



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13th Assembly

ECONOMIC POLICY SCRUTINY COMMITTEE

Public Hearing Transcript

Work Health and Safety (National Uniform Legislation) Amendment Bill 2019

1.00 pm, Monday, 18 November 2019

Litchfield Room, Parliament House

Members: Mr Tony Seivers MLA, Chair, Member for Brennan
Mrs Kate Worden MLA, Member for Sanderson
Mr Jeff Collins MLA, Member for Fong Lim
Mr Lawrence Costa MLA, Member for Arafura (via teleconference)

Witnesses:

- Kane Lowth: Northern Territory Organiser, Construction, Forestry, Maritime, Mining and Energy Union
- Ashley Manicaros: Chief Executive Officer, Northern Territory Cattleman's Association (via teleconference)
- Andy Burford: Branch Secretary NT, Maritime Union of Australia
- Lee Norris: National Legal Officer - Qld/NT, CFMMEU-MUA Division, Maritime Union of Australia (via teleconference)
- David Malone: Chief Executive, Master Builders NT Limited
- Greg Bicknell: Chief Executive Officer, Chamber of Commerce NT
- Andrea Smith: Workplace Relations Manager, Chamber of Commerce NT
- Drew Wagner: Executive Director, Minerals Council of Australia NT Division
- Joel Bowden: General Secretary, Unions NT
- Adam Giuliani: WHS Project Officer, Unions NT
- Melissa Meyers: Senior Associate, Maurice Blackburn Lawyers

The committee convened at 1.01 pm.

**WORK HEALTH AND SAFETY (NATIONAL UNIFORM LEGISLATION)
AMENDMENT BILL 2019**

Construction, Forestry, Maritime, Mining and Energy Union

Mr CHAIR: Good afternoon. On the panel we have Mrs Kate Worden, the Member for Sanderson; Mr Jeff Collins, the Member for Fong Lim; and Mr Lawrence Costa, the Member for Arafura, may join us on the phone today. We welcome to the table to give evidence, Mr Kane Lowth, Northern Territory Organiser for the Construction, Forestry, Maritime, Mining and Energy Union.

Thank you for coming before the committee today, Kane. We appreciate you taking the time to speak to the committee and we look forward to hearing from you today. This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee applies.

This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for the use of the committee and may be put on the committee's website also.

If, at any time during the public hearing, you are concerned that what you will say should not be made public, you may ask the committee to go into a closed session and we can take your evidence in private.

Please state your name for the record and for Hansard and the capacity in which you are appearing today. We offer you the opportunity if you would like to make an opening statement.

Mr LOWTH: My name is William Kane Lowth and I am a senior officer for the CFMMEU. I also thank the committee for being available today for us to add a little more to our submissions. I do not intend to address the wording of the legislation too much. I am not a lawyer. I believe that will be done over the course of the day by others, so I prefer to get on with what we think is ...

Mr CHAIR: Yes, your key points.

Mr LOWTH: ... near and dear to where we sit.

Mr CHAIR: Correct.

Mr LOWTH: We would like the committee to focus on how best we go forward with the legislation because it has been recognised by us—and probably most of the submission you have received—that the legislation alone will not be a silver bullet. We believe there has to be some things that underpin it.

One of those things we would like to see is the codes of practice become enshrined in law. For the benefit of the committee, currently the codes of practice now are a guide, if you like, to workplace health and safety and welfare of employees under the Act. It is only a guide, it is not rigid.

If the committee will allow, I will give an example of where I have come across it recently. I will not be naming builders, individuals or anything like that.

Mr CHAIR: Yes, happy to.

Mr LOWTH: There was an excavation being done approximately two stories deep. At the bottom of that pit, we had workers who were steel fixers, form workers and concreters and the like. There was one access stairway down to there and it was blocked. It had material on it and things like that. Upon seeing the builder, we asked him to stop and do the rectification works. He informed me that the inspector had been there the day before. So, they called the inspector and he turned up and eventually agreed with the CFMMEU that work should stop and we should fix that.

Subsequent to that, though, the most disturbing part was that inspector confided in us that he did not have the industry knowledge or experience. That was a concern. The reason for the codes of practice that we are calling for is it is in black and white—there can be no argument about what is required. To me, that would mean employers, the inspectorate, health and safety reps, the employees themselves and the unions would clearly know the rules if those things were enshrined.

If we look at the codes of practice in Queensland for a form worker it says you must have two emergency accesses to come out of those pits, so that there is always two in case something happens to one you always have another way out.

The employer did the right thing, stop the works and proceeded to fix it on that basis, but we found it a bit extraordinary in this day and age, and given the fact that this was just this year that that had to take place.

The other part, the inspectorate not knowing it, which in itself is not the best but there are ways to fix it. One of those ways is by having the codes of practice enshrined in law, because everybody knows exactly what the obligations are on each other, and the expectation would be if that that was there it would have been a simple fix. It probably would have been a discussion between us and the employer—there is your problem, can you fix it? Rather than involving third parties. It is crystal clear.

Mr CHAIR: It is all very clear what you need to have.

Mr LOWTH: There are other jurisdictions now, Queensland most notably, that have that enshrined in the regulations. What we find over time is if you want to keep work place, health and safety contemporary that you have to have the ability to review between all the stakeholders—employer groups, unions and obviously government to make sure that those laws keep up with the times and best practice.

Mr CHAIR: Would see a code of practice sitting in the regulations so they can be updated?

Mr LOWTH: I would see it sitting in the regulations because one, there is ministerial control for whichever party is in there at the time but it also allows for those reviews to happen and to keep the laws contemporary if they change because scaffolding systems may change in the future. Someone might come up with a better idea and if these things have to change to be a little bit flexible, so to me I would see it sitting in the regulations.

Mr CHAIR: Yes, that makes sense.

Mr LOWTH: The other thing I did not want to say, we also think there is another area we could concentrate on that we believe would help, which would be in the licensing of builders and sub-contractors. I am not overly familiar with how that works in the Territory but what I would like to look at is that there should be a system in place that identifies principle contractors or sub-contractors that consistently breach health and safety laws. We think it should play, or the CFMMEU contends, it should play a role in the ability of those people that consistently breach it in securing government contracts.

Before employers and employer groups start jumping off the roof, I just want people to consider the good employers that are out there. A lot of this tends to be about bad employers, but what about the employers that do the right thing now that have the systems in place, that obviously costs a little more money, takes a bit more time, they are immediately at a disadvantage to some of the rogues and bottom feeders that tend to be in all industries. The building construction industry certainly falls in the category where we do have rogues that will make a profit over people at any expense. That is another area that we see that there could possibly—it is a bit of carrot and stick stuff and this to us this legislation always is.

If you are doing the right thing you should be able to bid for government works and if you are not doing the right thing, why should tax payers fund people that consistently do the wrong thing by Territorians?

Mrs WORDEN: Just to clarify, you see that as operating as a licensing system?

Mr LOWTH: I do. I am familiar with Queensland. I sorry, I have only been up here about 18 months and I have not got my head around absolutely everything that happens in the Territory although I have seen enough and it stirs me a little. I do see it sitting in the licensing area because in Queensland they have what is called the QBCC. It is nothing like ABCC. It just particularly pertains to licensing, making sure people have the financial capacity, making sure that they do jobs correctly, that their work is ...

Mrs WORDEN: I am just thinking it might not be a perfect fit for legislation. It might actually be a better fit for processes and programs with how an organisation operates.

Mr LOWTH: Correct.

Mrs WORDEN: Okay. Are you just placing it here as a thought not necessarily for the legislation?

Mr LOWTH: Not for the legislation, no, but once again I just want to make the point that the legislation itself is not going to deliver the outcomes that we all hope it to.

Mrs WORDEN: Of course.

Mr LOWTH: If we are not thinking about the underpinning laws and the things that we can do to enhance the ability for people to go home safely, well we are not doing our job.

Mrs WORDEN: I accept that, but we need some discussion today. It may not be appropriate in the legislation.

Mr LOWTH: I do not think it is appropriate in the legislation. I am placing it here as an opportunity to say that we need to think about putting some meat around it. We have some good legislation, let us not blow it by not considering stuff that comes up front.

Mr CHAIR: Thank you Kane. Are there any other points?

Mr LOWTH: I want to briefly bring to your attention some of the practises in the mining industry. This is not part of the industrial legislation, but it is something we need to fix. I am talking in the broader terms of the of the Lyons review.

We have discovered over the last few months is that mines self –report to NT WorkSafe. Essentially, they investigate themselves and report to NT WorkSafe. I do not think that anyone could or should think this would give confidence in the Inspectorate.

It is deeply disturbing, it is an industry that employs thousands of people and it is inherently dangerous work. It deserves scrutiny and oversight, in our view, that is more vigorous than mines scrutinising themselves and passing on their report to the Inspectorate.

That is something we see that needs change. I will bring that in the context of the latest incident at Bootu Creek. I believe there are things that are yet to come out. They will come out in the fullness of time but to let it have gone as far as it has, I do not know how it got to that stage, to be honest.

Mr CHAIR: Yes, I got that point.

Mr LOWTH: I do not have too much more to say. I would like to add that this is not a business-bashing exercise. We acknowledge that there are employers who do regard their employees highly.

At the forefront of our minds, this should be about getting Territorians home safe from work. By having those simple laws and the codes of practise and those things that sit behind the legislation, it is probably the most effective way to achieve that.

Like you, I do not want to see people charged under the industrial manslaughter laws. How do we overcome it? There is not a silver bullet, there will be other unions and other employer organisations that will have things to say about it, but we need to get those things right to make it effective and least likely for employees to fall foul of industrial manslaughter laws, if we get that part right.

Mr CHAIR: I will open it up to the panel for questions. We have about five minutes.

Mrs WORDEN: We have some generic questions that we wanted to ask everyone who appears today.

A major one is whether you agree that the offence of industrial manslaughter, should be applied to all people that have a health and safety duty, or only to senior officers and body corporate?

Mr LOWTH: I want to be clear, everyone has health and safety obligations but we also need to be cognisant of what happens in the real world. Workers do not determine what they do, the principle contractor or the bosses or those people do so. I do not see it going to the worker level because they are directed to do what they do.

Mrs WORDEN: What level do you think it should kick-in. It is one thing we are considering, which is why we are asking the question today?

Mr LOWTH: I would see it as the owners or the project managers. There are occasionally people in supervisory roles who determine when people go to work and how to do a job.

If you use the example of what happened in Western Australia where you had a backpacker who, I believe, was given a bucket to stand on to do some corking work and was working in the penetration and fell seven storeys to her death. She was directed to do that.

Mr COLLINS: Following on from that, what about in circumstances where the worker does not follow the instruction that was given to them?

Mr LOWTH: You would have to explain that to me because they still have a job to do.

Mr COLLINS: You have a number of workers who are instructed to do—you have some sort of supervisor or foreman who then instructs his workers to carry out work practices that he was not directed—so what about in those circumstances? They are a worker. A foreman is a worker as well.

Mr LOWTH: Exactly. But what if it leads to somebody's death? Is that what you are saying?

Mr COLLINS: Yes. Do you think that the powers that are in the *Occupational Health and Safety Act* are sufficient to cover that sort of situation already?

Mr LOWTH: I have to be honest. I am more a layman-type person. What I see on the ground is that most workers tend to care about each other. That is just human nature. You work with these people, you become mates and things like that. I have not seen a circumstance where a worker has deliberately disobeyed a lawful instruction that was going to cost somebody their life. In 17 years as an organiser, I have not come across that.

Mr CHAIR: If NT WorkSafe advises that a prosecution would not be brought forward to the business, do you think that should be referred to the Director of Public Prosecutions for them to look into?

Mr LOWTH: What we said in our submission—or the brief letter that I gave to the committee—was that we believe that unions and the family should have a right to send it to the DPP if Workplace Health and Safety does not.

The reason for that is you have to be sceptical if you are part of a family that has lost someone. You would want to know that there has not been negligence to the extent that it lead to that death. I think it should be extended to unions just to refer it to the DPP. Ultimately it is a decision for the DPP but if workplace health and safety or NT WorkSafe did not refer it, and people thought that there were valid grounds to refer it—unions or family members involved—I think they should have that right.

Mrs WORDEN: I think one of the problems with that would be the emotion that goes with it. There might be some consideration that people that are trained to do that who are a step removed, might be in a better place to make that call based on their knowledge rather than grief. How would you respond to that?

Mr LOWTH: I understand that but I also outline to the committee about the ability of some inspectors not knowing—I know when you get to a prosecution stage that there would be different people involved but I think there are deficiencies inside NT WorkSafe currently. I am not saying that is going to be around forever.

The other part is that, yes, there is always going to be that grief and emotional side of things but ultimately it will be the DPP that decides. We are talking about a referral to look at the circumstances. If NT WorkSafe forward it onto the DPP that is good and well but if they do not, the family can forward it on and the DPP can say there is a case to answer or there is no case to answer. They too act impartially.

Mr CHAIR: Is there anything else you want to raise with the committee?

Mr LOWTH: No, I think we have covered it all. Once again, thanks very much for the opportunity to come here and say our piece.

Mr CHAIR: Thanks for coming in, Kane. We appreciate those extra points. They are important to us as well.

Northern Territory Cattlemen's Association

Mr CHAIR: We welcome to the table to give evidence, Ashley Manicaros, the Chief Executive Officer of the Northern Territory Cattlemen's Association who is joining us by teleconference today.

Ashley, thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today. This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee applies. This is a public hearing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website also.

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For the record, could you please state your name and the capacity in which you are appearing today. Then we welcome your opening statement.

Mr MANICAROS: My name is Ashley Manicaros. I am the Chief Executive Officer of the Northern Territory Cattlemen's Association.

Mr CHAIR: Thanks, Ashley. Would you like to make an opening statement?

Mr MANICAROS: I will make a very brief opening statement, if I may, Mr Chairman. Basically, the Northern Territory Cattlemen's Association is the peak industry body for the cattle industry in the Northern Territory. Our membership represents 90% of the Northern Territory's cattle herd, which at last count was 2.2 million head, although that is probably reduced substantially in the current climatic conditions.

We look after a land mass that is roughly 700 000 square kilometres. We directly and indirectly have an employment reach of roughly 10 000 people in the Northern Territory.

We have a number of major concerns with the introduction of industrial manslaughter laws into the Northern Territory. Notwithstanding that the agriculture sector in Australia is an area that is constantly being reviewed and there is data which shows that over the last 10 years it has remained static, I have not seen any dramatic improvements in regard to work health safety, particularly for injuries, but also death.

However, when you lift up that statement and look underneath it, you get a feeling and understand that, in fact, what you find for the majority of the accidents that are recorded within the agricultural industry, is that they have to do with machinery associated to vehicles. There are of course accidents involving animals. There are some accidents involving pesticides and fertilisers.

In the Northern Territory there is no statistical data that I have been able to source that gives a clear indication of exactly where we sit in regards to work health issues. There is no data that could justify the introduction of industrial manslaughter laws.

I have had a look at the last couple of the NT WorkSafe annual reports and there is very scant detail in those reports anyway, but if anything, comparing 2016–17 to 2017–18, we actually see 25—they visited or were involved in 85 investigations in 2016–17 and then in 2017–18 it came down to 64.

You can make of that what you will. I am not really sure what that means because there is no genuine explanation for it. What I know about the role of NT WorkSafe is that my members of the NTCA utilise them to come out on station and have a look at the way they function. We have a very strong commitment to ensuring that—two or three years ago the NTCA went through the process with each of its members through government grants and NT WorkSafe audits, to help them generate work health safety standards and operational manuals with inductions that are done on a regular basis. As you can appreciate, with the seasonality of some of the work—there are two musters every year—that the number of staff can turnover quite a lot.

I raise that because one of the problems with what is being proposed here is that there is no—in my opinion or in any of the national data that I can find—empirical evidence that if you introduce industrial manslaughter laws that, in fact, you will be improving work health safety standards. I think that is a major concern because otherwise you are introducing something for what reason?

It is one thing to protect a worker. It is another thing to introduce a law based off no data that potentially could be used to send someone to prison for life. One of the areas within the legislation that I find concerning, is the third party reference component. I find that concerning because it means that basically, any third party, whether that be a union, a family member or an industry association like mine, can refer a matter for investigation under industrial manslaughter laws.

Why would an NTCA industry association refer anyone on that matter? We are having a dispute with CareFlight at the moment over night-time air strip landings. In my opinion, and in the opinion of the legal advice that I have sought, if CareFlight do not go and pick up someone—even though there is data available about the status or state of that air strip at night—why are they not negligent in completing their contractual duties and why is the Chief Executive Officer of that organisation not able to be charged with industrial manslaughter?

I find the broadness of it concerning and I do not think industry itself—I am quite distressed by statements associated to dark undertones of industry opposing this legislation. I think industry has very genuine concerns. I think if anything, the dark undertone that I pick up from this is that somehow industry and business has irresponsible people who let their workers go to work and die. To be honest, I find that offensive.

Our NTCA concerns are very broad, we think they will have an impact on our members. One of our other concerns, I will finish quickly, is having a look at the NT WorkSafe; their annual report, knowing what they do. To be honest, I do not know if they are equipped to handle this type of legislation.

From structural and resourcing points of view, they are my main concerns. I am happy to expand further.

Mr CHAIR: Thank you Ashley. I will open it up to the panel.

Mrs WORDEN: I am wondering if you have had the opportunity to look at previous workplace incidents—retrospectively, what different effect this type of law may have had on the outcome? Did I explain that well enough?

Mr MANICAROS: Do you think by having this law, standards would have been made differently?

Mrs WORDEN: Yes. Every industry is slightly different and we all know there have been some deaths in the cattle industry across time. If I was in your shoes looking at this legislation, I might look retrospectively if this had been in effect, how the outcome might have been different?

Mr MANICAROS: Hindsight is a wonderful thing. I am drawn to a case that has occurred in Queensland recently, where some directors have been charged because they did not put in a proper pedestrian area or the pedestrian area was not wide enough. One of their workers was run over by a reversing forklift.

The short answer is, I am not sure, I do not believe so. In our industry in particular, it is motor vehicles, unpredictable animals and aviation, primarily helicopters. There are already penalties associated with aviation. I do not know that industrial manslaughter laws are going to have any different outcome. An accident is an accident.

Two things are missing out of this piece of legislation. One that sticks out to me is the responsibility of the individual. If I have signs up saying you have to wear a helmet and the individual either takes the helmet off or is wearing a helmet and still manages to have an accident that results in his or her death, am I exposed? I do not think it is clear cut. Either way I can be referred to an investigation by a third party.

The other thing, is the Chief Executive Officers of all public service departments are exposed under this draft of industrial manslaughter. Why should the Minister of the Crown not be exposed? At the end of the day, the Minister of the Crown, along with the Cabinet, sets the budgets which the CE is supposed to implement everything, including work health and safety.

Mrs WORDEN: Thanks Ashley. I do not have any further questions.

Mr COLLINS: We were told in a briefing, by bringing this under the *Work Health and Safety Act*, that the Crown would not be exempt. I would be interested in your interpretation of that.

Mr MANICAROS: My interpretation the Crown being the public service, I did not interpret the Crown as being a minister. Do you interpret that as being a minister?

Mr COLLINS: The Crown, is the Crown. I would be interested to seek some advice on that. Thank you for raising it, a good point.

Mr MANICAROS: It is an interesting point, I know a CE is responsible for operation and policy. Or is a CE responsible for operation and the ministers and the government of the day sets the policy? It is an interesting

conundrum. To my mind, the minister should be included. It needs to be clarified, I would be interested to see how you do that.

Mr COLLINS: We had a submission from the CFMMEU before it talked a lot about, which is not in the Act and probably does not fit in the Act but could be an adjunct to it, developing codes of practice, it seems to be consistent with your, well, it is not stated, it is consistent with your submission. What do you think?

Mr MANICAROS: Yes. We work towards a code of practice in a number of areas, not only through our operational areas but also through our animal welfare. That is one way of dealing with it. It is just the overarching large penalty that goes with the industrial manslaughter law that I am not sure is justified.

Mr COLLINS: Thanks.

Mr CHAIR: Ashley, thank you for your submission and for joining us today, and we take those points on board.

Maritime Union of Australia

Mr CHAIR: Welcome to the committee and welcome Andy Burford, Branch Secretary, Maritime Union of Australia; and on the phone we have Lee Norris, National Legal Officer of Queensland/Northern Territory. Thank you for appearing before us today.

We appreciate you taking the time to speak to the committee and we look forward to hearing from you today. This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee applies.

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For the record and for our recording can you please each state your name and the capacity in which you are appearing here today.

Andy, would you like to go first?

Mr BURFORD: Andy Burford, I am the Branch Secretary of the Maritime Union of Australia.

Mr NORRIS: Lee Norris, National Legal Officer, Northern Territory and Queensland. Construction Forestry Maritime Mining and Energy Union, Maritime Union of Australia Division.

Mr CHAIR: Would either of you like to make an opening statement?

Mr NORRIS: I would and I do not think Mr Burford wishes to do so.

Mr CHAIR: Just before we start, Lee, I will let you know the Member for Arafura has just joined us, Mr Lawrence Costa, is on the phone.

Mr NORRIS: I thank the committee for indulging me by allowing me to appear by telephone. We have submitted a written submission. In those circumstances, I do not consider it a particularly useful bit of anybody's time to simply go over that and read portions and so on. Suffice it to say, we support the Bill that is being sought to be introduced into parliament and passed, except for one major aspect.

That is the aspect that employees who have a duty of care under the Act might be subject to a prosecution of industrial manslaughter.

We have identified that the Queensland parliament recently introduced industrial manslaughter legislation. The Australian Capital Territory has had similar legislation for about 18 years now—it was the first in Australia. The committee may well even know that the Victorian parliament is considering a Bill to amend their Workplace Safety Legislation Act to introduce a crime of industrial manslaughter as well. That Bill does not make ordinary workers—to use the colloquial term—subject to prosecution for the crime of industrial manslaughter.

We have given our reasons and so forth. It would be more use of our time, Chair, if we were to simply open ourselves to any questions the committee had.

Mr CHAIR: Yes, of course, we are happy to. Andy, do you have anything to add?

Mr BURFORD: No, I am fine. I will leave that to Lee.

Mr CHAIR: All right. I will open it up to the committee. Kate, do you have ...

Mrs WORDEN: I will in a second.

Mr CHAIR: Jeff? I have a couple I will go through. We have heard this afternoon about the code of practice. Do you support a code of practice and where would you see that sitting, Andy or Lee?

Mr NORRIS: A code of practice, typically, is not legislation by or of itself. But a breach of a code of practice can lead to—it is prima facie evidence that somebody has breached a duty of care that is under the legislation. A code of practice for industrial manslaughter, provided it was drafted very carefully, could work. Yes, we believe it could work because in Queensland it is known as the person conducting the business—or the head honcho, or however you want to described them—who has the responsibility to ensure the safety of everybody in the enterprise.

If they were given guidance on how to take the reins and leadership on that issue and if they fell down on that issue, well, then a prosecution would be well and truly justified, in our submission.

Mr CHAIR: Yes, good.

Mr NORRIS: A code of practice would be a useful thing in giving them guidance on how they might take the reins.

Mr CHAIR: Okay, great. My other question is if NT WorkSafe advise that they were not going through with a prosecution, would you support it being referred to the department of prosecutions by other parties?

Mr NORRIS: Yes, we would. That has been an issuer in other jurisdictions as well. I do not want to take up your time, honourable Chair, but the short answer is yes, we would support that.

Mr CHAIR: Yes, great. All right, thank you. They are my questions. I will go to Kate.

Mrs WORDEN: Yes. Hi, Lee. There was some discussion earlier today about the level—should this legislation be introduced, we should preface that. At which level you think it should apply? You guys have just touched on that a moment ago in it should not be applied to the worker. But at which level do you think liability should be apportioned, if the legislation goes ahead?

Mr NORRIS: Yes, the NT parliament could take quote useful guidance from the Queensland amendments where it is known as a person conducting the business and that has been defined in their legislation. I think the Office of Parliamentary Counsel might even wish to have a look at the recent Victorian amendments as well.

There is always a top layer. For example, company XYZ Pty Ltd, although it would be an artificial entity, it is a corporate entity, it is the top entity. Below them are natural people because a corporation can only act through the agency of natural people. Below them are executive officers and the like that are described in various ways: chief executive officers and chief operating officers are another term I have heard. At that level, it should be applied because they are the people who are responsible for ensuring the corporation's compliance.

Anybody that has a very senior position and is in a position to affect an employer's—for want of a better term a person conducting businesses' compliance with industrial manslaughter legislation ought to be within the range of people who can be made amenable to the offence.

Mr COLLINS: This is probably a continuation of that and it was asked earlier but if somebody is responsible for acts through negligence or recklessness on a worksite and is responsible for another worker's death, even if they are another worker, do you see the provisions under the criminal procedures for manslaughter are sufficient? Is that what you are saying?

Mr NORRIS: No, it can be very difficult to obtain a conviction in those circumstances for legal reasons, which quite frankly, I would not wish to go into. I would not wish to offer a legal opinion on it. It revolves around whether or not the breach is criminal negligence—which is a different standard to ordinary negligence—or not. The reason I understand it is because there has been few, if any, prosecutions in this country for negligence whether you are operating in a code-like state which is the Northern Territory, Queensland and Western Australia, or a common law criminal state which is other states like Victoria and New South Wales.

It is really beside the point because it is very difficult to meet that criminal negligence threshold. To use, perhaps a poor example, somebody is not watching what they are doing and makes an error and heels a brick over the edge of that building site and it drops on the head of somebody, that may be negligence but it is not criminal negligence.

Mr COLLINS: No, I understand that. The provision for manslaughter in the *Criminal Procedure Act* is negligence or recklessness. That is already there in the current criminal procedures. What I am asking is, this piece of legislation is seeking to take the charge of manslaughter into the workplace health and safety area. You support that for officers and persons conducting the business, but what if it is in circumstances where it is another worker who is responsible for the reckless or negligent acts that causes another worker's death? Do you think that should not be pursued?

Mr NORRIS: No because they do not have the capacity—the ordinary worker or employee who is going to work for a day is really forced in this modern society to do so to earn their living. They are not going there in pursuit of profit and they do not stand in *pari passu*—or in the same shoes—as an employer.

When the employer makes a substantial profit, the employer is not bound to distribute equally the profit to their employees. When something, such as the death of a worker occurs, it is only just and fair, in our respectful submission, that they should take responsibility for that.

There is an extremely different nature of the relationship. One person is there because realistically, in economic terms, they are forced to be there to make their way through society. The other is there to pursue a profit. We make no criticism, but if they are going to do that, they have to understand that there are obligations they have to live up to and if they fail in those obligations, there are consequences.

Mr CHAIR: Andy and Lee, before we finish do you have anything else to add?

Mr NORRIS: In conclusion, I would like to say, we would urge the committee to take into account that this legislation of this kind has already been looked at in the ACT and Queensland, without ordinary workers being made liable or amenable to prosecution.

Subject to a vote of the Upper House, which is a dicey thing in Victoria, the Victorian Parliament is considering an identical Bill. One can say with certainty that the Bill does not seek to make ordinary employees amenable to the prosecution for industrial manslaughter.

In conclusion, that is what we wish to highlight.

Mr CHAIR: Thank you both for appearing before the committee and your submission.

Mr NORRIS: Thank you Mr Chair.

**Master Builders NT Limited
Minerals Council of Australia NT Division
Chamber of Commerce NT**

Mr CHAIR: I welcome to the table to give evidence to the committee David Malone, the Chief Executive Officer of the Master Builders NT; Greg Bicknell, Chief Executive Officer of the Chamber of Commerce NT; Drew Wagner, Executive Officer Director of the Minerals Council of Australia NT Division; and Andrea Smith, Workplace Relations Manager Chamber of Commerce.

Mr CHAIR: Thank you for appearing before the committee today. We appreciate you taking the time to speak to the committee and we look forward to hearing from you today. This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee applies.

This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for the use of the committee and may be put on the committee's website also.

If, at any time during the public hearing, you are concerned that what you will say should not be made public, you may ask the committee to go into a closed session and we can take your evidence in private.

Please state your name for the record and for Hansard and the capacity in which you are appearing today. Then we welcome an opening statement.

Mr WAGNER: Drew Wagner, Executive Director, Minerals Council Australia Northern Territory division.

Mr MALONE: Dave Malone, Chief Executive, Master Builders NT.

Ms SMITH: Andrea Smith, Workplace Relations Manager, Chamber of Commerce.

Mr BICKNELL: Greg Bicknell, CEO, Northern Territory Chamber of Commerce and Industry.

Mr CHAIR: Thank you very much. We welcome your opening statements.

Mr MALONE: Thank you very much and thank you for the opportunity to speak today. Throughout our history, Master Builders has been a strong supporter of measures designed to improve workplace safety in the NT. Just like everybody else in this room here today, we have family and friends that leave for work each day and just like you, we want them to return home safe and sound.

As a consequence, in the normal course of events, and putting aside some of the rhetoric around industrial manslaughter legislation, you could expect us to support initiatives like this. At this stage, we simply cannot. We urge the parliament and this committee to recommend that the passage of the legislation be deferred until three—what we think are quite reasonable—steps are taken.

First of all, we know that legislation on its own rarely brings around improvements. If you look at anywhere in life, laws are passed but it does not necessarily bring about change. We believe strongly that government must back its claims around safety by significantly increasing the investment in the education and information activities of WorkSafe as well as development of standard systems of safety that can be used by micro and small business.

Next, we believe government needs to show some respect to the business community by getting out and explaining what they are looking to achieve with this legislation. I am not sure, as far as I know, if any minister has left this building and actually spoken to business about the intentions of this legislation.

Finally, government must make a couple of technical improvements to the current Bill. First, the test around recklessness or negligent conduct must be transparent and very clear. At this stage, many people believe that is not the case. It should match the existing standards in the community. Next, the provision providing open standing to request the regulator to bring a prosecution, should be limited to people directly involved in the matter and not to any third party who wishes to do so.

As you know, this Bill contains penalties of life in prison for individuals and \$10m in fines for organisations. They are very significant penalties by any measure. We believe that it is undeserving of this government to prepare its legislation in secret and then seek to rush it through the parliament without much in the way of consultation.

Most importantly, we have not seen the effort to connect with the people who are actually exposed to these particular provisions. We are not saying do not proceed with the legislation. We are saying that deferral provides the opportunity to get these things right and I encourage you to make that recommendation. I am happy to take any questions.

Mr BICKNELL: Thank you for the opportunity to appear before the community. Thank you for your interest and invitation; it is appreciated. I would also like to reinforce some of Dave's comments around our members' strong commitment to providing a safe workplace for all their employees. We see the make-up of our business community in the Northern Territory with almost 60% employing less than four people. You have a very close-knit dynamic within our workforce already.

As David said, nobody sets out at the start of the day to deliberately harm anyone. We are firm believers in the importance of continuing an education process for employers and businesses going forward.

When I first started in this job, some of the angriest meetings I was ever involved in were between employers and the regulator. We saw a very punitive regime where businesses would be closed down with no notice. We then have seen a change to a more educational focus in identifying particular issues with businesses where inspectors have travelled into those businesses and allowed them to fix those problems.

If you are a small business, particularly in today's very tough economic times, if someone closes you down for several days or weeks, that can, basically, be the difference between continuing and not continuing. We have companies at the moment, where people are borrowing against their mortgages to pay salaries. It is a really tough time. I am sure you are hearing many similar stories. It is not as if we have this great cohort of people who are earning tens, hundred, millions of dollars who can have the systems in place. We need to continue to educate. That is very much the case.

A lot of our members feel that they have been unfairly demonised. We have seen an improvement from a pretty poor base, around 2012, in the number of serious incidents in the Northern Territory. We are seeing some positive results on the back of that education.

Again, we support what David said. We believe that this legislation has been introduced and there are many member businesses in the Northern Territory that have no real idea—apart from what has been reported in the media saying that every employer is trying to do the wrong thing. We believe, 100%, that is not the case. Nobody attempts to do that.

We have to try to work together to have legislation in place employers are involved with and are informed about so that if there are things like introduction of codes of practice or changes to the legislation that businesses can be prepared.

The Chamber is an approved provider of workplace health and safety representative training. We train about 80 people a year through that. We are seeing that commitment from employers, where they are releasing people for a week at a time to do that training. It is a slow process, but it is having a significant impact.

The introduction of this legislation without the right amount of consultation and education will bring that progress to a halt. That is a real worry for us.

Along with that, we understand the government is currently experiencing some reasonably tough times itself, and any allocation of resources within the public sector are hard fought. So, we would be looking to encourage adequate resources to be able to deliver any changes to the wider business community.

As we are a family member of the Australian Chamber, we have been involved in—the Australian Chamber movement has been involved around the country in discussions and development of legislation.

We see that there are some quite well considered parts to this legislation, but we would welcome the opportunity to work further. We had three representatives working with Tim Lyons on his reference group. The general consensus was that, while they were consulted, their recommendations did not form part of the final report. They it was very much a Queensland model that was placed upon the Northern Territory rather than something that was developed from the ground up.

We are a very different jurisdiction. Parts of Queensland are very similar but other parts, the greater part of their population is around the south-east corner and very different from anything in the Northern Territory, and we need to take that in to account with this legislation.

We have quite a few members that are Aboriginal organisations—non-government organisations in remote areas are getting information out to them tends to be a one person job is a tough ask.

Mr CHAIR: Yes, agreed.

Mr BICKNELL: We have also outlined in our submission a scheme that we believe can be set up to encourage employers to adopt work health and safety practices. I will not run through that but if you have any questions I will be happy to take those.

Mr CHAIR: Thanks, Greg. Anyone else?

Mr WAGNER: I would like to start by thanking Master Builders and the Chamber for actually inviting me to join their presentation today to present some information and evidence to the committee.

It goes without saying that work place health and safety is the number one value of the Minerals sector across the nation let alone just here in the Northern Territory. We no longer call it a priority because priorities change over time, values certainly do not. We also believe, as it has been stated already, that we will not get change just through legislative effect alone but if we are to put that legislation in place we believe it needs to be fit for purpose and define succinctly and correctly what it needs to define.

At this point in time we do not believe that some of the definitions contained within the legislation are fully enunciated, particularly around what recklessness and negligence actually is. As has been mentioned by one of the committee members already this afternoon, the current criminal legislation does allow for current manslaughter charges. That criminal legislation also allows for the full prosecution and defence of those charges. The work health safety legislation does not allow for such under current proceedings at this point in time. We do not believe that has been taken in to account in the current framework as proposed.

We also believe that we perverse policy outcomes that may actually be achieved by putting this provision in place in the legislative framework. The number one value, as I said, is that work health and safety of our workers. Every single meeting or forum that we holds starts with a safety share. They are all to do specifically with any concerns, on goings, mishaps or otherwise that have been identified across our sites.

If this was to be driven in to place a lot of this information will be pushed underground and would not be shared across our sites to actually have those learnings consistent across our entire industry, and indeed in fact an industry that has leading edged recognised work health safety efforts are actually put in place.

Some of the definitions, particularly as I mentioned around gross negligence versus recklessness and otherwise, need to be a lot clearer and there needs to be that consistency across a number of jurisdictions. As has been mentioned by previous committee members, as well as people presenting evidence there are two other jurisdictions with this legislation in place and even there is no consistency across those two let alone what is now proposed in the third coming forward.

We encourage the deferral of this legislation. It is not to say that we do not believe there is some merit in it but we believe as we have outlined in our submission a number of inclusions and definitions that we can look at. I will not waste the committee's time in going through them. They obviously have the written copy with them of the information provided, but to actually strengthen the position of making sure that each of our workers gets home in exactly the same condition as when they left that morning. We believe a number of those provisions need to be taken in to account before this legislation can move forward.

Mr CHAIR: I will open it up to the panel for questions. Jeff, do you have anything?

Mr COLLINS: It is probably more for Dave and Greg. You spoke of the development of codes of practice, we have heard that from one of the unions earlier as well, and a suggestion of the use of licensing provisions for targeting poor performers. What do you think about that sort of approach?

Mr MALONE: If I can answer in a sort of long-winded way, thirty years ago I was involved in Master Builders developing the first code of practice for working at heights in the Northern Territory and the purpose of that was to make sure that there was one set of information for people to use when they were working in those sorts of circumstances and when you consider, as Greg said, that so many of our businesses are so small, many of them might only have one or two employees, for example, you are going to get far more progress by providing codes of practices to people and leaving people to their own devices and then either pinging them when something goes dramatically wrong—which is the worst of experiences that no-one wants to see.

What we are actually trying to do is to stop people getting hurt in the first place. Codes of practice are fundamental to getting common practice across the industry as people move from employer to employer. They also make it easier for small business to ensure that they are compliant. They are struggling every day to be compliant with almost everything. Running a small business is the hardest gig in Australia right now.

Codes of practice are fundamental to getting the final result that we want which is a much safer workplace and to be truthful, it is an area that we are falling down on dramatically. That is because of a lack of resources. The fact that we are looking to prosecute at one end without providing the education and training that we should at the other end shows the flaw in logic that we see in this process. We are happy for legislation to go through but the investment has to occur as well.

Mr BICKNELL: In terms of codes of practice, we just cannot afford to over-complicate them. There is a place for them and one of the things that we try and work with our members on is making sure that they have

policies and codes of practice around a range of things that affect their business. We try and use the KISS principle as much as we can to allow people to be real about it and give them a working, living document rather than something they look at and think it is too hard and file it away and never refer to it again.

There is a place for them but we do not want to make them overly complicated because everyone talks about red tape, green tape, brown tape; anything is an additional cost to business.

Mr COLLINS: No, I get that. What about using licensing provisions? So if you have endemic poor performers with licensing restrictions on them and that sort of stuff. How do you feel about that sort of approach?

Mr MALONE: In the construction sector, for example, we are probably heading in that direction thanks to the reviews of the building industry occurring as part of the cladding matters that you would have seen around the country and the move towards—we will see some form of licensing come through as part of that exercise.

The crucial thing is the CPD component of that. If it is turn up at Motor Vehicle Registry and get a piece of paper, slap it on your windscreen and drive out again, that is not changing anything at all. If it is genuinely about lifting the knowledge level of people and tying it to licensing, there is nothing wrong with that. That is the kind of system that you hope for. I do not think you will license every trade though and I think across the wider business community, you cannot license everything that people do. That is why you have to have that outreach program from WorkSafe connected to the business community. As the Lyons report rightly picked up, not every business operates in Darwin so it has to have the capability to get out there as well.

Mr CHAIR: Drew, do you have anything to add to the questions from Mr Collins?

Mr WAGNER: Interestingly enough, our operations are actually governed by approval processes which have to take into account our workplace health and safety standards and commitments. Without them, you do not get your approval to continue to operate anyway. We are already in that space under the *Environmental Management Act*.

Mr CHAIR: A comment on a code of practice?

Mr WAGNER: Fortunately for whatever reason the code of practice—I am not talking about companies here that are only employing two, three or four dozen people, I am talking about companies that employ thousands literally—the very vast majority of my members are global market operators and there are certainly a number of other realities upon which they will be looking forward in regards to their workplace health and safety, particularly around social licence and otherwise, regardless of the condition of actually looking after their members.

We probably have some opportunity to learn and expand the learnings that we have had in the minerals sector on behalf of other sectors, and some of the cultural changes that have been made over the last generation or so. There are certainly a lot of approvals processes, licensing or conditions that are already now in your ongoing operations that take those into account.

Mr BICKNELL: Through the Chair, if I could just add something in regards to licensing. The other important thing we need to bear in mind is that any licensing we do as the Northern Territory, there has to be portability of that. It has been an ongoing problem for many years. We have a very transient workforce and if there is going to be one jurisdiction with one set of licences and another with another; if that was going to be the case there would need to be a lot of work. Some things in high-risk are being looked at nationally. That national approach is—anything for licensing qualifications, we need to have portability.

Mr CHAIR: Yes, Good point.

Mrs WORDEN: Yes, I am interested in the view that we have a model that has not been developed from the ground up. Just quickly on that, what would you suggest would be ideal in that space? What would be the best way to approach that? What are you suggesting?

Mr BICKNELL: Okay, the feedback from our members was that they had not been involved. That is what we are saying—to get any sort of buy-in by local business, there is that need for people to feel they have been involved in the process. The Lyons review was a closed process, from what the general business community witnessed. The Master Builders and other would agree with that. We were fortunate that we had a couple of people involved, but they were out of the legal fraternity and were very much interested in the legalities of what was being discussed and potential legislative outcomes, rather than necessarily the impacts on MSEs across the Territory. No criticism of ...

Mrs WORDEN: No, that was interesting because you raised it. The other one is let us put it all aside and say, 'Okay, the legislation goes ahead'. There has been quite a lot of commentary about the different levels of people within organisations who should at least be held to account were questioned in that space. Do you have any commentary on, if the legislation goes ahead, what level it should be pitched at? You might all have very different views.

You guys have been in the room for a bit and there has been some rhetoric about other employees—staff members—who might direct someone to do something. It seems to be something that is quite prevalent through all of the submissions.

Ms SMITH: It is pitched to the right level, is it not, at the moment? We feel it is definitely pitched at the right level, because it is such a high threshold. We do not feel employees will be singled out easily. Does that make sense? It is a very high level of threshold. Provided the definitions are clarified then it will make it clear to understand.

It would be an extreme case, I would imagine, and, based on previous history, unlikely. It is only a safeguard.

Mr WAGNER: That would also come down to—at this point in time, the proposal is for workplace health and safety regulators to prosecute this case, not the Director of Public Prosecutions. As I mentioned in my opening statement, the ability to fully investigate, as a typical manslaughter legislative offence occurs, would not have the same defence allowed it under work health and safety regulators, rather than a full Public Prosecutions case? There are the ones who actually identify who is the appropriate person to look at or where the appropriate responsibility sits.

Mr MALONE: The way we look at it is, if the legislation is to be designed to make someone pay once someone has passed away, then you leave the responsibility with the person who operates the business. If, on the other hand, this is about making sure that people do not get hurt in the first place, then the responsibility for that health and safety responsibility must travel to everyone. That becomes doubly so on a construction site.

A construction site is not a regular factory where people turn up and do the same job over and over, it is organised chaos where up to thousands of people are working for different employers, all on the one site. Everybody has to have responsibility for that.

I do not have any problems with the fact that there is additional responsibilities that flow up the chain. I do not have any problems with that at all. But to be really honest, I struggle with the idea that someone on site, who may have been able to prevent an incident, does not prevent it, but they are exempt from these responsibilities. It really should be that everybody has a health and safety duty—a basic principle to that—but there may be additional obligations that fall on the people who are responsible for leading either that part of the project, the full project, or the organisation.

Mr CHAIR: Yes, great.

Mr COLLINS: On that point of WorkSafe prosecuting, we were advised in a briefing that it still has to be approved by the DPP. That still has to be approved ...

Mr WAGNER: I am not 100% sure that came out in the information that has come to light.

Mr COLLINS: It might not have come out clearly, but that is what we have been told. They make the call on all prosecutions, whether they proceed or not.

Mr CHAIR: Any further questions?

Mr MALONE: I have one further comment. As per usual, with legislation that goes through the Parliament, there will be some media coverage of this when and if it goes through.

Mr CHAIR: The media are in the room right now.

Mr MALONE: Surprisingly, five seconds after that happens the footy or cricket score will come up and the next time people will talk about this issue will be when unfortunately someone has passed away and there is a prosecution that is being mooted.

If that is where the Northern Territory gets to in passing legislation, when we are trying to protect people, we have missed the boat completely. There is a responsibility on the people in this building to get out and explain it to the community. I can assure you now, of the 12–13 000 businesses in the Northern Territory operating now, you would not find 1000 who know what is going on in this room.

Mr CHAIR: Thank you David. We are about caring for the worker and businesses. Getting this legislation right is important to us. Lawrence, do you have anything further?

On behalf of the committee, we thank you for appearing before us today. We will take those comments on board.

Mr MALONE: Thank you.

Mr BICKNELL: Thank you.

Unions NT

Mr CHAIR: We welcome to the table to give evidence to the committee Joel Bowden, General Secretary; and Adam Giuliani, WHS Project Officer.

Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today. This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee applies. This is a public hearing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website also.

If, at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and you take your evidence in private.

For the record, could you please state your name and the capacity in which you are appearing today. Then we welcome your opening statement.

Mr BOWDEN: My name is Joel Bowden, General Secretary Unions NT.

Mr GIULIANI: Project Officer, Work Health Safety Unions NT.

Mr BOWDEN: Thank you for the opportunity to appear today at the scrutiny committee. The Northern Territory Trades & Labour Council, otherwise known as Unions NT, is the peak body for unions in the Territory. We have 13 affiliates and over 13 500 members. We feel we have a big stake in this game.

Unions NT purpose is to improve the social and economic future of workers and the community in the Northern Territory. We see industrial manslaughter as a key element to the future of workers and the community. Currently the NT has the worse statistics in Australia for deaths at work.

A worker is three times more likely to die at work in the Territory than anywhere else and that is the average. Compare us to the ACT, ten times more likely to die at work under the current statistics. They are WorkSafe Australia statistics. We do not have the current statistics because they take a while to come through. Unfortunately, we can remember the deaths in Tennant Creek, Bootu Creek and Wishart Road. There are others this year, which are too early to raise.

These deaths have long-lasting and community-wide devastating effects. The Territory is too small sometimes especially when someone dies, let alone dies at work, and the ripple effect throughout the community is immense.

I put to you as a committee that current workplace safety must improve and we must do better for everyone in the Territory. We feel really strongly that industrial manslaughter is a key plank to that approach.

We have been advised by a couple of legal firms, the ACTU Legal team in Melbourne and numerous other learned individuals around Australia about this industrial manslaughter draft legislation. We think it just falls short in the way that it has been written and what it set out to achieve.

With the damning statistics I have just mentioned, there surely needs to be more focus and emphasis on work health safety in the Northern Territory. Therefore there are a number of points I would like to make today. A lot of this is around the legislation itself and the way it has been written.

The first one is the coverage of workers which was brought up in the previous submission. The underlying intent of the proposal for industrial manslaughter is to introduce industrial manslaughter and to ensure that it operates to include the conduct of corporate entities and those persons concerned with or taking part in the management of the corporate entities causing work-related deaths. We call these people senior officers or PCBUs.

Significantly the draft laws apply to a person. We believe that would capture all workers including PCBU and senior officers. This is certainly not desirable nor is it the intent of the legislation in our view. The intent of the legislation is for corporate entities and those concerned with or taking part in the management of the entities.

Section 34B suggests the offence is one that would be capable of being committed by all persons and that is the bit that we are looking at that needs to be changed. A definition is required for a 'person' because it does not define it within the legislation. We think that you probably want to exclude 'persons' and come up with a better definition. We are happy to work around that. There are other examples in Queensland and Victoria that we can use so it is something like a PCBU and/or a senior officer or executive.

That is simply to reduce industrial manslaughter offences to be limited to PCBUs, executives or senior officers. Queensland extend it to senior officers and they are executives who make the decisions affecting the business function and further to that, the culture of the business. An undefinable element of a business is its culture but it is very important around safety.

Volunteers are exempt from the NT laws unless they are workers or others with the duties under the NT *Work Health and Safety Act* and in Queensland, the Act exempts volunteers. Industrial manslaughter should only apply, again to PCBUs and executives or senior officers.

We also believe that the NT Criminal Code offence sufficiently deals with the conduct of workers and volunteers outside of the *Work Health and Safety Act*. That is section 160 in the Criminal Code which is manslaughter. It deals with it. There is a worker on a site who does something that kills someone else either recklessly or negligently, they are dealt with under section 160 of the Criminal Code.

Both the ACT and Queensland are the only the state and territory that currently have this legislation for industrial manslaughter and they have recognised the undesirability to have workers included in the offence. Additionally, there also seems to be a little bit of confusion—and this is more of a technical argument—in the Criminal Code in Division 5, Section 43BL, the physical elements say that if a physical element of an offence is committed by an employee, agent or officer of a body corporate operating within the actual or apparent scope within his or her employment or within his or her actual authority, the physical element must also be attributed to the body corporate.

For us—we are not lawyers but we have received advice on this—it is difficult to understand. We want to make sure that we get this right and simplify it.

The next point I make is around intentionality. For the draft offence of industrial manslaughter, the prosecutor has to prove that the duty holder acted intentionally under section 34B and 34C. Work health safety offences are usually a strict liability. Under section 12B of the *Work Health and Safety Act* it is a strict liability which is: it happens and you are liable. Like when you get done for speeding. If you are doing 65 kilometres per hour and you get done in a 60 zone, that is it.

The Queensland industrial manslaughter laws do not require proof of intention; proof that the duty holder was negligent and has subsequently contributed to the death is enough. You do not have to have intention.

We seek clarification around this element of the draft. To keep it as simple as possible is the way to go. Look at Queensland. 'Conduct', for example, means 'an act or omission to perform an act'—doing it or omitting to do the act in regard to safety. Our draft has four points. Compare that, again, to Victoria, which is 'What is an act?' 'An act is an act or an omission to perform an act'—full stop.

Ours says, (a) the person who is the health and safety dude, (b) the person intentionally engages in the conduct—that is confusing for us—(c) the conduct breaches the health and safety duty, (d) the person is reckless or negligent about the conduct breaching. In our view, we think it confuses the physical elements with the fault elements of the law. It quite clearly states in the *Criminal Code Act* about the negligence or

recklessness. It is spelt out within the *Criminal Code Act*—I think section 43AL is negligent and section 40AK is recklessness. It is spelt out there. We do not need to include intentional. We would like simplicity. We would like an act to be an act—remove intentionality.

The other issues are on the prosecutions, which has just been covered briefly. Proceedings for industrial matters can only be brought under the NT Act with the consent of the DPP. Again, this is different to Queensland. I am not saying that Queensland is the only place you can reference, but it is different and we want to make sure that the way it goes through is right and people get the opportunity to request an industrial manslaughter prosecution.

Mr CHAIR: Yes, good.

Mr BOWDEN: We are seeking some more explanations on the differences. I have been given some explanation of the intentionality. I found it confusing at best. It was a 120-page judgment, *Ladd v The Queen*. I will read you page 119 where I do not think this is relevant. The past paragraph says:

There were two eye witnesses. Both had been drinking. One eye witness said the appellant was 'blind drunk', the other, 'full drunk'. Nothing was said or done by the deceased to make the appellant angry. According to the witness ... before the stabbing ...

I am not a lawyer, but when we are talking about industrial manslaughter, it is very different to drunk people stabbing each other. This is the case that I have been referred to as relevant on intentionality. Adam has worked on a worksite many times. You are tested for drugs and alcohol regularly. You are tested on the gate on certain jobs. This will never be an issue for us, in our view, where we have to worry about someone being blind drunk. We need more clarity on this. I am happy to provide the case, if required.

I would like to resubmit the Hall Payne Lawyers submission which we think spells this out clearly. We also fall onto the Maurice Blackburn submission from Melissa Meyers, who I know is appearing shortly, about making it as simple as possible. I conclude my remarks with one quote. Leonardo Da Vinci said that simplicity is the ultimate sophistication. We want to get this right, keep it simple and ensure that the intent of the law comes to the forefront. I hand over to Adam.

Mr GIULIANI: Thanks, Joel. I start by thanking the committee for allowing us to talk today on this pretty big topic, being the introduction of the industrial manslaughter law.

The evidence we provided in our submission was well and truly evidence based and was vetted via the assistance of two lawyers. It is a pretty well rounded submission.

I take this opportunity to lend further commentary to our submission as well. The recent Marie Boland review of the model work health and safety laws has 34 recommendations and the Tim Lyons best practice review of workplace health and safety in the Northern Territory has 27 recommendations that provides governments the evidence-based ways to make change to improve current already nationally harmonised work health and safety laws in not only this jurisdiction but the country.

One of the recommendations was the provision focusing on the introduction of industrial manslaughter, which the Northern Territory does. Both reviews clearly articulated the industrial manslaughter laws should be more focused on body corporates, senior officers and officers inside a PCBU.

It also is noted that there is a requirement to reword parts of the Act to ensure that all sections of the Act can be prosecuted.

Recently in Victoria, which worked in hand with Western Australia—so you would assume that Western Australia will take it on board—helped with the current first reading of their industrial manslaughter laws. ACT and Queensland have these laws introduced and passed. On 1 November this month it was mentioned at the Holland Park Magistrates Court, the first charge being laid under the Queensland industrial manslaughter laws as their current form.

These laws are at such an infantile stage to say they are not a deterrent, which a lot of the other submissions have said are not proven to save lives is pretty far-fetched. Obviously it is due to its infantile stage.

Workers have a duty within the Act. For many reasons this could be misconstrued resulting in a worker or a volunteer being charged under industrial manslaughter. We see that happen in construction a lot where the work will be blamed because they are the lowest denominator and unions fight this all the time.

The current criminal code already holds a worker or volunteer to account for manslaughter. Workers and volunteers remembering they have absolutely no control or influence or directive capability of the organisation. They do not set KPIs, they do not set timelines, they have no input in to the management strategy of the company or do they have any input in to the organisation or structure, budgeting or directing reviews on safety mechanisms or resource control at all.

To have them involved in an industrial manslaughter as it stands is not a good look. This is why unions feel that it is imperative that workers and volunteers are excluded from the act of omission or of industrial manslaughter.

Work health safety and OH&S laws have been legislated in Australia for decades. How long do employers need to educate or understand the laws and take our safety seriously? There are numerous resources to educate and assist employers on how to maintain compliance and to protect their workers but it still is not sinking in.

Media reports indicate other stakeholders have concerns that a Senate with an undertone of how this industrial manslaughter Bill will save lives and that it will cost them more money. This is quite misleading because the purpose of the Bill will not a corporation or a business any more money. The proposed Bill is no extra monetary burden on stakeholders to comply with the current laws. There is no extra regulations or anything introduced, it is just a punitive measure.

Insurance premiums are set by their current dedicated compliance to the work health safety laws. If they stayed dedicated as they are already paying premiums for they should not have a drama.

If employers are compliant which their insurer believes, no dramas, or is the fact they are committing fraud towards that insurance company? Or if employers are already operating compliant of the current work health safety laws incidences should reduce resulting in fewer claims and then subsequently a reduction in premiums. In Unions NT's submission we highlighted the enforceable undertakings agreed can be an extremely high monetary value. If employers did their jobs in the first place thoroughly the death or serious injury of a person may not have happened.

I have an example of 5 June, where WorkSafe accepted a sanction from a fishing boat fatality. Some of the commentary—the grinder was plugged in to an electrical socket that was not protected by a residual current device.

Currently, they have failed in the work health safety laws 164 using an outlet in hostile operating environment and also failed in 165 testing for residual current devices. Included in that sanction was also employer dedicated workplace health and safety advisor. Regulation 37 state that you need to maintain of control measures. You have to maintain the control measures, and in 38 you need to review the control measures.

One of the other sanctions was purchase and maintain defibrillators for all Australian fleet and vessels. Defibrillators forms part of DRABC and if you are working on a boat and CPR would be an important part.

Work health safety regulations failed in its duty to provide First Aid, which includes First Aid rooms and resources and trained personnel to do this.

On 8 August 2019 sanctions accepted over large multi-national grocery supplier, I will not mention it name, was the death of a Maningrida man who was run over by a prime mover in a shopping centre loading bay. Sanction—upgrade the infrastructure of the back docks of all stores across the Northern Territory to enhance traffic management controls above what is required by law. It basically failed a regulation that was set in 214—powered mobile plant general control of risk. They also failed in 215—the person conducting business (inaudible) must ensure that the plant does not collide with pedestrians or other powered plant.

It is well below expectations that there has never been a corporation or single entity in the Northern Territory who has killed a worker, has been incarcerated. This is failing all Territorians.

The proposed Bill of industrial manslaughter, is not industrial murder. There is no need to prove intent, it is not required. You cannot intend to commit manslaughter, your actions are the cause and effect. We believe this terminology is not needed.

On 15 October this year we commemorated the 19 year anniversary of the death of 35 workers when a 120-metre span of the half-built Westgate Bridge collapsed into the Yarra River. That was at a time when

employer groups were responsible for the safety of Australian workers. They failed. That is why the union movement advocated tirelessly to be the real custodians of the Act.

Unions NT sees the proposed Bill as a massive step forward towards protecting workers and improving workplace safety. There is not a single insurer that can protect anyone who is convicted for manslaughter or industrial manslaughter. I believe this is the real premise of employer groups fears.

In conclusion, if this proposed Bill makes one PCBU, one officer or one body corporate stop and think, 'Is this shortcut worth going down for?' Maybe that shortcut will save lives.

On 7 November this year, Australia sits at 138 deaths in the workplace. That is deplorable. In this jurisdiction, we have had EUs—the main concern is about the wording in regards to other parts of the Act which need to be changed.

The offence for category 1, which is reckless, not a single person has been charged either under category 1 offence or has received imprisonment. They are the only ones that hold that, as it stands now.

As part of our submission, we stated we need to ensure that negligence and recklessness brings this in line so the ability for the regulator to prosecute and get a conviction on category 1 offences is needed.

In line with the category 2 offence, one caveat states: if it is classed as a category 2 offence and not in line with industrial manslaughter laws, as an alternative charge, as it stands now, we have charges laid over the apprentice at Tennant Creek on a category 2.

- INPEX, a construction company, was charged over a death on 7 November on a category 2.
- A bus operator who is being charged under the death of a bus operator on 11 October on a category 2.
- A company director has been fined for obstructing workforce after the death of a worker; that is the only prosecution WorkSafe could get and only under 'misleading information to the regulator'. That body corporate only received a \$13 000 fine. What is a life worth?

That concludes my statement, I am willing to take any questions in relation to my submission from Unions NT.

Mr CHAIR: Thank you Adam and Joel. I will open it up to the committee.

Mr COLLINS: You have concerns about wording and there have been other concerns raised about improving safety. I know you made a good submission in relation to those. What would you say to a short deferral of the legislation until early next year to have some consultation about those issues which you and other people have raised?

Mr GIULIANI: A deferral would be good however in light of sittings and time constraints, I believe there is an ability as it stands now with the submission from other stakeholders, that a wording change is quite simple and could bring clarity to section 34B. That is all we see as an issue. Then introducing it to enable that is a slight change in the Act already under section 31 of the Act under a category one offence. That is all I have to comment on that.

Mr CHAIR: We have heard from people today and organisations and unions that support a code of practice. How do you feel about that and where does it sit?

Mr GIULIANI: Codes of practice currently can only be used in the regulations when a prosecution needs to confirm that the code of practice has not been followed. It is not evidence-based. Companies up here refuse to accept them as the go-to tool. As part of my submission to the Tim Lyons review—and I believe the CFMMEU and other unions have made recommendations—they should be enshrined in the regulation not just as an evidence-based tool to show that they have not met the obligations of the code, that they are actually stuck to.

When we look at some of the proposed stuff in this industrial manslaughter law, it is hard. The health and safety representative, who is the voice of workers on the floor, does not have the literacy skills—they may have—but do not have the skills to get involved in the Criminal Code. To refer them to the Criminal Code and check this, this and this is poor drills.

The work health safety law and the code of practice are the work health safety instruments they use. The codes of practice are always the go-to document and they should be for PCBUs. They are continually updated. Safe Work Australia ensure that through monitoring and through boards on nearly every model law that codes of practice are kept to up-to-date with industry needs.

If they are enshrined in the regulations, they are quite an easy document to understand. If you are operating a paint factory, you get the paint code of practice and you just read that and you cannot go wrong.

Mr CHAIR: If NT WorkSafe advises that a prosecution will not be brought forward, do you support a third party sending it to the Director of Public Prosecutions?

Mr GIULIANI: In all my experience and other experience working with the unions, families are the most devastated when it comes to a death of a person in any community. It does not matter whether it is at work, in their day to day business, someone should be held to account for industrial manslaughter.

If the regulator is not willing to step up to prosecute, it should be imperative that either through consultation with the family and unions, that they can forward through whatever means—be it the regulator or the DPP—that the prosecution is upheld.

Mrs WORDEN: I might add to that because I asked this question earlier. The only complexity I see with that is obviously with families being in a state of grief, whereas the regulator would have to look at the facts. It would clearly muddy the waters and perhaps request the DPP to look at a circumstance where there is not enough evidence for that. Are you basically saying that the regulator cannot be relied upon?

Mr BOWDEN: I think what we are asking for is the right to request a prosecution; not take it through the legal process, just request it if it has not been put forward.

Mrs WORDEN: I am only being the devil's advocate here which might come up if such a situation arose. The regulator is required to look at all the facts. If they do not find on the balance of evidence that there is enough to go forward, that would be their recommendation. It is not that the matter would not have been looked at. It is a matter of the regulator had come to a determination. Whereas you have people who are driven by grief—and I get where you are coming from—often there seems to be an injustice on the face of it, but often with these things, when you unpack them, there is a very different story underneath. There perhaps is not enough evidence for that to be made ...

Mr BOWDEN: I imagine that would be drawn out within the process of the request—the compelling argument either way. That is why we have lawyers, because they have a view on legislation with a different set of eyes. If a grieving family wanted to request it, and they were able to provide another set of eyes, then perhaps they would have a different view. We would like that right for them to be able to request it.

Mrs WORDEN: Is there a presumption that the regulator does not have similar legal advice? It seems to me to be duplicating the same thing that would possibly have already happened. Others before you have stated earlier that they do not necessarily think that the regulators have capacity.

Mr GIULIANI: The thing is with the Tim Lyons review, there is definite talk about them being more involved and getting investigate powers. Part of their training continuum for their staff will include that. I believe that their investigative powers will raise with time. They should have already been in place, but constraints are constraints.

When you talk about grieving families, the death on INPEX on scraped in for prosecution by 16 days. The two years have nearly gone through. On 7 November—my maths is wrong—WorkSafe prosecuted only a section Category 2 offence. Okay? He died on 27 November. There is two years where there is no clarify for a family. Yes, a family will be in grief, but I do not believe the regulator will not have the right tools—if the wording is correct—if a death is caused by recklessness or negligence, be able to find it. It is pretty easy by just some of the sanctions I read out before.

Mrs WORDEN: I am just concerned that is a resourcing issue and legislation is not ...

Mr GIULIANI: It definitely is.

Mrs WORDEN: ... always the way to fix those issues. That is what, obviously, as the committee, is our role—to look at the outcome of the legislation. I am not so sure at this stage ...

Mr GIULIANI: We understand too that that is the maximum. Depending on the size of the company, the person may only get a \$1m fine, but are prosecuted and given a suspended sentence for industrial manslaughter, which they should be. They have been found guilty of committing industrial manslaughter ...

Mrs WORDEN: Yes, it is not necessarily that end that I have concerned about. It is actually who can refer. It is obviously two perspectives.

Mr GIULIANI: As it stands at the moment in the Act, if WorkSafe has not prosecuted within two years any person can request prosecution—from any part of the Act as it is.

Mrs WORDEN: Have there been cases where they have missed a deadline and that should have been—that you know of?

Mr GIULIANI: I find the most disheartening one was the Sumanas one at the moment. Not that there was the death of a person, but there were a lot of casualties in that. They have an enforceable undertaking. I did some research and lent some assistance to some of the victims. I have grave concerns and I suggested to them that they prosecute.

Mrs WORDEN: But they have missed the deadlines?

Mr GIULIANI: They did not miss the deadline, I just do not think they ...

Mrs WORDEN: But are there cases where the deadlines have been missed and you think that it is because work safety ...

Mr GIULIANI: Well, not in the Territory because no one has been prosecuted under a Category 1 offence. The thing is they just go to a Category 2 offence and then they get an enforceable undertaking which holds no conviction for anything. Or even an admittances of guilt—there is no guilt attached to it.

Mrs WORDEN: And you think in some of those circumstances that if a family members had been able to that would have had a vastly different outcome?

Mr GIULIANI: Yes. A person needs to be, I believe, have the right to respect, and show the same respect to a family member that is deceased. It is pretty hard not to expect to be able to say that there is a law, and I should be able to exercise that. My thought, I guess.

Mrs WORDEN: Thank you.

Mr COLLINS: I do not have the figures in front of me, but you said we have had, statistically, three times the deaths of other jurisdictions. Ultimately, that is still how many deaths in the Territory?

Mr GIULIANI: Well, this year alone, we have had five.

Mr COLLINS: Even if it was five, if the families are allowed to make those requests, you are not talking about a huge amount of work. Each of them will be an amount of work but...

Mr BOWDEN: It is the right to request not the right to then go...

Mr COLLINS: Yes, I understand it goes to the DPP and they then make a decision about whether the evidence is there to support the complaint.

Mr GIULIANI: Considering the size of the workforce in the Northern Territory at the moment—we will just say at the moment—Victoria have only had 22 deaths and they have a massive workforce. We have had five. I am not suggesting they are small.

Mr COLLINS: No, but in terms of the workload that would run from this because probably, from most of those cases, the work health and safety agency would pursue the charge anyway.

Mr CHAIR: Adam and Joel, thank you for coming in today. We appreciate those very important points. Thank you for coming in and for your submissions.

Maurice Blackburn Lawyers

Mr CHAIR: We welcome to the table to give evidence to the committee, Ms Melissa Meyers, Senior Associate at Maurice Blackburn Lawyers. Thank you for coming before the committee today, Melissa. We appreciate you taking the time to speak to the committee and we look forward to hearing from you today. This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee applies.

This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for the use of the committee and may be put on the committee's website also. If, at any time during the public hearing, you are concerned that what you will say should not be made public, you may ask the committee to go into a closed session and we can take your evidence in private.

Please state your name for the record and for Hansard and the capacity in which you are appearing today.

Ms MEYERS: Melissa Meyers, I am a Senior Associate, Maurice Blackburn Lawyers in Darwin.

Mr CHAIR: Thank you, Melissa. We welcome an opening statement if you have one.

Ms MEYERS: Thank you for the opportunity to present to the committee today. I appreciate that. Maurice Blackburn applauds the introduction of this Bill and we hope to be able to assist the committee in getting it right the first time.

To be clear, this law is all about deterrence and I appreciate and adopt the comments made by Unions NT today. The Northern Territory continues to have the highest rate per capita of deaths in the workplace. That demands change. A clear message needs to be sent that workplaces need to take safety seriously in the Northern Territory. Given the worrying statistics about workplace deaths the Territory is very well placed to lead the way in bringing about what we would say would be the gold standard in this legislation.

We applaud the government for being on the front foot in this regard and we note that there is only a couple of jurisdictions that have taken this step today, so we applaud that step.

Maurice Blackburn is a law firm of long-standing in Australia. We have provided legal services to Australians for over 100 years. Our core business is, in fact, personal injuries, including workers compensation, motor vehicle accidents and public liability claims.

The safety and wellbeing of Australians and Territorians is at the core of our work. Unfortunately deaths at work are cases we see far too often across Australia and in the Northern Territory. Our lawyers regularly analyse the causative factors behind those injuries and deaths in the workplace and we support bereaved partners and children and extended family members.

Our experience is that the vast majority of workplace deaths are entirely preventable and commonly arise from inherently unsafe workplace practices underpinned by a culture which we say at best is lip service to effective safety standards. It is our experience that the accountability for workplace deaths rarely matches the lifelong impacts for the family members, co-workers and communities left behind after a workplace fatality.

Given our work for injured people and their families Maurice Blackburn strongly supports these laws and we support the introduction of industrial manslaughter provisions across all states and Territories in Australia based on the nationally agreed benchmarks.

As noted in our detailed submission to the committee, Maurice Blackburn does believe unfortunately that the current draft legislation is fundamentally flawed in its wording and will not necessarily result in the outcome desired. To have the requisite deterrent effect and to be consistent with other jurisdictions we say the wording needs to be amended.

To this end we draw the committee's attention to our following key points. We note that the language is significantly different to that that has been brought in in Queensland which is considered the current best practice model.

We want to keep it quite simple but our main submissions are in respect of the employment of the words reckless or negligent rather than just the use of the word negligent. We say that significantly changes the meaning legally as compared to the Queensland offence. We think it takes the bar far too high. It is going towards category one offence when you use the term reckless. We say it should just be about negligence.

The inclusion of the word reckless in our view will create a bar to successful prosecution, much in the same way that category ones are not being prosecuted in the Northern Territory. The deterrent effect hence will be defeated if that word is to remain.

The further implication in our view of the words reckless or negligent rather than just negligent is that it seems to infer gross negligence of a category one style offence. We think that that is too high of a bar and we submit that any negligent conduct leading to a death at work should be caught by industrial manslaughter laws. The point is the outcome and the outcome is a death of a worker.

Our other main concern and it is something Unions NT covered very thoroughly today is the use of the word intentionally. We consider that is a very difficult word to have in the legislation because it seems to suggest *mens rea*, which in simple terms means a guilty mind. That requires more than just the mere knowledge of a risk in the workplace. It seems to require that the conduct was intended to cause harm, we say that is too high of a bar. We submit that it would very rare for that to be the case in a workplace and that it is going to be effectively a bar to prosecution for these types of offences if the word intentionally is kept.

Even if our interpretations of the proposed wording are incorrect or too conservative we think it just creates confusion. The Queensland model does not have either of those words, it does not have reckless, it does not have intentional. We think it creates confusion across jurisdictions and we think it is ambiguous. We think that it is going to result in non-conviction because the court will not find that the conduct was reckless or intentional and we think that that is putting the bar too high.

Maurice Blackburn submits that the current drafting will mean there is not successful prosecutions for industrial manslaughter which undermines the overall intent of this legislation which is to ensure that Territorians are safe at work and that they come home to their families.

We say in very simple terms that the words 'reckless' and 'intentionally' should just be removed and that the wording should reflect that brought in in Queensland. I do not intend to address things in any greater detail than that other than to take questions from the committee and I welcome any questions.

Mr CHAIR: Thank you, Melissa. I will open it up to the members.

Mr COLLINS: Just on the wording, this legislation is to introduce a manslaughter charge into work health and safety. When the manslaughter charge or offence under the *Criminal Code Act* includes recklessness or negligence, how do you justify the removal of reckless when you are trying to incorporate that offence into this Act? I do not understand. I do not get that connection that you have to remove 'reckless' to make it an effective law. Are you saying that the current manslaughter laws are ineffective?

Ms MEYERS: The key point in your question is that we are talking about industrial manslaughter and there is already a category one offence. If it is a reckless, gross negligence, there is already a category one offence there and that is not being prosecuted in the Northern Territory now.

We do not want it to be a gross negligence. We are saying that if someone breaches their duty to a worker, and that worker dies, and we can prove negligence; that is enough. It does not need to be reckless conduct or gross negligence.

Mr COLLINS: If your category one offence is recklessness or gross negligence that is clearly different from reckless or negligent. If reckless or negligent is the standard for a charge of manslaughter, I do not follow your argument that it has to be simply negligence. To me, that seems to be reducing the bar far too low. Simply to prove negligence—ultimately it is reckless or negligent anyway. The provision as it stands, or as it is proposed, provides the alternatives.

Ms MEYERS: We think that the use of 'reckless' or 'negligent' creates cognate offences which suggests that it is gross negligence. The way the law tends to interpret legislation when those two words are used together, seems to indicate that is gross negligence. We think it is ambiguous. Queensland has not put 'reckless' in their industrial manslaughter laws.

Mr COLLINS: I do not necessarily care too much about what Queensland has. We are talking about industrial manslaughter. If we have a current offence of manslaughter and that terminology is sufficient for people to be charged and convicted then I do not follow your argument. I would like to see it developed more. At this point I do not follow it.

Ms MEYERS: I think the difficulty is that the recklessness is already a component of category one and that is not being prosecuted. It is not being pursued.

Mr COLLINS: You just said before, it was reckless or gross negligence. I do not know. To me, that is clearly different from reckless or negligent. I do not see that you import gross into it simply because you use the same terminology that is used in the offence of manslaughter.

Ms MEYERS: We think the use of the term 'reckless' does import 'gross.'

Mr COLLINS: If that is the case, then you would see that in the prosecution of manslaughter charges. By simply putting those two words together in this provision, then surely the same must happen for manslaughter charges under the current offence provisions.

Ms MEYERS: The difficulty for us is that getting that conviction on reckless in an industrial context is going to be very difficult. It is creating a bar that effectively will not be met, in our view.

Mr COLLINS: I am not convinced at this point in time. The intention as well; just reading the provision, I do not see that imports *mens rea*. It intentionally engages in conduct and that conduct breaches the health and safety duty. It might be convoluted and it may be simply about the worker. If a worker is going to be charged, there has to be an intentional engagement in conduct which breaches the work health and safety duty.

Ms MEYERS: We think intentionally is a difficult word.

Mr COLLINS: I understand that better but I am still not overly convinced whether it is not just simply a matter of if we had someone kicking with the back of their heel a brick and it falls over the edge of a building and kills someone. I would expect that is an unintentional engagement?

Mrs WORDEN: You were in the room when previous submitters discussed who can refer matters to the DPP. Have you any comments, I am interested in your perspective?

Ms MEYERS: I take on board the point that there will not be a lot of these in the Northern Territory. There are not that many people living in the Northern Territory that there will be a flood of families requesting that this prosecution proceed.

I would hope that the regulator would always look seriously at the death in a workplace. Hence, I do not think that is a serious concern. I would support families being able to request, so they are part of the process. What we can add to the committee is the perspective we hear from families, that they are not heard or part of the process and not kept informed currently. We often hear from families that they do not know where things are at.

I am currently acting for a family. The widow mentioned to me recently that she had not heard anything from anyone in almost two years. She did not know whether a prosecution would happen, she did not feel a part of that process or feel empowered in it. She had no communication.

It brings families into the loop to be able to communicate their wishes and be informed of outcomes. If that is the case that there is not enough evidence, then they are part of that process and they get informed.

At the current state of play, I do not think that is happening. It certainly not the feedback we get, that people are involved.

Mrs WORDEN: It is a concern. Are we looking at a communication or a resourcing issue, does legislation have a part to play in fixing that, that is what we are talking about? WorkSafe is a government agency. If that is a failure of activity versus—whether legislation has a place to fix something like that is the real question for us as a committee.

Ms MEYERS: Thank you. I take that question on notice because it is not something I have given a lot of consideration. I have been fixated on the wording of this provision. I am a Queensland lawyer and I have been watching Queensland closely and how they have addressed this issue. I have been working in personal injuries for a long time and have dealt with a lot of grieving families.

Is this a resourcing issue? Undoubtedly. Does it work to be able to have the families bring this to the attention and request? I think that does work because you raised the point earlier about missing time limits. It is good if the family can say, what is happening? We want to request a prosecution. It brings us into the loop and it

requires steps to be taken in circumstances, where they are not currently. Not necessarily kept in the loop and they do not know if steps have been taken.

The ability to request prosecution means they are brought into the process and will be kept informed and it might be that the outcome is not what they are chasing. It might be a decision not to prosecute because of the facts, but at least they are in that process. Currently they are not.

From what I hear from workers families which have been lost in their place of employment, they are not kept in the loop. Does there need to be a law to ensure they are kept in the loop, I would say yes.

Mrs WORDEN: Or procedural change?

Ms MEYERS: Or procedural change ...

Mrs WORDEN: If it is a cultural thing or a procedural thing, or the fact that staff are not following direction and not keeping the family involved, that is a question that needs to be answered, rather than, can we do this as a legislative fix? It is just a consideration for us. Obviously, you have a perspective. You deal with grieving families. It is an interesting perspective.

Ms MEYERS: Thank you.

Mr CHAIR: All right, Melissa, that is all we have.

Ms MEYERS: Thank you.

Mr CHAIR: Is there anything you want to add before we ...

Ms MEYERS: I reinforce to the committee that we hear the stories from grieving families and the penalties that we see in the NT and across Australia—families consider them a slap on the wrist compared to the loss of a father, a husband, a co-worker et cetera. We work not only for the grieving families, but I routinely act for co-workers who might have a psychological injury in respect of having watched a co-worker die in their place of employment. It is a large flow-on effect that perhaps is not necessarily understood in the wider community. A death in the workplace affects a large number of people.

Mr CHAIR: Thank you, Melissa.

Ms MEYERS: Thank you for having me.

Mr CHAIR: Melissa, thank Maurice Blackburn Lawyers as well for appearing before us today.

Ms MEYERS: Thank you, will do.

Mr CHAIR: Thank you very much.

Mr COLLINS: Happy birthday to them.

Ms MEYERS: Thank you. Happy hundred years.

Mr CHAIR: Thank you everyone. That concludes the hearing today.

The committee concluded.
