actually died.

When you add those figures together you come up with a disturbing statistic which is that you have 19 deaths in terms of the total number of deaths in that industry and that equals construction, according to those statistics.

**CHAIR:** Are these shopping centres or warehouses?

**Mr KINELY:** Retail outlets does not include wholesalers.

**The Hon. AMANDA FAZIO:** What sorts of places are these exactly, garages, bottle shops?

**Mr KINELY:** All sorts of retail outlets, convenience stores, petrol stations, supermarkets. Retail as a whole is a huge industry.

**The Hon. DAVID CLARKE:** Do these figures include people going to and from work, because they will have workers compensation?

**Ms YAAGER:** Yes.

**The Hon. DAVID CLARKE:** That distorts the figures a little bit.

**Ms YAAGER:** Not necessarily.

**The Hon. DAVID CLARKE:** It would seem to me there is a certain percentage who are killed going to or from work involved in motor vehicle accidents.

**Ms YAAGER:** But is fatigue the factor from working long hours?

**The Hon. DAVID CLARKE:** Is it?

**Ms YAAGER:** In some cases it is. An anaesthetist who has worked a 17 hour shift and has to drive home from the hospital, some of the rural fatalities, fatigue is a big factor.

**The Hon. DAVID CLARKE:** Do we have any documentation?

**Mr KINLEY:** We will take it on board. Specifically in relation to those statistics, as I said before, we are the fifth highest in terms of workplace fatalities. There have been over 1,200 injuries which resulted in people having permanent injuries in retail, which is also a disturbing fact. The vast majority of those injuries have resulted from manual handling injuries, because that is what retail workers do.

The second major issue is the issue of workplace violence, and I raise this because this is a big issue in retail. In 2002 there were over 21,000 robberies from retail stores. This was a 7.5 per cent increase on previous years. The number of armed robberies across New South Wales with firearms was 714, which remained static over that period of time. It did not decrease. The number of armed robberies without a firearm was around 2,700. The point I am trying to make is that this is a serious issue. Traditionally this was a problem because police would attend armed robberies and there is this instance when they occurred at a store. Traditionally there was not any communication, or if there was it was haphazard, between the New South Wales Police Service and the WorkCover Authority. If there was an incident and there were no measure, no security cameras, nothing to deter criminals, WorkCover would not go out there to put these things in place to rectify the problem. I am pleased to report to the Committee that there has been a memorandum of understanding reached between the New South Wales Police Service and WorkCover which hopefully will rectify this issue. This is a problem in terms of the statistics that have been kept in the past.

**The Hon. DAVID CLARKE:** What does this memorandum of understanding say?

**Mr KINLEY:** I don't know. I have not seen it yet. It is to be released from a circular.

**Ms YAAGER:** From a protocol determined between the inter-Government agencies.

**Mr KINLEY:** To report to WorkCover when there is an incident.

**Ms YAAGER:** We will comment on that in our submissions.

**Mr KINLEY:** Another thing was, specifically in relation to retail - I wanted to make this point because it demonstrates something the Labor Council put earlier in its submission - in retail there are approximately, according to the Australian Bureau of Statistics, 470,000 people, almost half a million people in New South Wales, employed in the retail industry. When you look at the number of inspectors that specifically deal with retail issues, there are 16 inspectors across the State that deal with retail issues. They make up a department of 32 inspectors, but these inspectors deal with other industries, certainly transport, warehouse and storage industries. You have 16 inspectors to deal with an industry that covers half a million people. In my view that is inadequate. The inspectors themselves,

and I have a good relationship with them, they work hard and do a good job but they are vastly under resourced. The other statistic in relation to that, there are 301 inspectors in total in New South Wales and of those only 16 are employed in relation to specifically looking after the retail industry.

The next point I wanted to make, backing up what Mary said, was that the whole gist of the changes to the Occupational Health and Safety Act and Regulations in 2000/01 was to focus on the process of risk assessment and consultation. Those were the major changes to the Act and in our view WorkCover should focus on enforcing those provisions. These are preventive strategies that will decrease the number of fatalities in the workplace and that was the gist of that legislation. Strategic prosecutions need to be made in those areas to encourage employers to take these steps in order to decrease these incidents from occurring.

The last recommendation that we will make specifically in relation to retail was in relation to the workplace safety summit which took place in the year of 2002, and out of that summit came a number of recommendations. I had the duty of being on the retail working group that was part of that summit. One of the recommendations was in relation to manual handling for the retail industry and providing funding and support for employers and employees to come up with solutions for particular manual handling problems specifically in relation to check-out operators, check-outs. We have not had any response from the Government in relation to providing assistance to put a project together on that issue through the retail industry reference group.

The second resolution to come out of the workplace safety summit was in relation to violence, and a code of practice which sets minimum standards for employers in terms of putting steps in place to deter violence was one of the recommendations. The Government has taken steps and we commend the Government for putting in place guidance material for employers. It is guidance material, it is not a code which employers need to refer to. I would make the point that in Western Australia there is such a code and in Victoria there is a far more extensive guidance document which is going to be put into a code this year and I ask that the Committee recommend to the Government that that be done. Those are the only points I wanted to make.

**Ms YAAGER:** Just in summing-up, and my colleagues might want to make a few closing comments, I think basically that we do need industry strategies; we need a whole of Government approach. We need to go down that industry path but more so than WorkCover. There are more people responsible in industry like Ministers for agricultural, these were some of the things that happened at the safety summit, there should be some industry committee set up under a Minister, with WorkCover having input, to look at this globally.

In terms of the data, I am sorry for some of the errors in the data. Hopefully in our final submission we will break it down and go into more detail. It is resource intensive to do this. We will do that over the next couple of weeks. Can I thank the Committee for letting us present our oral submission.

**The Hon. AMANDA FAZIO:** Perhaps in the recommendations you might want to put in your submissions that WorkCover improve their data collection.

**Mr KINELY:** It is not like you can go to the web site and look them up or telephone somebody and get them. It is a mission to get this data.

**Ms YAAGER:** WorkCover is researching this issue of data and trying to improve data, this is the whole of Australia.

**The Hon. IAN WEST:** I think the Government inquiry into WorkCover in 1998 recommended it and if you go back to 1979 the recommendation was being made then.

**Ms YAAGER:** The Law and Justice Committee.

**CHAIR:** I can tell you all the excuses or reasons why they have not got it.

**The Hon. PETER PRIMROSE:** We found out this morning that one of the issues was the WorkCover data base, just in terms of tracking down directors of companies, purely relates to New South Wales and it seemed to me that one of the difficulties, not so much in terms of public agencies but certainly in terms of say manufacturing, there is a string of little companies which are constantly changing directors and that if someone has had a fine or a penalty in Queensland then we have no way of tracking them down in New South Wales. That might be something else.

**Ms YAAGER:** You have to look at a national data base. That is really the answer to all of this, which we recommended to the productivity commission.

**CHAIR:** We look forward to the interim submission.

**Ms YAAGER:** The next time we appear before the Committee the Secretary of the Labor Council, who apologises for not being here today, would like to make an appearance.

**The Hon. CATHERINE CUSACK:** The police are the only public sector union?

**Ms YAAGER:** The nurses were meant to be here but they apologise. I contacted the teachers and they will have input into our submission.

**CHAIR:** If they want to make an additional one of their own we are happy if you want to do that. There are some urgent concerns.

**(The witnesses withdrew)**

**FRANCIS EDWARD DAVIS**, private consultant, sworn and examined:

**CHAIR:** Would you like to make an opening statement?

**Mr DAVIS:** The Occupational Health and Safety Act has been around for quite a while. I have been involved not only in a national and state sense but in an international sense since 1974 and I believe that there are some basic flaws in the way that the scheme, the WorkCover scheme, has been set up.

It comes back to the legislation and basically the legislation is predicated on risk management and risk management is not a management concept. Risk management is not management, it is an insurance concept, not a management system. This is part of the problem.

Because it is not a management system, the system perceived is the present functions are not in place and these not being in place, the right sort of information is not getting into WorkCover, just as the lady said here before the break.

The management system basically is planning, organising, meeting and controlling and I think the lesson that Louis Allen gave us after the Second World War is probably worth repeating. Louis Allen was a fighter pilot in the American Air Force and towards the end of the war he became very upset because the war effort was not supporting the troops in the field and after the end of the war he started to ask the question why.

He did a lot of research on it and finally set up a system known as the Allen Management System or management program. This program was introduced into Australia on a full scale basis in 1967 into ACI, a company of 17,000 people.

I happened to do the feasibility study for the exercise and so I was actively involved right from the start with the Allen management people. I was lucky enough at that stage to be trained in management systems myself. That was a good starting point for me.

I had done five and a half years as training manager of Mt Isa Mines, where I got a fairly substantial safety background, and Mt Isa Mines had a large construction division, so I got an understanding of the construction business. This is virtually the work I am doing today, setting up safety management systems for the construction industry and setting up safe methods statements for subcontractors and contractors in the industry.

**CHAIR:** You are like a consultant?

**Mr DAVIS:** In July last year I was pulled out of retirement to do some of this work. I had been doing extensive work for Multiplex over the years and they wanted a job done in July last year and hence I was offered to set up the safe work method statements for the construction industry. One thing led to another and now I am that busy that I cannot turn around. I am enjoying it.

I might add also that as well as having a general interest in this from the management point of view, I started writing in 1976. I have published six books on safety management and related areas best practice. I have spent 81 weeks overseas talking to anyone that means anything in the safety and education and general safety fields.

I have done a lot of work with the likes of the National Occupational and Safety Association in Canada, in Toronto; with the British Safety Council. I have a Diploma of Management from the British Safety Council. I have been Vice-President for Oceania of the World Safety Organisation and I was on the inaugural board of the International Management College when it was set up in 1975, so I have been virtually keeping in touch with the concept of safety and systems safety management as it has grown throughout the world.

Part of that has been involved in the developing of the international safety rating system. Some of you may be familiar. It is the international safety rating system, measured in gold stars and green stars, 10 levels altogether, and we set up the international safety rating system in Australia in the coal mining industry with some success.

A typical example when you set a system up properly, at Coalcliff Colliery in eight months we saved \$4 million, just by setting up a proper safety management system and taking note of the things you had to do to make a mine operate safely in this particular case and to do what was needed to keep ongoing data.

The ongoing data in safety management should be compared with how you went last year. In a whole range of areas you should be preparing and striving for increased improvement, just as total quality management has as one of its precepts now. Continuing improvement is the thing we are looking for.

This is the field I have been working in. When I saw the advertisement in the paper I got a little bit hot under the collar, because WorkCover are very hard to get alongside, particularly when you are a consultant.

For example, because I was interested in getting back to work, I applied for the Construction Induction Training Authority as I do induction training for construction workers. I have probably done more training, something like 500 or 600 courses, short courses, developed short courses, done more training than anyone else in Australia, yet I am not eligible to run the construction induction course.

**CHAIR:** What was the reason for that?

**Mr DAVIS:** They say recency. Even though I have been retired I have done a lot of part-time training as well. I gave them evidence of this. I think I may have upset someone. I was critical of the reply to my application. I got a one page letter, which I have not got with me, from the education officer in Parramatta and I was absolutely disgusted with it so I wrote to the director of WorkCover and told him so. I think that is probably why I did not get my qualification.

I have got part of it, step four qualification, having done it through a friend of mine, but I am not going to worry about that now because I have plenty of other work on. I do know I am qualified in management, safety management, training management, industrial relations. I have done four years law, labour relations and the law. I am qualified in all those areas.

Another point I would make before I shut up and let you ask some questions, Mr Chairman, is that I don't believe, even though they said I wasn't competent to run induction training, and I probably developed some of the first mining induction training in Australia, I don't believe that the WorkCover inspectors, many of them, are competent to be WorkCover inspectors because they have done no law training but they are interpreting the law, that is their job. I will leave it at that.

**CHAIR:** Would you say then that one of the main problems that the inspectors are experiencing is this lack of knowledge of the law, how to interpret the legislation?

**Mr DAVIS:** In feed back from some of my construction clients, not on an ongoing basis as you suggested before with the WorkCover consultants, I go in and I put a system in or do safe work statements, as I mentioned, and I walk away and if they want me again they call me. I don't stand on the doorstep all the time. Yes, I have had a lot of feedback. For example, in one particular case, without mentioning a name, an inspector came in November and found nothing wrong. Three weeks later the bricklayer contractor sacked one of his people because he wouldn't wear safety footwear. This same bloke went to WorkCover and the next another inspector was back on the doorstep of my client and, boy, they took him to the tailors. Okay, a couple of things were genuinely wrong, but even though they found a lot of things wrong, there were a hell of a lot of things they did not find, because I went back

the next day and had a look.

All the passageways were obstructed, some of them with three or four pieces of four by four, not together making a walking surface, but so you walk in between them from one level to the other. There was no access to the top level. You had to pull yourself up on cleats and run up a board like that on cleats. It was only temporary, I agree, but there is, I believe, a big need to look at not only the way the law is structured and the way the law is being interpreted, I think New South Wales could learn a lot from the approach being taken in Victoria, safety map.

**CHAIR:** They need more practical knowledge.

**The Hon. DAVID CLARKE:** You say in this document here:

To my knowledge New South Wales is the only Government authority in our modern industrial climate which has moved away from system safety management, practical approach to the conceptual insurance related risk management approach.

Earlier you go on and say that you are disappointed in this approach. Can you explain to me in simple terms what the two approaches are?

**Mr DAVIS:** System safety management is based on four functions of management and managing. Risk management is something that you do. You manage your risk by taking out insurance when you have finally got to the end point and cannot do any more. It is really to save you money. Risk management is all about saving you money. You insure in order to save the losses that might occur if something happens. Now in management we talk about planning, organising, leading and controlling, and each one of those has got activities. For example, in leading the activities are motivation, communication, selecting the right people in the first place. That is three of them.

**The Hon. DAVID CLARKE:** How has the Government moved away from those?

**Mr DAVIS:** They certainly have not, so far as my reading of the regulations and the Act. Okay, people are now important and the duty of care has been really stressed in the 1983 Act and then again in the recent version of the Act, but when you get to the regulations you do not see any means. I might add, the contractors, for example - I am working with building contractors - have got to be able to interpret the regulations and put systems in place in order to satisfy the requirements of the regulations. The management guidelines are not there, they are not in the regulations.

**The Hon. CATHERINE CUSACK:** Is there a quality management system that people can be accredited to in the construction industry that would be consistent with the approach you are advocating?

**Mr DAVIS:** There is a recent one brought out by Australia and New Zealand recently, AS4801 is a quality come safety approach. I have been working independently in following safety management and environmental management and now that they have thrown the old quality assurance out I have now put a composite system together that combines the three, because document control is the same in all three, records is the same with all three, training is the same with all three, and yet we had to have three separate sets of documents the way it was set up before. That is not the Government's fault. That was the international scene that set up quality assurance, because quality assurance did not even mention people. People weren't important under quality assurance. It is crazy.

**The Hon. CATHERINE CUSACK:** We have had the unions in earlier today. You have worked with a lot of large companies but a lot of concern is expressed about medium size construction businesses and the concept that the Government needs to be more proactive on its own work sites, namely schools, in terms of making sure that workers are not being killed on their work sites and more proactive supervising, which is a difficult thing to do on a day to day basis. I did wonder if a quality management system could be a solution for Government to assure itself that the contractors it is

engaging, and the subcontractors it is engaging, have got a regime in which safety is important. Is it something that is quantifiable?

**Mr DAVIS:** Yes. Under quality management you have 20 elements in the system.

**The Hon. CATHERINE CUSACK:** Is that a solution?

**Mr DAVIS:** Partly. One of the elements is inspection and testing, and inspection and testing as looked at in quality management can be expanded for safety by a hazard identification check list, by housekeeping check lists, communication check lists, which brings the communication and consultation that we were talking about earlier back. All of those things can be built in by adding it. I have used this in my composite system in that I still use the 20 elements, I still use the numbering that we used to use in the old quality assurance. If I put anything down as 405, that is document control. It is document control no matter what it is. All I have done is I have taken the best out of all of the three system and put it into a composite and thrown out the rubbish and just kept what was working.

**The Hon. CATHERINE CUSACK:** Can the businesses achieve some form of certification that could be recognised by the Department of Public Works for example, that that business has achieved a certain standard?

**Mr DAVIS:** You can get a quality management certification for the quality side of it. You can get a certification through the Construction Policy Steering Committee. I was one of the twelve trainers selected for the CPSC in 1993 when they were looking at what should happen and what changes should be made to the Act and regulations from a construction industry point of view. That committee still sits I believe and their guidelines are edition three and we work to those guidelines. I have actually set up about 40 or 50, maybe 60 systems for different industries, not only the building and construction industry, but for a whole range of industries. Safety management systems they were, of course, because the CPSC was concentrating on safety.

**The Hon. CATHERINE CUSACK:** Can they be certified?

**Mr DAVIS:** When we put the safety management system together initially there was a Water Board auditor out at Chatswood, this was the contracts division of the Water Board out at Chatswood, and he used to audit the system. He is working with the railways now because they closed down one of their contract divisions. The Water Board had two; now they have only got one. Alan Kelly is the safety manager for the Water Board and he now does the audits of any management system that is put in place for people who are doing contracts for the Water Board. There were, I understand, several more of these accredited auditors who could accredit these management systems that were put in place to satisfy the requirements of edition three of the guidelines of the CPSC. On the other hand, environmental management did not come into it very much until the Olympic Games. When the Olympic Games came I had four clients working on the Olympic projects and they were audited.

**The Hon. CATHERINE CUSACK:** It is the safety and compliance but those systems are already in place from the sounds of it. Is the Government requiring as part of its capital works projects, for the Water Board say, are they requiring that tenderers should be quality management certified?

**Mr DAVIS:** Only some of them were. They wanted them to be safety certified but they did not all require quality management certification.

**The Hon. CATHERINE CUSACK:** That would be a solution?

**Mr DAVIS:** Yes. Total quality management could embrace all three and be the solution to what we are talking about, yes. It is about that thick.

**The Hon. CATHERINE CUSACK:** It is an interesting idea.



**CHAIR:** It would be true though some companies see risk management as working out where the possible risks are that could cause an injury or a death and then setting in place procedures to remove those possible risks, for example simply leaving tools on the ground and making that a policy that no worker leaves tools on the ground so you do not have people tripping over things. Is not that one way risk management is used?

**Mr DAVIS:** That is the way it is used now. Basically system safety management was they used to look at hazards and hazardous conditions and dangers and perils. If the right things were not done, the first thing you do is a danger, risk or hazard is to eliminate it. If you cannot eliminate it, you get to the stage where the risk comes in as the risk control. This is where the insurance factor comes in, as I mentioned before. Risk management, I had six or eight books on it, I did not write any of them, and not in one of those books could I find any management system. It was all the insurance lingo. These were written by insurance experts obviously and it was all about risk and insurance and that even goes to the stage where you re-insure if you are in trouble. Actually, the insurance companies offset and re-insure. I was working for Duncan Risk Management as a loss control management consultant for a short period of time when I came up from Melbourne. That made me familiar with risk as distinct from safety.

**The Hon. DAVID CLARKE:** Yesterday we heard about two young men who fell to their deaths from three or four storeys up and it was found that the employer was in breach of the safety regulations, specifically there was no harness. What are you suggesting that you would institute to stop that situation? I mean the law is there, they just did not observe the law.

**Mr DAVIS:** That is right. One of those was behind Wonderland. They mentioned the company before in here. I went out there and I talked to the supervisor. I talked to the safety officer. The safety officer reckoned there was nothing wrong. But what happened, in fact, was that normally you have got to have an overlap of four inches of mesh on the bearers of the ceiling so that if anyone does fall the staples that are holding the mesh in place will not pull. In this case they were trying to save money and they only had a half an inch overlap and when the guy fell the staple was holding half an inch or three quarters of an inch and his weight took the net down. Had there been overlap and locking of the net together, that would never have happened.

**The Hon. DAVID CLARKE:** The regulations provided for that and that was not observed?

**Mr DAVIS:** Yes. I might make one other point that relates to that. I believe in the approach of the system and approach we are using. I do not agree with the union delegates who were in here before that we have to fine more people and be harsher. WorkCover has a very important role to educate and to guide people, if you like counsel people, in how to set the proper systems up.

**The Hon. DAVID CLARKE:** Those who do not want to be counselled, what do we do about them?

**Mr DAVIS:** It is quite easy for a skilled counsellor; you help the person to find out for himself what his problems are and then you help him to accept that they are his problems and no one else's. This is the approach WorkCover needs to use.

**The Hon. AMANDA FAZIO:** Following up on that, the adoption by WorkCover of the risk management approach, you have said earlier that as far as you can see that really is only trying to minimise the disincentive for an employer to minimise the amount of insurance premiums they have to pay for workers compensation. Given that is the case and that there is no other financial incentive for employers to provide a safe workplace for their employees, is not the only other financial incentive in that case penalties for breaches?

**Mr DAVIS:** No. If, for example, a company has a \$50,000 accident and he is only operating at a three per cent profit level, he has to have a million dollars worth of business to get that back. His business is

going to go down the drain if he continues to let serious accidents happens. I wish I had the chart with me, one of Frank Bird's charts. I use it all the time when talking to management people.

**The Hon. AMANDA FAZIO:** I saw one of the attachments in the plastic sleeve. If a workplace takes 10 per cent out, you spend another 90 per cent cleaning up after that accident. They are the only two things you can identify, the cost of the clean up plus the increased insurance costs. They would be the only two incentives, plus that business implication?

**Mr DAVIS:** I think if you can convince management it is good business to put in a safety program, and I think that is the approach and the emphasis, if I was in charge of this sort of thing, that I would be making. I tell you that is the way I sell my systems.

I have got that chart that I mentioned before. Here I talk about principles as being also part of the management. These are principles and these are principles. You do not find them in any WorkCover documents.

**The Hon. AMANDA FAZIO:** I am not sure if you were here earlier when there was a discussion we had with the panel of union representatives. The attachment to the second part of your submission, which had the 12 months time line, what is called the international safety loss control management diagram, is that the sort of thing that you think would be appropriate to ensure that an organisation could guarantee that they have got good workplace safety in place?

**Mr DAVIS:** If we had the system in place and if we had auditors set up to audit them, just the same as quality auditors are accredited by an international body, in this part of the world the Australian and New Zealand Government have representatives on that body, if the International Safety Rating System was set up and companies were audited annually there is no doubt that you would get a vast improvement.

I might add that I put the International Safety Rating System into three coal mining companies. I put it into Coal and Allied, introduced it to them and let them do the systems themselves. BHP Northern Colliery, we put it into five operations up there. We achieved five gold stars in the second year in one of those operations. There are 10 levels, five green stars and five gold stars up top.

**CHAIR:** That is very good.

**Mr DAVIS:** When I put a system in any mine I went in at the three gold star level. We never missed once. Coalcliff Colliery, \$4 million in eight months we saved. Westcliff - I am talking Kembla Coal and Coke - I had a 12 months contract with Kembla Coal and Coke and it lasted three and a half years.

**CHAIR:** You would agree if there were bad employers who were neglectful of their responsibilities - and those particular ones you are talking about are those who are responsive and want to do the right thing - the only option, as the unions were saying, would be to have penalties. Would you accept that in those cases?

**Mr DAVIS:** Not really. There is a place for penalties I believe. I did a two and a half year assignment as safety manager of Axo Pacific Chemicals. They had a bad problem there and they had tried three safety officers down at various levels in the organisation and they got a consultant in to tell them what they should be doing. They said get a professional and have him report to the managing director.

I went in there in February 1992 and by February with 101 employees they had 22 lost time injuries. For the rest of that year I think we had about 31 for the total year. The next year we had it down to 14. In the next half year we had it down to four.

**The Hon. DAVID CLARKE:** What is it now?

**Mr DAVIS:** They are not in operation. They are had to close down due to fluorocarbons.

**The Hon. AMANDA FAZIO:** You have given us examples of larger organisations where you say this sort of safety regime has been able to save considerable amounts of money. Do you think medium to smaller employers are aware of the potential productivity savings by having good OH&S, or is that something in general the level of management would not be aware of?

**Mr DAVIS:** I am finding the people who have started recently, there is one developer who is on his fourth development, and another guy on his first development now, they cannot get proper management systems quick enough, and we go in and put in guidelines with the key people and it does not take long.

For example, the management systems are about so thick. It covers all the planning, organising, leading and controlling I talked about before. The guidelines, once you explain them to them, are quite easy to use and I had two sessions, a two and a half hour session one Thursday night and the next week a two hour session on the Thursday night. I did not have to go back again.

They are happy. They know to use it. They know exactly the forms to fill out. They know the records they have to keep over time and probably 10 minutes per day per person to do what you need to do.

**The Hon. CATHERINE CUSACK:** Is that per employee or per manager? When you say "they", do you mean the employees or the managers?

**Mr DAVIS:** The people I had in the session were the two supervisors and the manager and the director. They are a small organisation still. Lots of people can see a future in this game. They are coming to me for management systems before they start and that is good. I am very pleased with that.

**CHAIR:** You have obviously got a tremendous wealth of experience over the years and from what you have been telling us you have been quite successful in various areas in reducing accidents and injuries, which is what we are on about.

**Mr DAVIS:** I do what I do, Mr Chairman.

**(The witness withdrew)**

**(The Committee adjourned at 4.35 p.m.)**