



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: [Annual and financial reports 2011-2012](#))

Members:

MR Z SESELJA (Chair)
MS M PORTER (Deputy Chair)
MR B SMYTH
DR C BOURKE

TRANSCRIPT OF EVIDENCE

CANBERRA

TUESDAY, 23 APRIL 2013

Secretary to the committee:
Dr A Cullen (Ph: 620 50142)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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Privilege statement

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Amended 9 August 2011

The committee met at 1.57 pm.

Appearances:

Corbell, Mr Simon, Attorney-General, Minister for Police and Emergency Services,
Minister for Workplace Safety and Industrial Relations and Minister for the
Environment and Sustainable Development

Chief Minister and Treasury Directorate

Kefford, Mr Andrew, Deputy Director-General, Workforce Capability and
Governance Division

Brighton, Ms Meg, Director, Continuous Improvement and Workers
Compensation Branch, Workforce Capability and Governance Division

Commerce and Works Directorate

Fletcher, Mr John, Default Insurance Fund Manager, Default Insurance Fund,
ACT Insurance Authority

Justice and Community Safety Directorate

McCabe, Mr Mark, Work Safety Commissioner, WorkSafe ACT

ACT Long Service Leave Authority

Goran, Mr Josipovic, Acting General Manager

THE CHAIR: Good afternoon, everyone, and welcome. I formally declare open this public hearing of the Standing Committee on Public Accounts inquiry into the 2011-12 annual reports. On behalf of the committee, I would like to thank you, Minister Corbell, and your directorate and agency officials for attending today.

Today the committee is examining the 2011-12 annual report of the Chief Minister and Cabinet Directorate with regard to industrial relations matters—specifically, industrial relations policy, workplace compensation and IR matters as they relate to workplace safety policy. We will then move to the annexed reports of the Work Safety Council and the Default Insurance Fund and will conclude with the 2011-12 annual report of the ACT Long Service Leave Authority.

Minister, as you are aware in your capacity as Minister for Workplace Safety and Industrial Relations, you have responsibility for private sector industrial relations and workers compensation. The committee is therefore working on the basis that IR and workers compensation matters as they relate to the ACT public service as an employer fall under the responsibility of the Chief Minister in the context of her responsibilities for the ACT public service and ACT public sector workers compensation improvement. The Chief Minister is scheduled to appear on 10 May.

Today's hearing will conclude at approximately 3.30 pm. Can I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the blue coloured privilege statement before you on the table. Could you confirm for the record that you understand the privileges implications?

Mr Corbell: Yes, thank you, Mr Chair.

THE CHAIR: Thank you. I also remind witnesses that the proceedings are being recorded by Hansard for transcription purposes and are being webstreamed and broadcast live. Before we proceed to questions, minister, would you like to make an opening statement?

Mr Corbell: Thank you, Mr Chairman, and thank you to members of the committee for the opportunity to be here with you today. I do not intend to make an opening statement, but my officials will try to answer your questions.

THE CHAIR: Great. The Work Health and Safety Act 2012 came into effect in January of last year. Are you able to give us an update on what has been the feedback in relation to how that particular piece of legislation is working? Have any problems arisen during the implementation of the legislation?

Mr Corbell: Thank you, Mr Chair. Obviously, I am relatively new to this portfolio, but in the period of time that I have been responsible for this portfolio I have had no feedback about any significant concerns as to the operation of the new legislation. Obviously, the new legislation beds down a range of nationally agreed reforms around work health and safety. The overall common unified approach to work health and safety arrangements has been generally well accepted across all parts of the relevant sectors that it covers.

There remain broader issues about workplace safety culture in the ACT and there are some issues around strengthening of some provisions of the act that have been identified as a result of Mark McCabe and Lynelle Briggs's investigation into workplace safety in the ACT. So the government is currently considering some further strengthening of the legislation, particularly around the capacity of inspectors to provide for on-the-spot fines in a particular range of circumstances. Those are currently being developed for further consideration by the government.

THE CHAIR: Can you remind the committee in relation to on-the-spot fines? They are able to be issued in some circumstances. What is the particular issue?

Mr Corbell: Generally speaking, the provision for on-the-spot fines is limited and, generally speaking, what inspectors can do instead is issue prohibition notices. The steps they can take in the immediate circumstances where they detect a problem on a work site is that they can issue a prohibition notice or a stop work notice to prevent certain equipment from being used or to stop certain work on part of, or all of, a site.

That has been identified as not necessarily being sufficient to get the message across about improvements in safety. The *Getting home safely* report talked about the need for there to be an on-the-spot monetary penalty to get the message across about the need to focus on safety issues. That is something which is being given further consideration.

THE CHAIR: Have the relevant bodies—either the unions and employee representatives or the employer representatives such as the Master Builders Association—been specifically consulted on those sorts of potential changes?

Mr Corbell: Not on the specifics yet, because we do not yet have a detailed legislative proposal. But we will consult on the details of that once the bill is developed. That is under development. It would be fair to say that there is an acknowledgement right across the industry that monetary penalties often talk louder than other forms of penalties in the construction sector.

THE CHAIR: Have there been any prosecutions under the act to date?

Mr Corbell: Yes, certainly there are prosecutions in development. Whether they have actually gone to court yet I would have to check. But there are certainly a number of matters that have been referred by WorkSafe ACT to the DPP.

DR BOURKE: A supplementary, please, chair?

THE CHAIR: Yes.

DR BOURKE: What sort of quantum of on-the-spot fines are you talking about, minister?

Mr Corbell: That is yet to be determined, Dr Bourke. It will depend on the particular circumstances and the particular nature of the offences that are identified as part of that work. But, basically, there are a broad range of circumstances where, at the moment, prohibition notices or stop-work notices can be put in place. The common one that is used, for example, is in relation to unsafe scaffolding where there is not adequate fall protection for people working at heights.

At the moment, those can be dealt with through prohibition notices but, certainly, that relies on people being caught out. So people make the judgement that they may not get caught out, that an inspector might not show up or might not identify that problem. The risk is very low, I guess. There is no real financial risk. They take the view as to whether or not they are actually going to get an inspection and make a judgement about that risk.

The preference is to have a very clear scheme where, if you are caught, it is actually going to cost you money. It will need be to a sufficient level, but the exact level has not yet been considered by the government.

DR BOURKE: Of course, that level is going to vary in its impact depending upon the size of the organisation. So, for instance, for a contractor involved in a multi-million dollar project, the quantum there is going to be significantly different to someone who is doing a bit of landscaping and so on in the backyard.

Mr Corbell: Yes. Generally speaking, penalty units are applied against either an individual or a corporation. So it would depend on the entity against which the action was taken. And individuals and companies both have responsibilities under the legislation.

MS PORTER: Minister, I do not know whether you mentioned this in answer to Mr Seselja's question. On page 23, under the national harmonisation of the work

health and safety laws, reference is made to the development of a new code of practice and guidance material. Could you talk to us a little more about where that is up to? Sorry, it is on page 26 and is the third dot point under “Future directions”.

Mr Corbell: I will ask Mr Kefford or one of his colleagues to help.

Mr Kefford: Ms Porter, the way in which the harmonised scheme operates is that nationally consistent laws are in place now in all jurisdictions apart from Victoria and WA. Then through Safe Work Australia there are working parties to develop consistent codes of practice. So there is more than one, and they cover a range of specific aspects of work safety. For example, there is one being done on workplace bullying at the moment, which is the subject of debate. Others have been done. We could probably provide the list later if the committee were interested. But the process is that it is settled by officials and brought from the officials group to the select committee on workplace relations for endorsement.

Ms Robinson might be able to get that list of the ones that are being worked on, but there might be seven or eight on the go at the moment. The intention is that these will be promulgated progressively.

MS PORTER: Thank you very much, Mr Kefford. It would be very nice for us to have the list of the existing ones.

Mr Kefford: Sure.

MS PORTER: Obviously, you cannot give a list of those that may be worked on; that might be a little more difficult.

Mr Kefford: In some respects, the nature is that it is intended to be an inclusive process. If not while we are at the table, certainly on notice we can provide that information.

MS PORTER: Thank you, on notice will be fine.

DR BOURKE: Perhaps I might get the same answer as well, but page 25 of the report mentions advice on issues arising from the intergovernmental agreement on the national workplace relations system. What are currently those main issues? Are they just around those codes of practice or are other things happening? Are they different with the new governments that have emerged in some states?

Mr Corbell: Generally speaking, the issues are arising out of codes of practice and associated areas for focus on particular types of OH&S problems. Mr Kefford mentioned workplace bullying, for example, and the commonwealth is progressing options for addressing issues around workplace bullying and roles, potentially, for Fair Work Australia in that process. So those have been the issues of most current attention. Certainly those are the issues that have been most recently brought to my attention. There may be other issues that officials might wish to add to that.

Mr Kefford: Thank you, minister. The other area of work that is picked up in that reference, Dr Bourke, is the ongoing discussions around the review of the Fair Work

Act itself and the implementation of the recommendations of that report which the commonwealth commissioned. So there is an ongoing stream of work in that space dealing with both the technical amendments to the act that were proposed and accepted by the commonwealth as well as some of the more substantive issues. It is part of an umbrella for a whole range of interjurisdictional conversations.

The most significant conversations in recent times have been around the commonwealth government's response to the House of Representatives committee inquiry into workplace bullying and the proposal to which the minister referred about giving Fair Work Australia jurisdiction in that space. There is an intergovernmental forum where those issues are able to be discussed. But the focus in the last while has been very much in the harmonisation space but also in this review of the act itself.

DR BOURKE: Just coming back to the other point I raised, with these new governments that we are seeing in state jurisdictions, is that making any difference to the national flavour, or are we still pursuing the same overall agenda—apart from Victoria and Western Australia, of course?

Mr Corbell: Generally speaking, the commonwealth takes the lead on the convening of state, territory and commonwealth discussions on issues. They tend to be the jurisdiction that puts proposals for change on the table reflecting the operation of the Fair Work Act across jurisdictions.

MS PORTER: Minister, on page 26, under the heading “Future directions”, the report notes that the Office of Industrial Relations and Continuous Improvement and Workers Compensation in Workforce Capacity and Governance Division will “consider further reforms to the Territory’s asbestos management strategy”. Could you please advise the committee as to the work that is being carried out to facilitate this process and where we are up to?

Mr Corbell: Yes, thank you, Ms Porter. The government, as you would know, has a detailed asbestos management arrangement in place that focuses on both legislative policy and regulatory responses to issues around asbestos. In July last year an asbestos coordinator was engaged within the office of industrial relations to improve across-government coordination in terms of our responses to asbestos incidents and to related policy issues.

We know that we will continue to strengthen our capacity to deal with the emerging policy issues as well as managing incidents as they arise in relation to asbestos in the community. Asbestos is very prevalent in the built environment, particularly in Canberra given the age of our buildings and the popularity with the use of asbestos particularly in the post-war period up until 1980s. We are going to continue to see problems with asbestos in the built environment.

A new wave of asbestos-related exposure is upon us as people undertake the renovation of their own properties and potentially inadvertently expose themselves to asbestos through do-it-yourself renovation work in the home. We need to continue to strengthen our capacity to educate people about the risks associated with asbestos products in existing properties.

We will also need to keep a close eye on issues arising from the asbestos removal program that occurred just prior to and immediately after the commencement of self-government in the territory with the removal of loose fill asbestos from properties and some of the legacies associated with that program. So there is quite a bit of ongoing work for us to do. The underlying message for the government and for the broader community is that awareness is critical.

Asbestos is a fact of life in the built environment and knowledge is critical to our ability to keep ourselves safe, keep our families safe and to manage it sensibly and appropriately. If we do that, then the risks can be manageable and we will protect people's health.

DR BOURKE: A supplementary, if I may. Just around that education component, which is obviously so important, minister, what sort of work has been done with the do-it-yourselfers to raise their awareness of this particular issue?

Mr Corbell: We maintain an online website presence that gives people information about issues to do with asbestos that may potentially be present on their properties and the types of things they need to look out for. We provide that information also through agencies that have a direct engagement with people who are undertaking building work, such as the Planning and Land Authority and so on. There is quite a bit of information and material out there. That is also replicated in information that is made available by industry groups—MBA, HIA and others involved in that sort of area. We also provide information to unions, and unions also provide information to their members, about the dangers of working with asbestos and the types of training and awareness they need to have in place.

I should also have mentioned that last year the commonwealth became more engaged in this space. In June last year the commonwealth minister received a report on the management of asbestos across the country. That report contained recommendations for the development of a national framework to drive both improved asbestos awareness and management nationally and the establishment of a new agency—the Office of Asbestos Safety—to coordinate that work. That is now being discussed amongst jurisdictions and the ACT is represented in those discussions.

DR BOURKE: I will take my substantive question, if I may, chair.

THE CHAIR: Certainly.

DR BOURKE: Minister, one of the future directions is to undertake a review of the Holidays Act 1958. Would you explain what that means and what is being reviewed there?

Mr Corbell: This deals with certain holidays, or lack thereof currently.

DR BOURKE: You mean there are not enough or too many?

Mr Corbell: It deals with particular types of employees. At the moment, under the Holidays Act where certain holidays, including Christmas Day and New Year's Day,

fall on a Saturday or a Sunday, the public holiday falls on the following Monday. Christmas and New Year for 2010 fell on a Saturday and 25 December 2011 and 1 January 2012 fell on a Sunday. The consequence of this was that persons rostered to work on those Sundays did not receive public holiday loadings—which are usually in excess of Sunday loadings—or the right to request that they not work on that day.

Because of that, the minister at the time, Minister Gallagher, declared those days to be public holidays on those occasions. But we are now in a situation where those significant dates—New Year’s Day and Christmas Day—will fall on a week day. They will next fall on a weekend in 2015, 2016 and 2017. So we need to now look at how we manage these public holidays.

It is my view—I think it is the government’s view, certainly in discussions to date, and this has been confirmed by my colleagues—that if Christmas Day or New Year’s Day falls on a weekend, it should be treated as a public holiday on that day. That will give employees the right to say, “I’m not going to work on that day.” It also allows them to be paid appropriate public holiday rates if the day falls on a weekend. I think that is only fair for people who work in retail or who work in hospitality.

MS PORTER: Nurses are another one. Nurses work on Christmas Day quite often.

Mr Corbell: Yes, that is true, although they have different industrial arrangements. Mr Kefford might be more familiar with those around public sector arrangements.

MS PORTER: Sorry to interrupt, minister, but being an ex-nurse—

Mr Corbell: The public sector have other ways of compensating for that around their rates of pay and so on. But it is the private sector employees that we are most concerned about because they currently do not have any real protection. The government is considering whether, when those days fall on a weekend, to have them declared as public holidays so that employees have the right either to refuse to work on those days or to be paid the appropriate penalty loadings on those days.

DR BOURKE: If that happens, the Monday or the Tuesday which would normally have been public holidays in the past will no longer be public holidays?

Mr Corbell: You might have to help me with that, Mr Kefford.

Mr Kefford: Dr Bourke, the proposals are in the process of being worked up. At the moment you are right; the days are declared afterwards. The other issue that is in the background, which is why I hesitate slightly, is the review of the Fair Work Act, which we mentioned before. One of the issues that was raised in that was the suggestion that there might be a nationally consistent set of holidays. So while what you say is one possibility, we are not in a position yet of having a definitive answer in that respect.

There is a proposal, at least, that the national employment standards, which set the minimum, prescribe certain days to be public holidays. The view of jurisdictions has been, though, that this really is a matter for jurisdictions to settle locally and that the national employment standards should, as it does elsewhere, prescribe the minimum

rather than necessarily be directive. As the bill is further progressed, one of the issues for discussion, including with the relevant workers and industries, is what is the change, what is the impact afterwards?

Mr Corbell: In New South Wales, 1 January and 25 and 26 December are all standard public holidays, including on the weekend. In addition, when any of those days fall on a weekend, there is to be an additional public holiday the following Monday or Tuesday. But what then happens, to prevent double dipping, is that people who are employed in these sectors do not get the benefit of two public holidays in terms of either penalty rates or time away from work.

MS PORTER: That is fair enough.

Mr Corbell: They can do one but they cannot do both. Industrial agreements have been amended to reflect those circumstances. I certainly had representations from unions that represent people in the retail sector and the hospitality sector who have raised this issue with me and they have said to me—and I think it is quite legitimate—that people should be able to have a choice to not work on those days, particularly Boxing Day and New Year’s Day. Christmas is a little different in terms of the amount of activity there is, anyway.

But, certainly, on Boxing Day and New Year’s Day there are often particular demands on employees to work those days. I think it is fair to recognise that these are also days for family to enjoy celebrations with family. Work arrangements should be more flexible and should recognise that people also have commitments to family during those times. That is what these changes are designed to try and look at.

DR BOURKE: You talked about a national movement as well. Is there some—

Mr Corbell: States, territories and the commonwealth have agreed that we will try and harmonise the number of public holidays across the country. But there is not agreement across jurisdictions. Those jurisdictions that have more than the number that is proposed—which I think is 11—are not prepared, obviously, to reduce the number of public holidays.

DR BOURKE: And those with less would seem unlikely to want to have more.

Mr Corbell: Yes. It is a bit of a stalemate and reflects the individual circumstances of individual jurisdictions.

THE CHAIR: “Future directions” on page 26 talks about the private sector workers compensation scheme. It says that the directorate will advise the government on its performance and issues arising within the scheme. What are some of those issues that have been identified?

Mr Corbell: The main issue is the affordability of the scheme. We have some of the most expensive, if not the most expensive, premiums in the country for private sector workers compensation. In the government’s view, there is a need to improve the affordability of the scheme. This is a matter which I and my predecessors have been working on for an extensive period of time.

The ACT currently has quite a generous scheme which provides for quite a broad range of claims to be dealt with through common law. Indeed, access to common law is unrestricted. So that has an impact on premiums and leads to issues around affordability. Since I have become minister I have had a number of discussions with my directorate about options for reform. I have asked them to prepare further detail around a number of those options for consideration by the government.

THE CHAIR: Is it your view, then, that access to common law under the scheme should be restricted?

Mr Corbell: I am not, at this point in time, going to give an indication around preferred policy positions. I have asked for further work to be done on a number of options, and I will make further announcements about those in due course.

THE CHAIR: Which aspects of access to common law are proving to be the most expensive? Which are the ones that are adding to the costs of the scheme?

Mr Corbell: I will give you some examples. Whilst common-law claims are not necessarily the most severe in terms of injury, they are the most expensive. In 2011-12 the average cost of a claim was around \$31,000, whereas the average cost of a common-law claim was \$215,000. That is the difference between the statutory entitlement people have for award compared to the common-law award.

Some of the highest awards have been for soft tissue injury. For example, in 2012 over \$1.3 million in damages was awarded for a soft tissue back injury sustained by a shop assistant while lifting. By comparison, the statutory lump sum for a worker killed on the job is \$207,000, and this is only paid in cases where there is a financial dependant. So there is disparity between common-law claims and the statutory lump sum entitlements that people have under the act. These are the types of issues that we need to give further consideration to.

THE CHAIR: I understand that there was an actuarial review of the ACT workers compensation scheme. It found a three per cent increase in claims. Is there a particular reason for that, or is that consistent with increases in previous years?

Mr Corbell: I will ask Meg Brighton to assist you with the detail, Mr Seselja. She is across some of this detail.

Ms Brighton: Thank you, minister. A three per cent increase in claims in the workers compensation sphere is considered to be a relatively stable environment. In fact, year over year, the territory has a very stable environment averaging between 4,500-5,000 claims lodged every year. Of those, only around 3,600 of them have costs associated.

THE CHAIR: The review found there was evidence for an increase in average claim size for medical and rehabilitation payments. What was the reason behind that?

Ms Brighton: We have seen a CPI increase associated with medical costs. There are no specific types of injuries that are driving any changes in that. It is just general increases in costs in those claim payment types across the country.

THE CHAIR: It also cites the GFC for a lower number of claims in 2008-09. What is the rationale for the conclusion that where there is an economic downturn there would be less claims?

Ms Brighton: The theory among compensation authorities is that when there are tough economic times, staff are unwilling to put in compensation claims for fear of putting into jeopardy the employment relationship. Those sort of trends are consistent across the country in schemes. What we find is that post-GFC they re-stabilised to normal numbers.

THE CHAIR: So we saw across the country that there were less claims?

Ms Brighton: Indeed, and most jurisdictions had more of an adverse effect than the ACT did.

THE CHAIR: Are there other questions?

MS PORTER: Yes. I realise that I should have asked you this question when we were on the workplace health and safety theme, minister; so I do apologise. Midway through page 87 reference is made to leadership. It notes that leadership performance has been enhanced through regular training and information for managers and supervisors regarding their obligations, roles and responsibilities. You touched on this, minister, when you were answering Mr Seselja's question earlier. Could you advise us a little bit more about the training and has it been effective from what we are seeing on the ground?

Mr Corbell: Happy to answer the question, Ms Porter. It relates to leadership around occupational health and safety in the public sector. So it is the work undertaken by CMTD in its responsibility for public sector management and safe workplaces in the public sector. But Mr Kefford can give you some examples.

Mr Kefford: The particular reference here, Ms Porter, is to our activities within our own directorate. What we are doing is consistent with what happens across other directorates. It is also relevant to the broader approach to continuing the training effort that is necessary in the work health and safety space.

A range of initiatives start out with things like the Work Safety Commissioner coming to address senior managers about what the new act says and its implications for us as employers. There is lower level engagement between the work safety team that is part of the directorate and case management as part of the improvement plan, engaging with directorates and having discussions with them about their own risk management planning, and developing their own engagement with their own particular business environments.

While we are a single enterprise and a single employer, obviously we are occupying very different workplaces. So not only because there is an obligation but because it is important, we stress with our directorates the need to actually sit down and have proper conversations about the work health and safety risks but then to also make sure through things like induction training and training and support to our managers that

our staff and our managers are equipped to identify health and safety risks, to raise them properly and to have them addressed properly.

There are also other mechanisms under our industrial agreements, for example, where we have ongoing dialogue with the unions that are represented in our workplaces. So there is an opportunity there to talk about work health and safety issues and also training and development needs in that space. There is another layer of conversation that happens at bodies like the joint council where there are representatives of directorates and all of the unions that are party to our agreements where there are opportunities to talk about issues that are emerging and opportunities for specific training and development in this space.

MS PORTER: Is it too early to actually see any improvement or some effect? It may not be additional training. I presume you have been having these kinds of training opportunities and these conversations for a long time and it is just bringing them up to date with the new circumstances of harmonisation. I am wondering whether you are seeing any improvement?

Mr Kefford: Again, it is a little outside the minister's portfolio, but with his concurrence, I will answer the question.

MS PORTER: Thank you, minister.

Mr Kefford: What we have seen in our performance as an employer, in terms of our own engagement with Comcare, is a material change in our number of claims and in the incidence rate. Despite the fact that for other reasons, which are probably beyond what we need to talk about this afternoon, there is growth in the premium, the actual performance that is inherent in the structural changes and the focus that was part of the improvement plan put in place two years ago have begun to show a real and meaningful impact to the extent that it is some five or six per cent—I can get the proper number for you, perhaps, but it is of that magnitude—in terms of the financial impact of our improved performance.

Indeed, when I appealed the premium that was imposed on us for the current financial year, one of the aspects that led Comcare to revise that number downwards was our continuation of improved performance in injury management and prevention space. That goes back to give some sense that, yes, the conversations and the awareness that we are seeking to engage is actually happening to demonstrable effect.

MS PORTER: Congratulations. Thank you, minister.

THE CHAIR: We will now move to the Default Insurance Fund? Do members have questions about the Default Insurance Fund?

DR BOURKE: I do. Page 126 talks about employers not having compensation coverage for their workers. What are the common reasons provided for employers not having compensation coverage?

Mr Fletcher: The answer to that question is probably cost pressures. I suppose another way to look at it is the type of profile of employer that we get our claims from.

Most of those claims, particularly in the uninsured employer fund, come from small business-type operators, particularly in the construction industry. A typical example is a small business that might be a tiling business or a roofing business and they have two or three employees. They might win a big job and their workforce increases or their cover drops off, they have an employee who is injured and they do not have a policy in place. That is when the injured employee comes to the fund.

DR BOURKE: How many claims like this do we experience in a year?

Mr Fletcher: There were 20 new claims in the uninsured employer fund in the period that we are examining today.

DR BOURKE: Any frequent flyers for employers in there?

Mr Fletcher: No, not really. It is only a very small pool of claims. There are only 35 claims in the uninsured employer fund. So it is difficult to identify any particular trends other than the comment that I just made about the construction industry. There are a couple of other categories that have a slightly higher profile as well. But, no, I do not think we have had any repeat offenders.

DR BOURKE: Minister, what happens to employers once they have been discovered not to have appropriate insurance in place?

Mr Corbell: Mr Fletcher will be able to help you with the detail of that better than I can.

Mr Fletcher: The process we go through is that we manage the claim. We discuss with the employer about how we can try and recover some of the costs from the employer—there are provisions under the act to do that—and we report them to WorkSafe. Then WorkSafe, as the regulator, takes action.

Mr Corbell: It is an offence under the Work Safety Act not to have that cover, and they can be prosecuted under that.

DR BOURKE: How many have been prosecuted?

Mr Corbell: Again, I would have to take advice from WorkSafe about that. Mr McCabe might be able to assist you with that.

Mr McCabe: Once WorkSafe detects that a company has not paid its workers compensation premium we can levy a penalty equivalent to double the avoided premium, and we have done that on several occasions. So that is a fairly big disincentive.

THE CHAIR: I apologise, Mr Fletcher, if you answered this in the first question. I was looking through some notes. The drop in income is quite significant—\$5.9 million to \$2.8 million. This is on page 175 of volume 2. Obviously it shows the levies have dropped and the recoveries have dropped significantly. What is the reason for that?

Mr Fletcher: One of the reasons is the difference in the levy model from 2011 to 2012. Some changes were implemented in 2011 that had effect in 2012 whereby rather than a scheme that operated as a pay-as-you-go scheme—in other words, the fund would look at its costs on a quarterly basis and then recover those costs from licensed insurers and self-insurers—we moved to a model whereby we levy insurers and self-insurers a percentage of their gross premium to fund the pool.

With the uninsured employer fund, the difference between the levies revenue that goes from \$2,249,000 to \$82,000 is a bit misrepresentative of the revenue that we actually collected. The way the fund works is that it has an unfunded component at the minute. The new model tries to achieve a fully funded outcome by 2015. Approximately half of the levy that we impose—which this year was 1.67 per cent of the gross working premium—is to deal with the costs of claims in the year that we are recovering and the other half is to try and build the fund towards a fully funded status.

The way the fund works as a trust is that we collect all of the revenue. We match that revenue to the expenses and then whatever is left is noted as levy revenue. That is the \$82,000. The rest of it goes to offset a receivable that is in the books.

THE CHAIR: Where do we find that in the books?

Mr Fletcher: If you look in the balance sheet on the next page, page 176, under non-current and current receivables, there is \$5.4 million there. In 2012, uninsured employer fund, there is a current asset receivable of \$1,316,000 and then a non-current asset receivable of \$4,130,000. There is a very complicated explanation of that at note 14.

THE CHAIR: So that is where that money is now allocated, whereas previously it was not?

Mr Fletcher: No, the basis on which it is a receivable is because, under the act, the fund manager has a statutory authority to recover funds from insurers. It is identified as a receivable because I can go and get it if I need it. So the mechanism that is in place is to identify that shortfall as a receivable because, under the act, I can exercise my right as the fund manager to go and get those funds. Whereas, the mechanism that is in place is about not imposing too heavily on insurers and, therefore, on the people who they insure such a significant cost in one hit. Hence, the model aims to reach the fully funded stage by 2015.

Perhaps you could look at the table in the text on page 128 of volume 1. You can see that that table attempts to forecast a break-even point for the fund. So towards the end of 2014 and into 2015 we end up with a positive balance, whereas the balance of liabilities is a negative all the way until that point. It is a bit of a strange accounting arrangement, but it anticipates the fact that the revenue is available if the fund needs it rather than not having an option to recover those funds from a source.

THE CHAIR: Just explain this to me as a non-accountant. Looking back at page 176 on the balance sheet, if the explanation for why the levy revenue has gone down is in the receivables, why have the receivables also gone down from 2011 to 2012?

Mr Fletcher: Quite simply because we basically had a good year, very good year, in terms of our claim payments. So in respect of the expenses that are on the operating statement, we only needed to attribute \$82,000 to the levy income to match that off and the rest of the funds—which is just over \$3 million in levies—were applied to the receivable.

THE CHAIR: Are there any other questions?

MS PORTER: No, thank you.

THE CHAIR: Thank you, Mr Fletcher. We will now move to the Long Service Leave Authority. Page 88 shows the triple bottom line reporting and the total net cost of services as minus \$5.5 million. Are you able to give us an explanation as to that shortfall?

Mr Josipovic: Sorry, could you repeat that question?

THE CHAIR: Page 88, looking at the triple bottom line reporting, in the operating statement under “Economic”, the total net cost of services for 2011-12 is minus \$5.59 million. Are you able to explain that shortfall?

Mr Josipovic: Can I take that on notice?

THE CHAIR: Sure, that would be great. One thing that I was not quite able to understand is that in looking at the board profile, which is listed in a couple of places in the report—pages 90, 91, 93 and 94—there are obviously a number of notes as to when people came on boards and left boards and the like and how many meetings they attended, and we had the deputy chairperson appointed during 2011-12 attending two meetings and then we have got a resigning chairperson, I think, in Mr Matthews attending two. Was one a replacement for the other?

Mr Josipovic: That is correct.

THE CHAIR: If that is the case, why is it between them there are only four meetings attended when other members have attended eight? Is there a reason why they were not attending meetings as often as other board members? That seems quite a big difference.

Mr Josipovic: There was definitely a gap between Mr Matthews’s appointment and Mr Pender’s appointment.

THE CHAIR: What was that gap? It is not 100 per cent clear.

Mr Corbell: Again, we would need to take that on notice.

THE CHAIR: Thank you. The other one that struck me as slightly odd was Kim Sattler attending three meetings. It looks like she was not part of the board for six months and that she served for a period of years then was reappointed with a six-month gap. Is there an explanation for why that would occur and why there would not have been continuity in that board service?

Mr Josipovic: Can I take that one on notice as well?

THE CHAIR: Sure.

Mr Josipovic: As far as board appointments go, the authority only administers the act.

THE CHAIR: Minister, do you have anything on that?

Mr Corbell: These are before I was responsible the minister, and unless Mr Kefford can assist I will have to take it on notice.

Mr Kefford: I think that would be the best approach.

THE CHAIR: Thank you. Ms Porter.

MS PORTER: Through you minister, page 89, section B, consultation and scrutiny reporting, under the heading “Community engagement”, could you elaborate, or Mr Josipovic, on the activities with particular reference to construction site visits and what a typical site visit entails?

Mr Josipovic: The authority has three compliance officers who are able to go out to construction sites. We have a program where we receive information through IRE certificates, through the tendering process, through procurement solutions and through public notifications. Our inspectors will go out to these sites and quite often obtain a site list, come back to the authority and make sure that all the workers or employers on the site are registered with the authority.

MS PORTER: So sometimes they are not? Is that the case?

Mr Josipovic: Most of the time they are. There are very few. Quite often we find that having a relationship with the employers enables us to get multiple site lists from the employer. We ensure that every employer that is on a registered site is compliant with our act.

MS PORTER: And then you have to take action if not, one presumes?

Mr Josipovic: A lot of the time we find that employers have come in from New South Wales on a short contract and they are not aware of the act. We will get them registered and make sure that they are compliant.

MS PORTER: So a simple solution most times?

Mr Josipovic: Ninety-nine per cent of the time.

THE CHAIR: Dr Bourke.

DR BOURKE: Minister, I notice on page 4 that the authority achieved an impressive 21 per cent increase in the number of apprentices registered with the authority. How did you do it?

Mr Corbell: Mr Josipovic might be able to help you with that question, Dr Bourke.

Mr Josipovic: Once again, we have a very small compliance team. When I arrived at the authority in 2009 we were able to have a relationship with the tertiary and training directorate and we were able to get the apprentice lists for certain industries and make sure that the people that were in the construction industry—all the apprentices—were registered. If they were not registered, we went back to the employers to ensure that they were registered. So we have got a very good relationship with the MBA, the HIA and the CIT.

DR BOURKE: Minister, how is the implementation of the portable long service leave scheme going in the community sector and training industries?

Mr Corbell: The government has committed, Dr Bourke, to extending the scheme to include people working in the aged care sector and in the contract cleaning scheme to cover waste workers. We are currently developing the specific policy proposal to make those changes to the act, and that will be the subject of consultation with relevant stakeholders in relation to those sectors. But I know there is a lot of interest in seeing waste workers and people working in the aged care sectors coming into the scheme.

DR BOURKE: How long do you think that process will take, minister?

Mr Corbell: That is yet to be determined, Dr Bourke, but I expect we will have made significant progress on that this year.

DR BOURKE: Good. Has the security industry portable long service leave scheme been any more difficult to implement than previous portable long service leave schemes?

Mr Corbell: Certainly the feedback I have had is that the changes in relation to the security industry have been very well received by people in that industry. Obviously it is a very transient industry with a lot of change not just amongst employees but also amongst changes in employers and the need for people to transition from one employer to another as contracts change and so on. So there is quite a bit of support from the people working in that industry.

Mr Josipovic: It has been implemented successfully because a large portion of the employers that are registered for security are also registered in the cleaning and construction industries as well. So they are very familiar with the authority's processes in relation to submitting returns and their obligations.

THE CHAIR: The community sector expressed concerns around cash flow when this was being implemented. Has any work been done with the community sector to ensure that this does not impact on their operations?

Mr Josipovic: We have only experienced one employer that had an issue with cash flow, and they have gone into receivership. But, by and large, the most compliant employers in our three schemes are the community sector. So we have not seen that.

THE CHAIR: So you have not heard their concerns about the impact on cash flow of having to pay that levy in relation to the portable long service leave scheme?

Mr Josipovic: No, 99.7 per cent of our returns and payments in the community sector are within the allotted time frame.

THE CHAIR: Sure, but that does not necessarily mean there are not cash flow problems. Obviously there is a statutory obligation for them to do it, but that may affect other parts of their operations. Have you heard any of those concerns, and has the government been working with them in order to deal with those issues?

Mr Corbell: No concerns like that have been raised with me since I have been minister.

Mr Josipovic: Or with the authority.

THE CHAIR: So the only one that failed in its payment, you are saying, was one that went into receivership, is that right?

Mr Josipovic: That is right.

THE CHAIR: Which entity was that?

Mr Josipovic: From memory, it was Northern Bridging Support Services.

THE CHAIR: What was the quantum in terms of—

Mr Josipovic: Approximately \$21,000, I think.

THE CHAIR: In terms of the construction scheme benefit payments, there is a pretty significant increase in the total claims lodged and in the number of payments made from 2011 to 2012. This is on page 5. It goes from 698 to 803 for claims lodged and from 641 to 767 for payments made. Is there a particular reason for what looks like a pretty large spike in both claims and payments?

Mr Josipovic: All jurisdictions—all states and territories—have noticed the same impact.

THE CHAIR: So what is the reason?

Mr Josipovic: It is just a general downturn in the construction industry where a lot of the employers are not having continuous work and are encouraging employees to take leave.

THE CHAIR: So they are claiming their long service leave because there is not enough work around?

Mr Josipovic: That is correct.

THE CHAIR: Ms Porter.

MS PORTER: I have a couple of questions around the cleaning industry. One is on page 81, where the third point down talks about the percentage of eligible unregistered contract cleaning businesses identified through a *Yellow Pages* review contacted and registered with the authority. They obviously made contact with them and they are now registered. Notwithstanding that it is 100 per cent successful, which is terrific, is there any other way that one can seek this information, because it occurs to me that there may be some that are not listed in the *Yellow Pages*?

Mr Josipovic: Yes, through the tendering process the authority goes on to the procurement website, especially for the ACT government schools and any of the ACT government contracts, and goes through the process of identifying all the employers that are on those sites and making sure that they are compliant with the legislation.

MS PORTER: And the other one is in relation to page 36, where point one talks about long service leave benefits and the accrual of long service leave varying between the building and construction industry with 13 weeks after 10 years and 8.67 weeks after 10 years for the cleaning industry and the community sector. Could you talk to us about that variation, through you, minister.

Mr Josipovic: They are legacy issues. When the scheme started they went around having a look at the most generous benefits around the states and territories and found the 13 weeks in the construction industry after 10 years as a benchmark, and the authority used that.

MS PORTER: So it is a benchmarking exercise?

Mr Josipovic: Yes.

THE CHAIR: Just in terms of the various schemes, how do the payments work? How often do employers have to make payments under the scheme?

Mr Josipovic: Employers submit quarterly returns, so four times a year. It falls in line with, say, their BAS and superannuation guarantee obligations. Most of the data they collect from those exercises they will filter into our system. Obviously the levy will be applied to the ordinary wages and remuneration.

DR BOURKE: And can they register those returns online?

Mr Josipovic: They can. Once again—I know these are high figures—but over 99 per cent of our lodgements are online. There are only 36 paper returns sent out. Obviously there are people in the construction industry that would prefer paper returns, so we accommodate that.

DR BOURKE: Did you notice a difference after you upgraded your website?

Mr Josipovic: We did; we noticed a significant difference.

DR BOURKE: How much?

Mr Josipovic: We had 68 paper returns and we have dropped them down by almost half. So we are down to about 36 to 38 returns. Employers are now embracing the smart phone technology and the online technology we have implemented.

DR BOURKE: And what sort of feedback did you get from employers?

Mr Josipovic: Most of the employers prefer to deal with it online. As you can imagine, if you are a construction worker and you are nailing something together and you have got the authority ringing up and saying, “Get your return in,” or “Can you provide us with a bit of information,” you would rather find another way. If you look at some of the analysis you will see that a lot of the uptake is with the lodgement of returns, and many of them were submitted between the hours of 7 o’clock in the evening to 2 o’clock in the morning. So it is great to get that sort of information.

DR BOURKE: And what about the workers?

Mr Josipovic: They generally like to come in and see us face to face. But they can request a claim form. We will send it out, mostly via email or by paper.

THE CHAIR: Just briefly back to the community sector issues, minister, you said you had not had any feedback from them on negativity. Have you actively in any way sought to gauge the impact? Have you sought to survey community sector organisations in relation to the implementation of this scheme?

Mr Corbell: Again, these reforms were implemented prior to me becoming minister so I was not directly engaged in those discussions, but I know that there was a detailed level of engagement with the sector as part of the implementation of the reforms. Overwhelmingly, the community sector welcomed better protections for their employees when it came to their leave entitlements. So there was not opposition to effective protection of people’s leave entitlements in this sector.

Since I have become minister I can only reiterate what I have said to you previously, which is, it is not an issue that has been raised with me. I have not had anybody from the community sector knocking on my door or raising with me concerns about issues to do with the implementation of portable long service leave into that sector.

THE CHAIR: Are there any other questions before we move on to the Work Safety Council?

MS PORTER: No, thank you.

DR BOURKE: No.

THE CHAIR: We will move on to the Work Safety Council. Page 132 talks about an advisory committee to provide advice on workplace bullying and psycho-social hazards. Who is on this advisory committee and how often do they meet?

Mr Kefford: Thank you, Mr Seselja. We spoke about that particular subcommittee at the estimates committee. It was brought into being by the changes the Assembly made

last year when it decided not to give particular inspectors with WorkSafe workplace bullying powers but to establish a further advisory capacity. So the group has been established and has met now on a number of occasions. I am on it. If you just forgive me for a moment I will flick to the page that has the membership on it.

The act was changed to facilitate us providing advice through the council to the minister on these particular issues. The membership of the committee is: it is chaired by Dr Vikki Knott, an academic at the University of Canberra with particular expertise in this field, and so she was brought on to the council last year; Kim Sattler, the Secretary of UnionsACT; Lachlan Abrahams—I forget his title—the education and training person; I am on it as commissioner; Greg Schmidt from the Chamber of Commerce and Industry; and Michael Baldwin from the MBA.

THE CHAIR: How often do they meet?

Mr Kefford: We have met twice separately to the council since those amendments were passed.

THE CHAIR: What has come from that council? Has it provided any sort of advice to government?

Mr Kefford: A lot of what happened in the initial period of this group was that its establishment coincided with the House of Reps inquiry, which I mentioned in one of my previous answers, so, the view was taken that, in one sense, while we could begin to collect the sorts of areas where we might pursue work, it would be premature to get ahead of where that national reform agenda was up to. Essentially, there are draft terms of reference, which I am happy to go through, but the view that has been taken with the Work Safety Council itself is that there is lots of activity in this space, so it is not helpful for this group and it is not resourced to repeat all of that activity. It is very much focused on what are the particular issues inside the ACT as a jurisdiction and to ensure there is a sensible contribution that can be made through the auspices of the Work Safety Council for improvements in all workplaces around this space.

The proposed work plan is aligned around a number of categories: research, awareness and training; legislation and policy, but recognising that a lot of that is happening at the national stage at this point; and then working on partnerships and interventions in the sense of providing a forum for us to share in the ACT the good initiatives that are working. So rather than trying to bite off the whole of the issue, we are trying to look at particular areas where the group is able to collect ACT-specific material and provide it in a form that is useful through the Work Safety Council itself, the various business organisations or, indeed, us as an employer.

THE CHAIR: Are there any instances that you can point to of that type of work and what has been the result of that work of the committee?

Mr Kefford: I think it is probably too soon, Mr Seselja, to be pointing to the end results of that project. We are about to report back to the council when it meets in May, having been through this kind of initial phase of, first of all, establishment and working out what the space is. At the second meeting we really got down to asking, now that we know what has been said in the national space, are we comfortable with

the terms of reference, and then actually coming up with a work program in areas where we are able to provide advice. It has been a useful forum if nothing else for information sharing between the various components of the sectors that are represented, and certainly it has been a place that has informed the Work Safety Council's own discussions around this issue, which have been shaped by the national reform agenda but which continue to be an issue right across the economy.

THE CHAIR: So when was it formed?

Mr Kefford: It had its first meeting towards the end of last year. I would have to take the exact date on notice. So we met once just before or just after the Work Safety Commissioner and I appeared at the House of Representatives inquiry. It has met once this year, and then the Work Safety Council has met in between, where the council itself considered the response both to the report and the commonwealth government's response to the House of Reps inquiry. As I say, the next meeting of the Work Safety Council will provide a report on a more focused work plan, and that is towards the end of May, from memory.

DR BOURKE: So, effectively, it is a subcommittee of the council?

Mr Kefford: Indeed. It is constituted as a subcommittee of the Work Safety Council.

THE CHAIR: Ms Porter.

MS PORTER: Yes, I note on the same page, page 132, that the last two dot points refer to, "discussed options for the extension of the workers compensation scheme to prevocational trainees and developed and agreed to an information sheet on impairment at work as a work health and safety matter". Is Mr Kefford able to give any information about those two?

Mr Kefford: I will ask Ms Brighton to come to the table around the workers compensation change. In relation to the fact sheet around impairment, one of the issues that was discussed ahead of all of the incidents that led to the getting home safely inquiry was an issue that had been discussed at the Work Safety Council for some time—that is, the issue of impairment of workers, be it from fatigue or drugs and alcohol. A view was taken that the council could play a role in providing information to employers and employees about the potential work safety impacts of those various factors.

So work was done through the council and endorsed by the council and provided as a piece of information. You would recall that was an issue to which the MBA returned in its response to *Getting home safely*, and it remains an issue in a number of sectors and a genuine work safety issue that needs to be addressed.

Ms Brighton: In relation to the pre-vocational trainees, we took a paper to the Work Safety Council to discuss the proposal to extend the compensation scheme to this class of individuals. The feedback from the council was that there was a range of other insurance arrangements already in place in terms of the education and training environment, the pre-vocational environment. Council members, by and large, felt that another scheme was not necessary at the time. It is a matter we periodically

monitor just to make sure those arrangements are satisfactory. Should those circumstances change, we will take a proposal back to the Work Safety Council.

DR BOURKE: Minister, what sort of examples of these pre-vocational trainees are we talking about?

Ms Brighton: They are individuals who have moved out of the school system and have not yet moved into the total vocational space. Often they are picked up by employers as a mechanism to enable them to access training, and it is classed as training rather than work. More often than not, it is the construction sector and some of the retail sector. It was the feedback from those sectors that adequate insurance arrangements were in place for individuals, and particularly from the construction sector. The CFMEU worked us through the types of arrangements they already have for those they work with who are in that space.

DR BOURKE: Are we talking about school students doing work experience?

Ms Brighton: No, Dr Bourke, it is more those who have left school who are looking to explore other career opportunities and other vocations who yet have not engaged in a formal vocational setting. Students who participate in work experience are covered through insurance arrangements through the Education and Training Directorate. So it is the small number of individuals that are between the school space and the vocational space who are looking for career opportunities.

DR BOURKE: In effect, the industry is saying that they will be covered by the insurance of their RTOs?

Ms Brighton: Some of it is covered through RTO insurance; some of it is covered through the public liability insurance that those entities already have in place. So it varies across the different entities. But the feedback from the council was that they were not of a view that it was necessary at this time.

MS PORTER: But you are keeping a watching brief?

Ms Brighton: Indeed.

DR BOURKE: Have there been any examples, perhaps in other jurisdictions, where this has been a problem?

Ms Brighton: Not where it has been a problem. There have been programs set in place for jurisdictions to look at concessions for the insurance arrangements that sit around apprenticeships, but not in terms of pre-vocational training.

THE CHAIR: Finally from me, page 132 states that the council reviewed the occupational health and safety liaison officer position and the arrangements managed through the Office of Industrial Relations. What was the outcome of that review?

Mr Corbell: That was undertaken by the chair of the council, Dr Knott. The review process involved canvassing a range of stakeholders seeking submissions from interested parties. The chair, who is an independent chair, found the liaison officer

position to be effective in that the activities and performance of the officer were meeting the objectives and the outcomes expected by the government. That was agreed to by the council in its meeting in February last year and was subsequently tabled in the Assembly. The government also tabled a response in the Assembly in August last year on the matter.

THE CHAIR: What prompted the review?

Mr Kefford: It was a scheduled one, Mr Seselja. I cannot remember exactly the period, but the intention was, having put the arrangement in place, that it would be reviewed. As the minister has indicated, the chair conducted that process personally.

THE CHAIR: Are there any other questions, Ms Porter?

MS PORTER: No.

THE CHAIR: Dr Bourke?

DR BOURKE: No.

THE CHAIR: Given there are no more questions, we will close in a moment. Before we do, there are a number of administrative matters to highlight. Answers to questions taken on notice at this hearing are due with the committee secretariat within two weeks of the proof transcript becoming available. Written supplementary questions from members should be provided to the secretariat within two working days of the proof transcript becoming available. If the committee has any supplementary questions following from this hearing, they will be forwarded by correspondence. Answers to supplementary questions should be provided to the committee secretariat no later than two weeks from the date of receipt.

On behalf of the committee, I would like to thank you, minister, and your officials for attending today—Mr Kefford, in particular. When available, a proof transcript will be forwarded to witnesses to provide an opportunity to check the transcript and suggest any corrections. I now declare the hearing closed.

The committee adjourned at 3.14 pm.