

COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

Senate

Education and Employment Legislation Committee

Estimates

(Public)

Wednesday, 14 November 2018

Canberra

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Senate

Education and Employment Legislation Committee

Wednesday, 14 November 2018

**Members in attendance:** Senators Brockman, Marshall, Molan.

**JOBS AND SMALL BUSINESS PORTFOLIO**

**In attendance**

Senator Ruston, Assistant Minister for International Development and the Pacific

**Asbestos Safety and Eradication Agency**

Ms Justine Ross, Chief Executive Officer

Mr Nick Miller, Director

**Comcare**

Ms Jennifer Taylor, Chief Executive Officer

Mr Aaron Hughes, General Manager, Scheme Management

Ms Lynette MacLean, General Manager, Corporate Management

Mr Justin Napier, General Manager, Regulatory Operations

Mr James McKenzie, Director, Delegated Claims

**Committee met at 09:56**

CHAIR (Senator Brockman): I declare open this meeting of the Education and Employment Legislation Committee. This is a spillover hearing for the supplementary budget estimates. The Senate has referred to the committee the particulars of proposed expenditure for 2018-19 and certain other documents for the Education and Training portfolio and the Jobs and Small Business portfolio. The committee may also examine the annual reports of departments and agencies appearing before it.

The committee has decided that answers to questions on notice will be required to be returned by close of business on Tuesday, 2 January 2019. The committee has resolved that written questions on notice should be received from senators by close of business on Wednesday, 21 November 2018.

Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

The Senate by resolution in 1999 endorsed the following test of relevance of questions at estimates hearings. Any questions going to the operation or financial position of the departments and agencies which are seeking funds in the estimates are relevant questions for the purpose of estimates hearings. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise.

The Senate has resolved also that an officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of an officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised.

*The extract read as follows—*

**Public interest immunity claims**

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer’s statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

*(13 May 2009 J.1941)*

(Extract, Senate Standing Orders)

Witnesses are specifically reminded that a statement that information or a document is confidential or consists of advice to government is not a statement that meets the requirements of the 2009 order. Instead, witnesses are required to provide some specific indication of the harm to the public interest that could result from the disclosure of the information or the document. Witnesses are asked to keep opening statements brief and to incorporate longer statements into the *Hansard*.

Comcare

[09:59]

CHAIR: I welcome the Minister representing the Minister for Jobs and Industrial Relations, Senator the Hon. Anne Ruston, and officers from Comcare. Minister Ruston, did you wish to make an opening statement?

Senator Ruston: No, thank you.

CHAIR: Ms Taylor, did you wish to make any opening statement?

Ms Taylor: No, thank you.

CHAIR: Excellent.

Senator MARSHALL: I want to start off with some questions in relation to claims of bullying or bullying-like behaviour that have been made—I'm talking about Comcare claims—by staff of members of parliament against members of parliament themselves. Just to clarify: when I talk about members of parliament, I mean that the parliament's made up of two houses, including the Senate. Senators are members of parliament. You agree with that?

Ms Taylor: Yes.

Senator MARSHALL: You'd be surprised how many people want to dispute that! Have there been any claims?

Ms Taylor: In relation to those claims, I can give you some information. I'm cautious, of course, about information that may identify individuals. If I give it to you over a time period—

Senator MARSHALL: I don't want to identify an individual who's made a claim.

Ms Taylor: No.

Senator MARSHALL: I may wish to identify a member of parliament at some point, but that's not my intention right now.

Ms Taylor: I understand that. I'll just give you the numbers. Over a 15-year time frame—the numbers are small, so I can talk about that—there were 29 claims relating to psychological injury. Of those—

CHAIR: Sorry; that was 29?

Ms Taylor: Yes, 29 claims over a 15-year time period. Of those—

Senator MARSHALL: Sorry—I don't want to interrupt your flow—are they claims that have been accepted or claims that may have been made and could have been rejected?

Ms Taylor: Both. I've got the numbers of those.

Senator MARSHALL: Okay; sorry. You're ahead of me!

Ms Taylor: They were related to psychological injury and bullying and harassment in the workplace. Of those 29 claims in total, 14 related to members of parliament. Of those 14 claims relating to members of parliament, eight were accepted and six were rejected.

Senator MARSHALL: Did any MPs have more than one claim made against them?

Ms Taylor: Yes.

Senator MARSHALL: How many?

Ms Taylor: One member.

Senator MARSHALL: How many claims were made against that one MP?

Ms Taylor: There were four claims.

Senator MARSHALL: So four out of the eight. Were they all accepted?

Ms Taylor: Yes, they were.

Senator MARSHALL: So one MP accounts for half of the accepted claims?

Ms Taylor: Yes; in that 15-year time frame.

Senator MARSHALL: Has that member of parliament been in parliament for longer than 15 years?

Ms Taylor: I'm not aware. I'll take it on notice.

Senator MARSHALL: When you look at claims like this, surely you would look at each individual member? It would be irrelevant for Senator Molan, for instance, over a 15-year period, because he's been here for about 13½ minutes! But for other people who might have been here for 22 or 25 years, a 15-year time frame might not capture all of that behaviour or record. Wouldn't you have a file, like the Department of Finance has, on each member of parliament about claims being made against them?

Ms Taylor: No, we don't. We look at each individual circumstance, because the claim comes in related to the individual making the claim. If we're talking about work, health and safety notifications, then we look at the employer, and that is the Department of Finance.

Senator MOLAN: Could I just ask for guidance, Chair? If we get too specific on the time frame, isn't that likely to identify the senator?

CHAIR: To identify the member of parliament, using the more general term.

Senator MOLAN: Yes. I said 'senator' because you made reference to me.

Senator MARSHALL: I'm sorry. I did that as an example. If you've had time to bully someone already, I would be very surprised.

Senator MOLAN: I'd have been working overtime.

CHAIR: As much as possible, I think we should keep this in the hypothetical. Obviously, it's within your power to go elsewhere.

Senator MARSHALL: No. As I have said, I may at some point want to identify the member.

CHAIR: Sure.

Senator MARSHALL: I would find it extraordinary if we decided it was in the public interest that bullies ought not be in the public arena, but we'll cross that bridge when we come to it, but that's not my intention at the moment. Could you take on notice, given it's a small amount of accepted claims—there's only eight—

Ms Taylor: Yes.

Senator MARSHALL: Could you then look at maybe coming back to me with a chart of when those claims were made. And I wouldn't mind if you could—I think you should be able to do this—identify how long each one of those members of parliament have been a member of parliament?

Ms Taylor: I'll take that on notice. I am cautious. It's a small number of claims, so I'm very cautious about identifying claimants.

Senator MARSHALL: No, all right. With that precondition on it, see what you can do.

Ms Taylor: Yes, I'll see.

Senator MARSHALL: There are over 200 members of parliament and many of them come in at the same election. You'll have lots of people with this number of years service and that number of years service, but there may be unique people that have had—

Ms Taylor: Exactly, so I'll see what I can do.

Senator MARSHALL: We'll see what you can do.

Ms Taylor: I'll take it on notice.

CHAIR: Just to be clear: from my point of view, Senator Marshall, this is about protecting the confidentiality of the claimants particularly.

Senator MARSHALL: Yes.

CHAIR: That's where I think we have to be cautious.

Senator MARSHALL: No, fair point. When you do that for each individual, if a member of parliament has been in for longer than 15 years, they may have behaviour not picked up in what you have given me so far. I'd like you to actually go back and pick up all behaviour for their term of service.

Ms Taylor: I'll take that on notice.

Senator MARSHALL: All right.

CHAIR: My sense is that attitudes towards things like harassment and bullying have changed significantly over time, particularly, previous to 15 years ago, I would assume the way these complaints were viewed would have been quite different. I might be wrong; you tell me.

Ms Taylor: Certainly. That's quite true. You'll see in the last 10 to 15 years increases in the reporting of bullying and harassment as there's greater training about how to deal with workplace conflict or bullying and harassment and awareness raising. It's like any campaign that's done. You raise awareness and you do raise the level of inquiry, if not claims or work health and safety notifications.

Senator MARSHALL: It would probably be fair to say a 15-year-old claim would have been a much higher threshold to get over, as well, so maybe the behaviour was even worse. Anyway, how recent are these claims?

Ms Taylor: They're within the last 15 years.

Senator MARSHALL: Yes, but are most of them in the last two years?

Ms Taylor: No.

Senator MARSHALL: All right. When you do that study on the breakdown, could you indicate when those claims were made. Again, if you've got problems about identifying people specifically, you could give me a small range. You might say the first half of 2018 or something like that. If you can give me the exact times, that would be—

Ms Taylor: I'll take that on notice, with that caveat. I will say one thing though: if you look at the incidents rate of claims for bullying and harassment in the MOPS Act, it's an incident rate of 1.6, which is the same as for the rest of the APS. We're not seeing any differences—

Senator MARSHALL: Yes. You don't have to defend anyone here. So that's your experience? Are you saying you're aware of what the MOPS Act experience is?

Ms Taylor: That's the MOPS Act experience and the general APS experience in the incidence rate.

Senator MARSHALL: For Comcare claims or claims—

Ms Taylor: For Comcare claims.

Senator MARSHALL: A lot of claims won't end up at Comcare.

Ms Taylor: Absolutely.

Senator MARSHALL: I asked these questions of MOPS, who for some reason, even though they were aware of things, seemed to know nothing. But we'll see what they come back with. Who do you see as the employer in these situations?

Ms Taylor: The employer is the Department of Finance.

Senator MARSHALL: How do you investigate such a claim? Do you receive information from the Department of Finance? Just so you know the sort of information I'm after: if you investigate a member of parliament and they may not have had a claim before, would you ask MOPS how many complaints had been made, because maybe they don't all end up in psychological injury resulting in a WorkCover claim? Would you receive that information? Would Finance give you that information?

Ms Taylor: In relation to a claim which comes from an individual, the process is: a person lodges a claim; we ask for a statement from the employer and the individual—that's generally on the claim form—

Senator MARSHALL: The employer being the Department of Finance?

Ms Taylor: The Department of Finance or a relevant line manager or whatever the Department of Finance really want to give us in relation to that.

Senator MARSHALL: We'll work through this, but how would the Department of Finance know anything of what goes on in a member of parliament's office?

Ms Taylor: We would expect that, in making an employer statement about the circumstances that have given rise to the claim, the department would make the necessary inquiries to be able to complete an employer statement.

Senator MARSHALL: How do you then satisfy yourself?

Ms Taylor: Then we look at the medical evidence. There has to be a diagnosis, obviously, and, in the case of psychological injury claims, a diagnosis from an appropriately qualified psychologist or psychiatrist. Once we've received all of that, we will then assess the claim. We are not assessing fault, because this is a no-fault scheme. What we are assessing is the injury and whether it's compensable or not.

Senator MARSHALL: No, no. You also have a role in prevention.

Ms Taylor: Yes, but I'm dealing with claims. We'll go to prevention. Can I do this in two separate parts?

Senator MARSHALL: Sure.

Ms Taylor: In relation to the claim and whether compensation is payable, whether a claim is accepted, that's the evidence that we look at. We are dealing with the individual and whether they are entitled to receive compensation for medical expenses, incapacity payments or anything else that is covered. That's the process.

Senator MARSHALL: Is the member of parliament interviewed in this investigative process?

Ms Taylor: It's a claim assessment process. It's not an investigation. We're assessing the validity of the claim based on the evidence we've received. If we require further clarification, we would go back to a medical practitioner or the individual or the employer. In some circumstances, we may require further information, but we're not assessing the fault in this.

Senator MARSHALL: That's Finance's role then, isn't it, as the employer?

Ms Taylor: As the employer.

Senator MARSHALL: Do you advise Finance when a claim has been accepted?

Ms Taylor: Yes.

Senator MARSHALL: Do you advise them that they have an unsafe work environment and ask what they're doing about it?

Ms Taylor: From our work health and safety side, we receive in addition—and they may not be related—notifications or incident reports in relation to bullying and harassment, for example, or roofs falling down, a whole raft of things. In those circumstances, we will look at a range of factors. We will investigate or do a monitoring and compliance activity. In undertaking that activity, we will interview individuals, who may include employees, members of parliament or the Department of Finance. But the Department of Finance in this case is the employer and the person conducting a business or undertaking for the purposes of the Work Health and Safety Act. In doing that, we may identify issues that need to be rectified and we will be in systems or practices or whatever, and we will work with the employer to make sure that they are implemented.

Senator MARSHALL: That's the theory. Has that actually happened in each one of the eight claims that has been accepted?

Ms Taylor: The claims are very different from a notification. There doesn't have to be a claim for there to be a notification. So they are quite separate. And, again, there doesn't—

Senator MARSHALL: Sure. But what I'm talking about is that you have actually accepted claims. You have acknowledged that there's an injury, a psychological injury. You have talked about how the process should then work. I'm just asking: was that applied in each one of these instances?

Ms Taylor: Yes. The processes as I have described for the acceptance of claims have been followed in all of those claims that have been lodge.

Senator MARSHALL: So the employer then knows that there's a problem? And they would be legally obliged to try to address that problem—in one case, at least, spectacularly unsuccessfully?

Ms Taylor: The employer knows that the claim has been accepted and the issues that gave rise to that. As an employer, they have a responsibility for providing health and safety workplaces in line with the Work Health and Safety Act.

Senator MARSHALL: Are they expected to respond back to you to say that—

Ms Taylor: Not in relation to a claim, but in relation to our work health and safety activities, yes.

Senator MARSHALL: And have they?

Ms Taylor: Yes.

Senator MARSHALL: In each instance?

Ms Taylor: No, not related to the claim; in relation to notifications under the Work Health and Safety Act.

Senator MARSHALL: So you're telling me that some of the claims may not have been notifications?

Ms Taylor: Some of the claims may not have been notifications—

Senator MARSHALL: Why?

Ms Taylor: because the act is quite definite about what is a notifiable incident. There has to be a threshold test about what a notifiable incident is. Mr Napier can go through that.

Senator MARSHALL: In part of your compliance—is that what we should call it 'compliance'?—

Ms Taylor: Monitoring and compliance activity.

Senator MARSHALL: have you interviewed any of the members of parliament for these eight claims? When I say 'you' I mean your department.

Ms Taylor: They're not in relation to the claims. So, the claims are separate. This is work health and safety notifications, which may or may not relate to a claim.

Senator MARSHALL: You said some, but maybe not all, are. So we know that at least some have been notified. As a result of that, do you speak to the member of parliament?

Mr Napier: I would have to take that on notice for the specifics. I don't have that at hand.

Senator MARSHALL: Alright.

Ms Taylor: And remembering, Senator, the employer or the person who has the responsibilities under the act is the employer and that's the Department of Finance.

Senator MARSHALL: I'm not trying to pin anything on Comcare.

Ms Taylor: No, I wasn't taking it that way. I was just providing clarity, Senator.

Senator MARSHALL: Mr Napier, in your investigations of the claims that were notified and required some investigation for compliance, would you then receive from Finance the history of other like behaviour? For instance, again just to help you with a form of illustration: if someone had a dozen bullying-type complaints made to the employer and they were investigated and found either to be validated or not but they didn't result in a claim, that would be relevant to your investigation, wouldn't it?

Mr Napier: It may be, yes. It would depend on individual circumstances.

Senator MARSHALL: How could it not be in this situation? We're talking about psychological injuries by members of parliament against their staff and we're talking about eight cases.

Mr Napier: Can I just go back and clarify a point?

Senator MARSHALL: Sure.

Mr Napier: Under the Work Health and Safety Act, the person conducting the business or undertaking, the employer, which, as Ms Taylor has said, in this instance, is the Department of Finance, has a duty to notify the regulator of any particular matters that meet quite prescriptive definitions under the Work Health and Safety Act. It's unusual for matters of psychological injury, bullying, harassment—matters of that nature—to be notified to the regulator, because of the prescriptive—

Senator MARSHALL: Sure, but Ms Taylor has told us it's some work.

Mr Napier: In order to trigger a monitoring and compliance activity, we might also take information from other sources—what we call WHS concerns. So, predominantly, if not in their entirety, the matters that we've been considering through a monitoring and compliance activity have come to the regulator through a WHS concern rather than a notification.

Senator MARSHALL: Really, what I'm trying to get to is: what do you do about bullying in this environment? Tell me.

Mr Napier: We would look at each of the matters on their merits, if you like, as an individual piece of information. We would go, in the first instance, to the PCBU—the Department of Finance—and we would seek from them information in relation to these allegations.

Senator MARSHALL: Good. So, if there is a record of that type of behaviour, you would then get that.

Mr Napier: We may request that. Again, I'd have to take on notice whether we've done so in individual circumstances.

Senator MARSHALL: It'd be pretty sloppy, I'd have to say to you, if you didn't.

Mr Napier: The way that the Work Health and Safety Act is formed is that it's about—

Senator MARSHALL: Mr Napier, you're either a fair dinkum investigator or you're not. Come on!

Mr Napier: We would look at each of these matters, I can give you that assurance, Senator.

Senator MARSHALL: Take on notice for me: in each one of the accepted claims that were notifiable—and we don't know how many of them there are—how many other instances of reported bullying or bullying-like behaviour had been made against the member of parliament? You'll have all that.

Ms Taylor: We'll take that on notice.

Senator MARSHALL: I accept that.

Ms Taylor: But, for clarity, in the definition of a 'notifiable incident', the threshold is quite high. So the notifiable incident means 'the death of a person', 'a serious—

Senator MARSHALL: No, we don't have all day, so don't take me through that. You told me that some of the bullying claims were notified, so they're the ones we're talking about. If they weren't notified and you didn't do an investigation, that's fine. I can make judgements on whether that's right or wrong, but we're just dealing with the facts.

Ms Taylor: So the incidents that were notifiable—

Senator MARSHALL: If you're telling me now that you're not sure that any of the eight were notified, that's fine. If you want to correct the record, do so.

Ms Taylor: Yes, as I said, I will take on notice whether there were any. What I was trying to do is make the difference between the claims and notifiable incidents.

Senator MARSHALL: Alright.

Ms Taylor: So we'll take that on notice.

CHAIR: Just to be very clear, the claims may have been notified in the colloquial sense of the word but may not be notifiable incidents under the relevant rules or legislation.

Ms Taylor: Legislation. And they may not have been notified, so they may not have reached the threshold to be a notifiable incident. We'll look at the correlation between those incidents that have been notified and the claims, but that's not a link we make.

Senator MARSHALL: Let's just come back to the total, the 14, for MPs. Four were from one MP. Did any other MPs have multiple claims?

Ms Taylor: No, Senator.

Senator MARSHALL: So the other four are individual.

Ms Taylor: Yes, Senator.

Senator MARSHALL: So we're talking about members of parliament. Out of the rejected ones, did any of them apply to any of those eight that were accepted?

Ms Taylor: No, Senator.

Senator MARSHALL: So, let's say, did one member of parliament have four accepted and three rejected?

Ms Taylor: No.

Senator MARSHALL: That's what I'm trying to work out. Are the whole amount of claims around those four members of parliament or—

Ms Taylor: I'll take that on notice. I have the information around accepted claims, but I will get the information on rejected claims as well.

Senator MARSHALL: All right. You originally said no, but you don't know?

Ms Taylor: Sorry, I'll be more precise. I will—

Senator MARSHALL: The worst-case scenario is that the member of parliament that had four claims accepted had the other six rejected claims made against them as an individual.

Ms Taylor: I'll take that on notice.

Senator MARSHALL: The rejected claims might also help in telling a story.

Ms Taylor: Not that I'm aware of, but I will take that on notice and get that for you.

Senator MARSHALL: Okay. Thank you for that. So we've got four claims. Do you have any obligation? What are you doing now? Are we just waiting for, maybe, a fifth claim?

Ms Taylor: This goes to the time period—

Senator MARSHALL: We are, are we?

Ms Taylor: It goes to the time—

Senator MARSHALL: That's all we're doing. We don't actually do anything, do we—

Ms Taylor: We do.

Senator MARSHALL: because it's a member of parliament?

Ms Taylor: No, that's absolutely not true, Senator.

Senator MARSHALL: All right. You tell me what you have done about this member of parliament that's had four claims—

Ms Taylor: We have worked—not specifically in relation to that—with the Department of Finance and identified the systems they have in place for workplace conflict, bullying and harassment in particular, making sure they have appropriate systems and appropriate training for members of parliament, as well as staff, in place and that there are—

Senator MARSHALL: So this member of parliament has done that training?

Ms Taylor: Senator, I—

Senator MARSHALL: You don't know, do you?

Ms Taylor: I don't know.

Senator MARSHALL: You wouldn't know?

Ms Taylor: The Department of Finance would.

Senator MARSHALL: But I'm asking what you guys do. You're the ones that are paying out the claims.

Ms Taylor: In relation to the claim and our work health and safety obligations, we work with the employer to ensure that they're meeting their obligations under the Work Health and Safety Act in providing healthy and safe workplaces.

Senator MARSHALL: But the difficulty, as I think you may be aware—and, if you're not, you should be—is that the employer in this situation really has nothing to do with the employment of the people involved. They actually work for the member of parliament. The employer has no day-to-day contact with, supervision of or control over the workplace—none at all.

Ms Taylor: The Department of Finance has the obligation—

Senator MARSHALL: Yes, I know.

Ms Taylor: to do that.

Senator MARSHALL: Yes, that's right. It may all come back to them. I'm just trying to work out what you guys do. So you had four claims of a similar nature from the employer in a specific small work group about one member of parliament. I was asking you—

Ms Taylor: Over a period of time.

Senator MARSHALL: Yes, sure. I put to you earlier that all Comcare is doing is sitting back and waiting for the next claim, and you were going to tell me what you are actually doing, not the employer. But if you're doing nothing, that's fine. If you're saying, 'We can't do anything; it's all Finance,' just tell me that.

Ms Taylor: That is not what I'm saying.

Senator MARSHALL: You tell me what you're saying.

Ms Taylor: What I'm saying is that we work with the employer to make sure that the systems and processes that they have in place for ensuring healthy and safe workplaces are being followed. Where we find issues—that there are gaps in their system, there isn't appropriate training, the workplace needs modification et cetera—we will work with the employer who has the responsibility to make sure that they're addressed. And we have done so.

Senator MARSHALL: So we can assume that Finance have told you that all those systems are in place?

Ms Taylor: We have worked with the Department of Finance through a monitoring and compliance activity that has identified gaps and they have put in place the corrections to those gaps in their systems processes et cetera to ensure that the issues that have been identified are being rectified.

Senator MARSHALL: That's what they tell you. Do you satisfy yourself that what they tell you has actually happened?

Ms Taylor: Yes, we do.

Senator MARSHALL: How?

Ms Taylor: We go back. Our inspectors go back to examine whatever it is that—

Senator MARSHALL: So your inspectors in these instances actually go to the workplace?

Ms Taylor: I'll take that on notice. But they satisfy themselves from the evidence that's provided that either the appropriate training has been put in place or the systems, the processes et cetera have been addressed. So it would depend on the circumstances.

Senator MARSHALL: All right. So you'll take on notice how many times your inspectors have actually gone into the workplace—not to the Department of Finance but to the workplace where this problem happens. Would they interview the other staff?

Ms Taylor: It would depend on the circumstances.

Senator MARSHALL: All right. Well, it doesn't seem to be working, but, nonetheless, we'll continue to look at it, and I look forward to seeing your answers to the questions on notice.

I just want to go to another area that was in the ABC news this morning. It sparked my interest, because the Senate's just done an inquiry into industrial deaths, and I'm sure you've read it and considered it already. It's fantastic reading—a beautifully written and presented report, if I say so myself. Anyway, getting back to a very serious matter, a young man, an apprentice, was killed. I'm not suggesting you're responsible as the regulator in this instance, but he was employed by the AIG's group apprentice training scheme, as I understand it. They did a report. This is the way the report has been described, so I just say that. This is the way the reporters reported it:

The report catalogued a litany of serious hazards, including the factory's lack of procedures for staff working in confined spaces, which it categorised under "High/Significant Risk, Almost Certain likelihood, Serious consequence".

Despite Ai Group identifying 11 high-priority safety hazards in a report delivered to Marshall Lethlean—

which is what the company is called—

on August 24, its training arm sent—

the apprentice—

to begin his apprenticeship at the factory a month later.

But Ai Group's chief executive, Innes Willox, defended his organisation and said the safety hazards outlined in the report would be common in most workplaces.

Would you, as a regulator, accept that common practice means that we should accept dangerous situations?

Ms Taylor: That's difficult for me to comment on. I don't think it's appropriate that I comment on a—well, I know it's not a hypothetical—

Senator MARSHALL: Well, it sort of is a hypothetical, but I'm trying to get to your policy approach as a regulator. Here we have the chief executive of one of the largest and probably one of the most respected industry organisations in the country sort of saying, 'Ah, it doesn't matter because these would be common hazards.' Would your inspectors go and say, 'This is a hazard—oh, but don't worry about it, because it's pretty common'? You wouldn't do that? That's not the way your policy guidelines are applied, Mr Napier, is it?

Mr Napier: Again, you're trying to draw me on a hypothetical. What I would say is that there will be practices in workplaces that are manifestly high risk in nature. The responsibility of the employer is to manage those risks effectively and, where possible, minimise, reduce or eliminate those risks.

Senator MARSHALL: I think that's a bit extraordinary, actually. Let me go on:

"These were issues that were identified more broadly and were not found or seen to be insurmountable, but needed work done and that would be done over time," Mr Willox said.

Someone died as a result of this, and here we have the CEO saying, 'Well, the safety hazards weren't insurmountable; they could be fixed over time.' Is that all right?

CHAIR: I don't think you should ask the officials to comment on a media article.

Senator MARSHALL: No, I'm asking about their approach to investigations.

CHAIR: I think it is legitimate to ask about what Comcare general policy is, so I'm happy for the witness to answer the question on the basis of what their policy approach is.

Senator MARSHALL: Yes, and that's all I'm doing. Again, I make the point that you're not the regulator responsible, but I just find these comments extraordinary. The regulators, all of you, have an obligation on setting a cultural scene of acceptance in workplaces. For the CEO of this industry organisation to just wave them to one said and say, 'As long as we intended to fix these problems over time, that's acceptable'—it's not acceptable to that young guy that died, or his family.

Ms Taylor: We take the obligations under the Work Health and Safety Act very seriously, particularly in circumstances like this where there's been a death. We apply the work health and safety laws. We investigate matters, particularly where there are serious concerns, and we take appropriate action. I think that's evidenced, certainly, in the number of prosecutions that we have put in place in recent years. In addition to that, we've increased our activity in terms of monitoring and compliance, as well as investigation and inspection. The act requires a person conducting a business or undertaking to do everything reasonably practicable. Those are the terms of the legislation. I don't know the circumstances particularly surrounding this—

Senator MARSHALL: I'm not asking you to judge on that.

Ms Taylor: but we take the obligation to provide a healthy and safe workplace very seriously.

Senator MARSHALL: The two issues I was trying to get to are these. There's the argument: 'This is a common hazard. The factory next door has the same hazard, so I shouldn't have to fix mine.' Is that an argument you would accept, as a regulator? That's the first question. I think you told me, yes, you could, you might.

Ms Taylor: No, that's not what we said.

Senator MARSHALL: Let's be clear. I'm trying to get you to be clear because I want to be clear.

Ms Taylor: I think you're trying to get us to comment on this particular circumstance.

Senator MARSHALL: No, I'm not. I've rephrased it to be very clear, because that's the point I'm trying to get to. There's a hazard that's been identified. The argument is: 'But this is a common hazard in this industry. You'll find it in the factory next door, so therefore I shouldn't have to do anything about it.' Would you accept that, as a regulator?

Mr Napier: We wouldn't accept that, as the regulator, but you're drawing me on a matter on which, other than what you've reported to me, the detail of which—

CHAIR: Again, ignore the specifics of this case. I know that Senator Marshall is perhaps phrasing his questions in a somewhat convoluted way, starting off with a hypothetical, but just leave it to your policy approach to this particular area, and then we'll be comfortable with that answer.

Ms Taylor: I'll caveat it by: it depends on the circumstances. But, in circumstances such as that, that would not be acceptable to us, as the work health and safety regulator. I'm happy to be quite definitive about that, but I'm not commenting on those circumstances because that's a newspaper report and, quite frankly, I don't know the detail. But, no, that's not.

Senator MARSHALL: The next point I want to clarify your policy on is this. A hazard has been identified; it's not an insurmountable problem to be rectified, but work could be done over time so it's all right to live with the hazard in the interim. Is that an approach of the regulator?

Ms Taylor: It would depend on the severity of the hazard, and, if it's a hazard that is likely to cause serious injury, then no.

Senator MARSHALL: Now we're getting there!

Ms Taylor: I'm cautious about being drawn to be seen to be commenting on the specifics of this particular circumstance. I'm talking about issues that relate to our jurisdiction and our work as the regulator. If our regulator saw something that they thought could cause a death or serious injury in a workplace then, no, that would not be acceptable.

Senator MARSHALL: All right, we'll leave it there. But I raise it in the sense that here we have the CEO of one of the largest employer organisations reflecting views which I think are just outrageous. And you would think, as a spokesperson for his industry, that's generally what the industry believes, which I think is appalling. Anyway, we'll have more to say about that issue as we move forward.

Asbestos Safety and Eradication Agency

[10:41]

CHAIR: I call representatives from the Asbestos Safety and Eradication Agency. On behalf of the committee I welcome Ms Justine Ross in her new capacity as chief executive officer. This would be your first time, or have you been here in other capacities?

Ms Ross: I've been here in other capacities.

CHAIR: Fair enough. I would also like to acknowledge the service of Mr Peter Tighe. Do you wish to make an opening statement?

Ms Ross: No, I have no opening statement.

CHAIR: All right then. We will ask you some questions. Senator Marshall.

Senator MARSHALL: Were you asked to apply for this position?

Ms Ross: No, I wasn't asked to apply for it. I applied for the position.

Senator MARSHALL: How was it advertised?

Ms Ross: It was advertised in the national media, on APS Jobs, in the usual way.

Senator MARSHALL: And you're regularly looking at those, are you?

Ms Ross: Well, I was in the Department of Jobs and Small Business before taking this position, so I did know that the position was going to be advertised. I've worked for many years in a health and safety environment—

Senator MARSHALL: A policy environment?

Ms Ross: at Safe Work Australia as well. I was interested in the position. And I knew that Peter Tighe's term was coming to a close this year, so I was aware.

Senator MARSHALL: So you've been in a health and safety policy position.

Ms Ross: For almost 17 years.

Senator MARSHALL: Have you ever handled asbestos?

Ms Ross: I have asbestos in my home in Canberra.

Senator MARSHALL: Oh, do you?

Ms Ross: But I haven't handled it, because I know it's not safe to handle.

Senator MARSHALL: Very good.

Ms Ross: Actually, I will correct that: I guess like many Australians of my generation, I recall renovations being done at my house when I was a little girl, on my fibro house in Sydney that my father built. Thinking back, yes, I know that there was asbestos being pulled out—and that very sad story of trying to use it as chalk on the driveway. So yes.

Senator MARSHALL: Have there been any policy changes since you've taken over?

Ms Ross: No, there haven't been any policy changes. My focus since commencing my appointment has been on completing the evaluation of the National Strategic Plan for Asbestos Management and Awareness. The current phase of the plan is coming to an end this year and the former CEO, Mr Peter Tighe, spoke about that at his last appearance at estimates. We've completed the evaluation, and we have prepared a draft of the next phase of the national strategic plan. We have done what we've called some soft consultation on that, so we've got experts and interested parties but we propose that next week it's our national conference and we're holding two workshops on the draft plan.

Senator MARSHALL: I'll come to the conference—I've got some other questions too on the strategic plan—now that you've mentioned it. In the past, I understand, you've assisted some participants with travel arrangements, and that's been particularly relevant for people coming from Western Australia and other places. I'm advised that that's been withdrawn this year—is that right?

Ms Ross: That's absolutely incorrect.

Senator MARSHALL: Incorrect?

Ms Ross: Absolutely.

Senator MARSHALL: Good to hear it. Maybe on notice could you just provide the details that you're—

Ms Ross: Yes, we'll provide the details of the assistance we're providing, but it is 100 per cent, I can say, incorrect.

Senator MARSHALL: If people are under the misapprehension for whatever reason that they're not able to ask for some assistance, they can come straight to the agency and have—

Ms Ross: We put out an email three or four weeks ago, as we do every year, making a call-out if people need some assistance. We've appreciated that, and this is the fifth conference, it gets harder for these groups to find that bucket of money to come to the conference as the years go on. So, we've been very aware of that, and most of the groups like to bring quite a few members. Just before the conference—because it starts on the Monday—on the Sunday, we provide secretariat support for a meeting of the support group network. They like to come in on the Sunday and stay till the conference closes on the Tuesday, so we're well aware of the expense involved.

Senator MARSHALL: I'm going to try and get there myself. I've meant to in other years, but I haven't quite made it. Hopefully, this time—

Ms O'Rourke: Good.

Senator MOLAN: You can't assist the senator, can you, in getting there?

Senator MARSHALL: No, the senator doesn't need assistance. I'll let you know if I'm coming, so you can roll out the red carpet; and, if you do, I'm sure Senator Molan will be happy to walk down hand in hand with me on it. Is the attendance similar to other years, or is it—

Ms Ross: Yes, it's good.

Senator MARSHALL: Not in decline?

Ms Ross: No, it doesn't seem to be in decline.

Senator MARSHALL: I might put some questions on notice there. If we come back to the strategic plan, can you give us a breakdown of the key elements.

Ms Ross: Sorry, Senator: of?

Senator MARSHALL: The five-year national strategic plan.

Ms Ross: Just a bit of a breakdown of the current one?

Senator MARSHALL: The key elements.

Ms Ross: The key elements of the current one, or what we're proposing?

Senator MARSHALL: What you're proposing, yes.

Ms Ross: What we're proposing is that it will be very similar to the existing one, but we want it to be—

Senator MARSHALL: Which was my next question actually, but anyway.

Ms Ross: more focused. The current plan has—now, I have to get this right—one aim, six goals, six strategies, 22 outcomes, 20 deliverables and five principles, which sort of makes it very difficult to coordinate. We're trying to make it more focused, so we're proposing to have four priority areas around asbestos awareness. We're attempting to influence behavioural change.

There's also a priority around identification and effective legacy management of the stock that we have here, the legacy stock. There is also going to be a priority around removal and, combined with that, waste management because those two things go hand in hand. The last one is going to be around international leadership, and that largely falls within the agency's remit and involves the work that we've been doing with some South-East Asian countries to help them work towards imposing bans on asbestos manufacture and use.

Senator MARSHALL: And stop importing their asbestos to Australia.

Do you mind if I jump in?

No, I don't mind.

Just on the awareness issue, people of my

CHAIR: Just on the awareness issue, I guess people of my generation lived through the whole period when we came to realise the dangers of asbestos and the risks involved. Is the younger generation, the generation that's reaching adulthood now, aware of the risks? Have we done any work on that?

Ms Ross: We have done some work, and I might hand over to Mr Miller for this. We do an awareness survey and we've got the results of the latest one that we've done. I think it has shown a problem in that cohort.

Mr Miller: The agency was established in 1 July 2013. We've run national awareness attitude surveys in 2014, 2016 and 2018. The 2014 survey provided the benchmark. In 2016, the results were similar to the 2014 results, although there was a slight dip in awareness, which obviously concerned us. We've done a lot of work in the last two years to ensure that the rate of awareness rises. The 2018 survey actually does show a rise in awareness levels across Australia, which should—

CHAIR: A rise in awareness levels?

Mr Miller: Yes, which we're very happy about. We look at different groups. Certainly within tradespeople there is actually quite strong awareness. The issue we're finding is mainly with younger males, so I think what you were saying before is really correct. And that's detailed in the 2017-18 annual report, which you should all have a copy of.

Ms Ross: Yes, and there'll be a presentation at our conference on the awareness campaign.

Senator MARSHALL: Good. How many people do we think are dying each year in Australia from asbestos related exposure and disease?

Mr Miller: I can take that question, Senator. Currently we're saying that around 4,000 Australians die from asbestos related diseases in Australia each year. That's based on WHO figures. Those figures were actually relayed at our summit here in Canberra in 2017, and the lead author on that is Dr Tim Driscoll from the University of Sydney.

Senator MARSHALL: It's an incredible tragedy. If those 4,000 people died in a single incident instead of spread out across the year, there would be a national emergency declared, but unfortunately it's not. It was a former Labor government that set this agency up, but I do want to recognise, and I've said so on other occasions, that I'm very pleased that this has got strong bipartisan support. The previous government and the current government—for the time when we weren't in government, that the parliaments and the governments in power have continued to support and increase the funding is commendable.

Mr Miller: At a PGARD—Parliamentary Group on Asbestos Related Disease—meeting, a meeting I think you were at, that number of 4,000 was certainly noted by those present as being a very significant number.

Senator MARSHALL: Yes. And, again, that's a very strong parliamentary group of a bipartisan nature. There's no politics in any of this, and the work you do is very positive and long overdue. I'll have some questions to put on notice, because we've got to wrap this up. It's one thing to have lots of plans and strategies; the next thing is do we actually get it done? How are we going to measure our success in removing asbestos from the built environment? And with the asbestos that isn't removed, how are we going to actually manage that in a safe and sustainable way?

Ms Ross: I can say that that's been the difficulty under the current plan. We've found, through evaluation, that it's been very difficult to measure the success of the plan. We've done it in terms of counting the number of activities that have been carried out across the country during the life of the plan, and that's up to nearly 150. What we're proposing for the next plan is that we actually have a set of targets. We're proposing seven targets at the moment. We think that will actually help us track progress and whether there's been progress, particularly in the case of removal and legacy management. Targets were envisaged for the plan in the—I don't know if you're aware, but the basis for the agency and the plan came out of recommendations in the asbestos management review that was conducted back in 2012. We've adopted the approach that was outlined there, which is to place some targets in there in terms of accountability. Once again, we're hoping to get relevant state and territory ministers to sign up to the plan. The function of the agency then is to encourage them to take action and to monitor progress, so we'll be tracking it against these targets.

Senator MARSHALL: So are the state jurisdictions on board?

Ms Ross: I would say yes. And I think we've certainly seen—not that I've been with the agency the whole time, but I've been on the sidelines I guess for the five years—a bit of a shift or a turning of the corner in terms of jurisdictions actively taking action. Even recently, in the last month, New South Wales put out a draft plan that they have on asbestos waste and disposal to combat illegal dumping, and looking at cheaper waste disposal options, which we see is something that there needs to be some movement on. Victoria has established its own agency and it has set about scoping the removal of asbestos from government buildings, so, yes, we think there has certainly been a shift.

Mr Miller: I just note that local government is also a key plank in this. That's also an area that we target.

Senator MARSHALL: And the supply authorities too, I guess. Do you actually deal directly with authorities?

Ms Ross: We can give the water authorities—do you mean those types of authorities?

Senator MARSHALL: I hazard a guess that most of the electricity authorities would still have lots of asbestos in their metering systems in the domestic and commercial areas, and also within that built environment that they're responsible for, but which they probably say they're not, of course.

Mr Miller: Energy Queensland have announced that they are going to be asbestos free by 2030. In fact, they're going to present at our conference next week as well. There are a whole lot of really positive stories happening across Australia.

Senator MARSHALL: All right. Thank you. I paid tribute to Peter Tighe at the estimates before last. He's a man who brought a lot of passion to the job, because he actually lived with it. He knew where it was in the built environment. He had experience with it; he'd worked with it as a former electrician. He brought a great passion to the job, and, Ms Ross, it appears that you've got some direct experience with it too and bring some passion as well.

Ms Ross: Yes. Certainly.

Senator MARSHALL: I think we need that in this area if we're actually going to make inroads, because it's a massive task. I congratulate you on your appointment, and fight the good fight.

Ms Ross: Thank you, Senator.

CHAIR: The whole committee shares that sentiment. And on that note, I thank you all for being here today. There being no further questions for the Asbestos Safety and Eradication Agency, that concludes the committee's examination of the jobs and small business portfolio. I thank Minister Ruston and all the witnesses who have given evidence to the committee today. I'd also like to thank Hansard, broadcasting and the secretariat.

**Committee adjourned at 10:58**