

TRANSCRIPT

ENVIRONMENT, NATURAL RESOURCES AND REGIONAL DEVELOPMENT COMMITTEE

Inquiry into the CFA training college at Fiskville

Melbourne — 20 November 2015

Members

Ms Bronwyn Halfpenny — Chair

Mr Tim McCurdy — Deputy Chair

Mr Simon Ramsay

Mr Tim Richardson

Mr Bill Tilley

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Staff

Executive officer: Dr Janine Bush

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Witness

Ms Clare Amies, chief executive officer, WorkSafe Victoria.

The CHAIR — We will now get started yet again. Apologies. We have to go through the same formalities for the public record so that Hansard has it. Again welcome to Ms Clare Amies, CEO of WorkSafe. I will just go through the requirements prior to us starting our questions of you. As outlined in the guide provided to you by the secretariat, all evidence taken by the committee at the hearings here today are taken under the provisions of the Parliamentary Committees Act 2003 and other relevant legislation and attracts parliamentary privilege. Any comments you make outside the hearing will not be afforded such privilege. It is an act of contempt of Parliament to provide false or misleading evidence to this inquiry. The committee may also ask you to come back at a later stage if further information or follow-up is required, and we may also ask further questions in writing, seeking further information from you.

All evidence will be recorded today, and you will be given a copy of the proofs prior to them being published in order to ensure that they are accurate. With that said, we will do take 2 and now start the questions in relation to what happened at the Fiskville training grounds.

As I was saying just not that long ago, from the evidence that we have heard, whether it has been through written submission or has been taken in person at public hearings, there seems to be a lot of comment or, just from our observations, a lot of concern or issues around the fact that a number of government departments or statutory bodies are required to be responsible for particular pieces of legislation. In many cases, as in the circumstances of the Fiskville training college, it seems that those authorities or organisations have not been able to enforce their own legislation, the legislation that they are responsible for, in protecting the public and in terms of protecting working people and firefighters that trained at or worked at, in fact, the Fiskville training college. What do you think about that feeling that we are getting? Do you believe that WorkSafe has in fact got the ability and has, in the case of Fiskville, enforced the legislation as it is required to?

Ms AMIES — Yes, I believe that WorkSafe has been able to administer the legislation as required.

The CHAIR — When we were interrupted I was then going to take you through a situation, which was under section 131 of the health and safety act. That was the situation where the United Firefighters Union or their legal representatives wrote to WorkSafe on 15 November 2012 and requested that the CFA be prosecuted in relation to a number of health and safety breaches that they believed either had occurred or were occurring at the site. The legislation says that once a request for prosecution has been made by a party — such as the UFU in this case — WorkSafe has three months in which to conduct an investigation and then they must advise the party that has complained of the outcome of that investigation. That did not occur. As we understand it, it was something like two years before WorkSafe actually did as was required under the act.

Ms AMIES — So do you want me to respond to what we did, why it took longer?

The CHAIR — Do you believe that part of the act was breached?

Ms AMIES — I understand that under 131 there is a requirement of three months. However, with very lengthy investigations or, particularly under 131, where we receive a requirement to investigate an employer, in this case the CFA — —

The CHAIR — Where does the act say that? Are you saying that the act says that because in your view there is a requirement to take longer than three months that you can just take whatever time you feel like?

Ms AMIES — I think that the intent of the act is to ensure that WorkSafe does a — —

The CHAIR — Can I give you the act? I will give you that section of the act.

Ms AMIES — I understand — —

The CHAIR — Please, again, are you in breach or was WorkSafe in breach of the legislation?

Ms AMIES — I do not believe we are in breach of the legislation when our practice is to make sure — —

The CHAIR — Well, can — —

Ms AMIES — I understand what you are saying, but I will just — —

The CHAIR — Sure.

Ms AMIES — Our ability is to ensure that we do a thorough investigation, and this required us to go over an extensive period of time and gather extensive evidence over a period of time to ensure that we could prove beyond reasonable doubt that there was a breach of the Occupational Health and Safety Act. Within that we do at these times often write to the person that has or the parties that have requested the 131 in terms of our ability to administer the legislation and through consultation agree that it will take longer than three months, so with very complex investigations. I understand what you are saying, in terms that the Act does say three months, but in terms of our ability to administer that, particularly where we are required to gather extensive information and evidence, that is our practice.

The CHAIR — That is your practice. So who makes that decision whether WorkSafe will breach the legislation and grant themselves an extension? Is it an outside body or within the organisation?

Ms AMIES — In this case the consultation is with the UFU, the United Firefighters Union, that actually requested, under the 131 section. So we would go back to them and agree that it was going to take longer than the three months.

The CHAIR — So are you saying that the UFU agreed that the investigation would take longer and that they did not require a view on the prosecution within the three-month requirement under the law?

Ms AMIES — I would have to go back and look at correspondence, whether they formally wrote to us and agreed, but I know that we did contact the UFU and we did inform them that, based on what they were asking us to investigate, it would take longer than the three months.

The CHAIR — So are you saying, then, that you would do it without agreement, or are you saying that —

Ms AMIES — No, we would normally go back and consult with the party that requested the 131.

The CHAIR — ‘Consult’ does not mean agreement.

Ms AMIES — If the UFU came back and said to us, ‘No, you’ve only got three months’, then we would not have been able to conduct a thorough investigation.

The CHAIR — But again, if the legislation says, ‘You must do it within three months’, you say, ‘Bad luck, we need longer’, you then say — you or somebody in WorkSafe — who makes the decision to grant an extension and breach the legislation?

Ms AMIES — I think it is important that we do not see this as ‘bad luck’; we do see this as absolutely taking every request for an investigation very seriously, and we want to make sure that we do that in a very thorough way. So that would go through our General Counsel. That would make the decision that the requirement for us to do a thorough investigation and ensure that we have gathered the evidence required for a prosecution means that we would need longer.

Mr RICHARDSON — Just on that point, Clare, under section 21 it reads that:

An employer must, so far as is reasonably practicable, provide and maintain for employees of the employer a working environment that is safe and without risks to health.

Ms AMIES — That is correct.

Mr RICHARDSON — That is ‘must’; that is absolute; that is unequivocal. So where the term ‘must’ is used throughout the legislation and is then used again under section 131, where is the grey area in that ‘must’ requirement in three months, under the legislation?

Ms AMIES — I am not saying that it is a grey requirement; I am saying that what we would normally do in terms of our ability to administer the legislation is in terms of as it is intended. So I appreciate that three months may be — it is actually quite complex; you are right. Sometimes we cannot do these investigations within a three-month time frame. But rather than making the decision not to do the investigation, we would go back to the party or parties that have requested the investigation and agree that it would take longer. So I am not denying that the legislation says that we must do that in three months; I am saying I do not believe it is the intent

of the legislation, and then how we administer it, that would require that we would not do investigations under a 131.

The CHAIR — I would just like to take you to some correspondence. I will go through it. On 15 November 2012 the UFU's legal counsel wrote to WorkSafe requesting an investigation and prosecution. On 25 March 2013 the same lawyers on behalf of the UFU wrote to WorkSafe making a number of points, including:

You are also aware that WorkSafe is currently in breach of its statutory obligations concerning its requirement to respond to our client within a three-month deadline.

...

Frankly, we are concerned that one month after the meeting it appears WorkSafe has done very little, save for interviewing Mr Mick Tisbury (which occurred when we pressed the matter at the meeting on 22 February —

2013. So how does that fit in with what you have just told us?

Ms AMIES — It sounds as though — I mean, I do not have the letter in front of me, so I am only commenting on what you have just read out, but it sounds as though — there was dialogue and conversations. There was obviously a meeting in February before that.

The CHAIR — There was no agreement from the complainant that you do not follow the legislation.

Ms AMIES — Then I will have to take that as that you have that in front of you, but that was not my understanding.

The CHAIR — What we will do is organise to have the correspondence — and we can come back to that at some stage during our discussions with you today and then perhaps continue to go through that.

So what we have got is a situation where the UFU has asked for a prosecution, it seems that WorkSafe has determined it will take too long and they need longer than three months, and in the end, ultimately, you decided not to prosecute. And it was two years after that complaint that that decision was provided to the UFU. Is that correct?

Ms AMIES — That is correct.

The CHAIR — And do you see that as an acceptable situation?

Ms AMIES — In terms of the time it took; is that what you are referring to as 'acceptable'?

The CHAIR — In terms of any part of the process; the time that it took — two years — the legislation says three months; the fact that there was no prosecution after all that time.

Ms AMIES — So I might start with a response in terms of how long it took, in terms of our investigation. This was a very complex and detailed investigation where the UFU had requested in their correspondence for us to go back over many years. We dedicated two full-time investigators to this. There was a significant amount of information for us to gather. I think what is important is that throughout that time we were seeking legal counsel, independent legal counsel, as well as looking at expert opinion and multiple reports. So, yes, it did take two years. In my — —

The CHAIR — Did you conduct any of the reports — did WorkSafe conduct any reports themselves, any sampling of water or anything like that?

Ms AMIES — I do not believe we sampled the water, no.

The CHAIR — And who provided the information, the reports, to you?

Ms AMIES — The CFA had engaged an independent expert around the sampling of the water. Through our investigation we did have an independent expert look at those results and the people who were doing the sampling of the water for the CFA.

The CHAIR — Who was the independent expert?

Ms AMIES — I do not have that in front of me, I am sorry, but I can get that for you as part of our investigation.

The CHAIR — If you could provide it to us, that would be great. Thanks.

Ms AMIES — I am going back now to: is two years too long? I appreciate that it is a very long time, and there are many people impacted who are waiting for us to make a decision on that, so I will not deny that two years is a very long time. However, I do believe that our employees, and particularly the investigators and the lawyers involved in this, were absolutely clear that they needed to do a very thorough investigation, so there was a lot of evidence gathered that needed to be worked through, and through that process ensuring that we were focused on our ability beyond reasonable doubt to have a successful prosecution.

In terms of the outcome, you asked me if I think that is satisfactory. I think again that is very difficult in terms of the expectation of the parties who then submit a 131, that if we do not believe that we will be able to have a successful prosecution and that the evidence is there to do that, I absolutely appreciate that is a very difficult message when people have been waiting a long time for the outcome of that. As I was saying, you would be aware that since then that has now been referred to the Director of Public Prosecutions to review.

The CHAIR — Do you think it is of concern when the organisation, WorkSafe, that is responsible for overseeing legislation to protect working people at work from poisons, toxins or unsafe work practices — do you think it seems a bit concerning that, whilst there is no action taken by WorkSafe to protect those that were at Fiskville, the place has now been closed down for the very fact that it is unsafe, but not by WorkSafe?

Ms AMIES — The first response is around your comment in terms of WorkSafe not taking seriously, I believe, in terms of the safety of workers. I would say at Fiskville — —

The CHAIR — I did not say that, sorry. I said: is it concerning that the organisation, WorkSafe, that is responsible for the legislation that protects people at work — does it seem concerning that it was not WorkSafe but other events and other organisations that closed the site because of safety concerns and that WorkSafe had no role in that?

Ms AMIES — I do not know whether we had a role in that or not. I would firstly like to comment that, in terms of our role going out onto a site, our inspectors, the first thing that they do in that immediate time is to determine whether there are hazards that would cause risk in terms of the health and safety of workers on those sites.

With Fiskville there is absolutely no doubt that the CFA had begun a process of testing the water on agreed standards that were provided to them by the Department of Health and EPA. They had, as I said, engaged an independent expert. The people who were involved in the training were wearing protective gear and had equipment in terms of their respiratory protection as well, and at that time there had been no reports of illness to us or to the CFA. I should say that the CFA was also using mains water. I agree that when that article was in the papers we did send people out on site, and they confirmed at that time that the CFA had a number of safety systems in place that they were monitoring to ensure the safety of their employees. Hindsight is a wonderful thing; there is no doubt that post that more information came out and more information was provided.

The CHAIR — So in terms of the, as you say, conversion to mains water, did WorkSafe require any further testing to ensure that that water that was going to be used for the fire training was suitable and safe?

Ms AMIES — In terms of the CFA my understanding is they continued to test the groundwater.

The CHAIR — But did WorkSafe?

Ms AMIES — That is right. There was a requirement for them to continue to test and to provide that information to us that they were testing and the results of those tests.

The CHAIR — What you said is that the water for the firefighting, instead of being the dam water, was switched to mains water —

Ms AMIES — That is correct.

The CHAIR — and therefore WorkSafe believed the problem was over. Did you require or seek any testing or testing results of the mains water from the outlets to fight the fires at the site? What I am saying is: it went to mains water; did you test that water that was then to be used?

Ms AMIES — We did not test the water. The requirement is on the duty-holder or the employer — the CFA — to test the water.

The CHAIR — Did you seek the results?

Ms AMIES — Yes, we did seek results on the tests that the CFA were doing on the water and their response to those tests.

The CHAIR — There seems to be a bit of a contradiction there, because you were saying that you thought the problem had sort of disappeared when they went to mains water, but then you are saying that you did get the results of tests on that mains water?

Ms AMIES — No, sorry; I am saying that the day the article broke in the paper we did send people on site, and at that time they collected a number of reports but also confirmed that they were not using the dam water, because at that time it was the dam water that was seen to be contaminated, and that we were satisfied that they had moved to mains water. I think the important thing for us is that we were mainly checking that the CFA was abiding by the standards required in terms of the safety of their workers or people on that site, so at that time the inspector confirmed that they were complying by putting a number of things in place.

In terms of the future testing on the mains water and the requirement for the CFA to do that and therefore report those results, that did come later. That is correct.

The CHAIR — So what do you say was their concern with the water? What was the danger to people that was in the water that was used from the dams?

Ms AMIES — I am not able to hypothesise on what I believe the danger is. I am not an expert in that area.

The CHAIR — No, sorry. I meant what was contained in the water that was considered a risk to people?

Ms AMIES — I do not have that in front of me, but my understanding from our records is that the EPA and the Department of Health had provided standards at that time in terms of the water and water testing, and the CFA were conducting their tests against those standards. I would also say that there are no occupational standards in terms of water, so it is really looking at what is the water quality, and that is what they were testing for. But I do not have the list in front of me of all the things that they were testing.

The CHAIR — So you know there are no standards for the level in the water, but you do not know what the actual chemical or organism was.

Ms AMIES — I do not have that with me today, no. We would have that, but I do not have that on me, no.

The CHAIR — In terms of the two years of investigation, as we understand it there is something like 66 volumes of documents that were put together and there was also commissioned a report that went to some 470 or 480-odd pages. What was the cost of investigating the issues at Fiskville?

Ms AMIES — I do not have on me the total cost, but I am sure we could provide that if that is what is required.

The CHAIR — We would like that; that is right. How much staff time was involved in compiling — going through and investigating all of this?

Ms AMIES — So we had two full-time investigators on this over the course of the investigation. We had legal counsel providing support, and there was a part-time legal counsel on this case. We had independent legal counsel as well, and throughout the process there were briefings internally in terms of to the general counsel of WorkSafe. So internally there was quite a significant number of resources.

The CHAIR — Is this the level of resources that is provided to any investigation for any organisation that provides a complaint or seeks a prosecution?

Ms AMIES — No. We would look at each of them individually in terms of the size of the investigation and what was going to be required in terms of us being able to ensure that we have gathered the information that is needed for a successful prosecution.

The CHAIR — Did WorkSafe consult any members of the government at the time about whether or not there ought to be a prosecution against the CFA?

Ms AMIES — Can you clarify what you mean: consult the government about a prosecution?

The CHAIR — Go to government about seeking advice as to whether or not WorkSafe should prosecute the CFA. So, separate to legal counsel, do you consult government when it comes to a high-profile, well-publicised issue? Would there be any briefings to the government of the day as to how WorkSafe should proceed or just advising of what they were going to do?

Ms AMIES — I would say no, that we would not be seeking advice from government on whether to prosecute. Obviously I was not in charge of the organisation at that time. However, I would think that would be very unusual practice for us to do that.

The CHAIR — You do not have firsthand knowledge of it?

Ms AMIES — There are no briefs that I am aware of, no. I do not know of any briefs that we have written to government asking for advice on whether to prosecute or not. That is correct.

The CHAIR — So 66 volumes investigating this issue, 480 pages of a report into the issue and a decision not to prosecute. Can you explain that? What happened?

Ms AMIES — As I have said, I think that the complexity of these cases is for us to have the evidence and a chain of evidence that we believe beyond reasonable doubt we will get a successful prosecution. So through the process and obviously through significant advice — legal counsel advice — we determined that we did not have the evidence to prosecute.

The CHAIR — This is my last question, which is on a completely different topic. In terms of industrial diseases, how does WorkSafe respond or act when there are allegations or not even just allegations but actual information, such as the Monash report, coming to light regarding particular cancers or other types of illnesses and whether they are work-related? What is the process in terms of WorkSafe acknowledging or recognising those industrial diseases?

Ms AMIES — We would look at any evidence that comes forward around any potential industrial diseases. I think the complexity often is that there is competing evidence around some of these diseases, so in terms of us determining whether that becomes a deemed disease or whether that is something that we would then accept in terms of any compensation claim made to us through our WorkCover scheme, we would take all of that into account. But I think the complexity often is that there is competing evidence. We are not the experts in making the decision where there is a causal link. We do rely on the evidence to be fairly clear and, again, that it would stand the test of court.

The CHAIR — There is a schedule that nominates particular diseases, and I guess in a sense it is sort of presumptive if you worked in this industry and these illnesses were contracted. When was the last time that was updated?

Ms AMIES — I know it was a while ago, but I do not have the date. But I am more than happy to provide that. But we do have a deemed diseases list; that is correct.

Mr RAMSAY — Thank you for your time this afternoon, Clare. I do want to acknowledge your recent appointment and many of the activities of WorkSafe with the previous CEO and the previous chair. I have two questions, part A and part B. One is in relation to compensation and presumptive legislation, so I am going to flag with you I will ask you a question about that, given your previous expertise in the area of insurance.

But, firstly, I was interested to note your responses to the chair's questions in that you feel that WorkSafe has complied with its responsibilities under certain acts. Yet the government saw fit to sack the chair and the CEO because of what they believe is not providing a sort of assurance from a regulatory body to government that

WorkSafe should have done in relation to some of the testing procedures. I just flag with you that a Minister for Finance media release dated 3 March 2015 stated that ‘current health and safety concerns at Fiskville that required its intervention’. WorkSafe provided the committee with a 2010 report by Wynsafe Occupational Health Services titled *Perfluorochemicals in Firefighting Water at CFA Fiskville* that was in their possession. The report indicated that the level of PFOS in the pit was 5.5 — I am not sure if you are familiar with some of these testings; I suspect you are — and the level of PFOA in the pit was 17. The report advises that, while there were no Australian standards or guidelines at that time, the US EPA said the standard was 0.2 micrograms per litre for PFOS and 0.4 micrograms per litre for PFOA.

Even if there was a dispute about the standards in 2010, a PFOS level 27.5 times higher than the US EPA standard and a PFOA level 42.5 times higher than the standard surely raised concerns when WorkSafe read about this in 2013 during its investigations. I guess the obvious question would be: what advice did WorkSafe get about the levels of PFOS and PFOA in the 2010 report that made you provide assurances to the government in fact that the levels of PFOA and PFOS were acceptable and not actually compromising the occupational health and safety act? That is part 1 of my question.

Ms AMIES — I just want to be clear, you want to know what advice did we receive that it was safe — —

Mr RAMSAY — What advice did you actually get in relation to the high — compared to the US standards of those two perfluorotoxins, the PFOS and PFOA, in relation to their significantly higher amounts than were acceptable by US standards? I appreciate there is not an Australian standard, which is problematic for everyone here, but the advice I understand WorkSafe gave to the government was, ‘Look, there are no issues around occupational health and safety’, that the CFA were doing certain things, yes, you have served notices and a few other things, you did not have enough evidence in relation to breaches of the Act. But the testing was so high that I would have thought WorkSafe would have been much more proactive in providing the government with advice that in fact there were unacceptable levels of PFOS and PFOA at the time. But that was not the advice that you provided to government, as I understand it.

Ms AMIES — In terms of the advice to government around the levels and the actions taken by WorkSafe, obviously you have that information in terms of the advice that we have given. I think what is important is what I was saying earlier in terms of how our inspectors went out and did their role was around whether there was a risk in terms of the exposure to people on the site. I absolutely appreciate, as I said earlier, that in hindsight, as further information came out and continued to come out around some of the events and some of the issues at Fiskville, there is no doubt that our position also changed in terms of the information coming through. We act in the time that we are there and in times of the decisions we made.

In terms of the advice to government and government’s response to that, I cannot comment on that right now. I do not have that in front of me, and I am not across the detail of what that communication was. I think in terms of our actions is probably more what I would refer to.

Ms WARD — But Simon’s question was about 2010, not so much 2013, so there were high levels in 2010 that were identified and given to WorkSafe. That is what you are referring to, Simon?

Mr RAMSAY — There was a report done in 2010 — —.

Ms WARD — That is in WorkSafe’s possession.

Ms AMIES — Sorry, but what you are saying is that we then advised government that there were not high levels or just that we did not advise?

Mr RAMSAY — I am saying that the government seemed to be somewhat surprised by the fact that WorkSafe as the regulatory body was not providing advice to the government in relation to those high levels. I would have thought your interest would have been to see if those levels were being reduced over time. I understand the EPA probably has more responsibility in relation to that area.

Ms AMIES — I would say that there are two things for us. The first is that the CFA was seeking independent expert advice, and at no time did that advice come back to them to say that they were not at safe levels. At the time that we were there in terms of our investigation, they had moved to mains water and were not using the water from the dams. So in 2011 when we actually attended in December on that visit the CFA had

put in place regular testing, but they were using mains water. So at that time the exposure risk, from our assessment, in terms of our inspectors on the ground looking at all that detail, determined that the CFA had put in place the requirements in terms of ensuring that they were responding to any risk to anyone on that site.

Ms WARD — Sorry, what independent advice did the CFA get in 2010?

Ms AMIES — Sorry, this is the water testing that was being done.

Ms WARD — This is the water testing that they contracted Central Highlands Water to undertake on their behalf — —

Ms AMIES — That is right.

Ms WARD — On which they did not receive interpretation from Central Highlands Water; they just received the results for their own interpretation. Who was the independent adviser to them in 2010?

Ms AMIES — I would expect that, if there was risk in that water, they would have been notified around that.

Ms WARD — By whom?

Ms AMIES — They had the standards that were agreed to by the EPA and the Department of Health, and the CFA were responding to that. There is also evidence through that time, that if they did get water results that were at a higher level, they would have them retested. But as I said, when we went on site in 2011 — —

Ms WARD — But Simon's question was about the results you received in 2010.

Ms AMIES — I know, but I am referring to, at the time that we went, what we needed to be able to confirm, one, is around our inspections and whether there is a reason at that time to do that inspection for closure — I think the question was why didn't we close or take action in terms of improvement notices right through to the investigation, including documents from the past and us being able to confirm that the chain of collection of that evidence was absolutely able to stand up in court. There have been issues in terms of the report and there have been a number of comments around that chain of collecting the evidence, how the water was collected and our ability to prosecute against that evidence.

Ms WARD — So why was there no site visit in 2010?

Ms AMIES — I am not aware that there was no site visit in 2010. We have been visiting Fiskville — I would have to go back over and look at what site visits we did — since 1991. We have records that confirm that we have been visiting Fiskville since 1991, right through to the investigation.

Ms WARD — So you can say with confidence that WorkSafe visited Fiskville in 2010, knowing the results of the PFOS and PFOA that was found in the water, knowing that firefighters were being doused in water used from those dams, and that it was safe practices?

Ms AMIES — We did not know in 2010 those results. That report was commissioned and it went back with those details. We did not look at the water in terms of our inspections on site until December 2011.

Ms WARD — So you got the Wynsafe report in 2011?

Ms AMIES — No, I am saying that in terms of our ability to question the CFA and when we started our inspections that requested information about the water and water testing, that was not until the *Herald Sun* article.

Ms WARD — No, I understand — —

Mr RAMSAY — Can I just finish my last question if that is alright, Ms Ward? Your chance will come.

Ms WARD — Sorry, Simon.

Mr RAMSAY — I am a bit methodical in my questioning. Vicki is right in that we are trying to get a bit of an understanding of WorkSafe's processes in relation to receiving the WYNSAFE report, knowing that the levels were high, simply higher than the US standard; wanting to know what advice WorkSafe got about those levels at the time in 2010; what investigation WorkSafe undertook to find out what had been done and the CFA's response to that report; and then: did WorkSafe get evidence that this level had been reduced?

The point being, of course, that in both instances the government has made decisions both in relation to how they felt about WorkSafe as a regulatory body and their leadership particularly in relation to the activities that they were involved in but, secondly, they decided to close Fiskville not because EPA or WorkSafe said that they had breached certain safety acts but because they made a decision outside the regulatory bodies' recommendations, I assume. I have not seen any documentation to tell me that the EPA and WorkSafe indicated to the government that this facility should have been closed down because of this, this and this.

Were you involved or were you working with the CFA to see if those PFOS and PFOA levels had been reduced over time, given that it is my understanding that the government's action in closing the facility was because of the high levels of PFOS and PFOA in the water system?

Ms AMIES — There are a number of things in your question, so I am just wondering if you could break that down because you have raised a number of issues that you want me to respond to.

Mr RAMSAY — The WYNSAFE report indicated high levels of PFOA and PFOS. We understand that report was given to WorkSafe, so you must have had some knowledge of the details of the report in 2010.

Ms AMIES — Not in 2010 — we did not have that report.

Mr RAMSAY — You are saying in December 2011.

Ms AMIES — In 2011 was the first time that we knew about issues with water and went out to the site on that day and confirmed, so we did collect a number of reports. What I have responded to is that what the inspector does is determine at that time — so in 2011 — was there any risk in terms of harm and was the CFA complying with the OHS act to ensure the health and safety of people on that site?

The CHAIR — Can I just clarify just one thing which was said? So WorkSafe had no information about the water quality until 2011.

Ms AMIES — That is correct. Our inspections, our notices, show that we were not visiting Fiskville to discuss with them about water testing until that time.

The CHAIR — The information that you gave to us includes a letter of 17 April from WYNSAFE Occupational Health Services to the executive manager of the CFA stating that the water quality was not fit. You are saying that you had 'not fit for human contact'. Are you saying that you had no knowledge of that information in 2009?

Ms AMIES — No, we did not. Our records do not show that we — —

The CHAIR — You provided that letter to us.

Ms AMIES — But that was collected once in 2011. As part of the inspection we collected a range of documents.

The CHAIR — Okay, so that was just clarification.

Ms AMIES — And letters — that is right.

Mr RAMSAY — Assuming that is true, my understanding is that from 2011, WorkSafe, the Department of Health and the EPA have not raised any considerable concerns in relation to the health safety of firefighters training at Fiskville, based on those tests in 2010. Is that correct from your understanding?

Ms AMIES — As I said, our role is to confirm when we go out onto that site that there is no further harm. Knowing I was coming here today, I have spoken to our inspectors about their role. They are clear that the first point was to confirm that firefighters wear protective gear with respiratory. They were using mains water, so

they were no longer using the dam. I am not denying what the report says, but in terms of the ongoing health and safety of people on that site, the inspector confirmed that the CFA did have practices in place to ensure an improvement in practice around health and safety and had a system in place where they were ongoingly testing the water.

Mr RAMSAY — So how do you explain, given that, why the government would choose to close the facility when it did?

Ms AMIES — I am talking about a point in time in 2011. I think that over the course of not only our two-year investigation but even more recently, more and more information has come out about the Fiskville site. It is not up to me to comment in terms of why government makes decisions; it is my role to ensure that we are administering the Occupational Health and Safety Act in accordance with the intent of the act.

Mr RAMSAY — If I may, Chair, and I know Vicki is champing at the bit, but I do want to cover off the compensation. What is your view about presumptive legislation and firefighters being able to access compensation if they suffer an injury or illness from participation in or leading from a training facility like Fiskville, and do you believe CFA volunteers should be entitled to such compensation? I am talking about in the spirit of presumptive legislation in relation to compensation or illnesses or cancers contracted or the linkages to the training facilities or in a working environment.

Ms AMIES — Currently the government has committed to presumptive legislation, so it is important that WorkSafe works with the government around that commitment and implementation of that if that sits with our workers compensation system or in partnership with what that will mean for volunteer firefighters. It is not about me having an opinion or a view. It is absolutely the commitment by government, and it is our role to ensure that we can work with government to meet that commitment.

Mr RAMSAY — Would WorkSafe be comfortable if the facility was opened up again and used as a training facility, given all the information you know now? Do you have any confidence that it could be remediated to a point where WorkSafe would support continuance of the facility?

Ms AMIES — I am not a specialist in environmental remediation. If it can be remediated to a point that it is safe, then we would need to be confident that that is the case.

Ms WARD — Just going back to Simon's questioning first, you say that WorkSafe goes out in 2011 being aware of the water testing and deems the site to be safe. But at this point mains water is not being used. Tanks are not installed until October 2012. Was WorkSafe not aware that water was being re-used through the dam system and being used within firefighting drills?

Ms AMIES — My understanding is that we believed or were informed that there was a use of town water, not dam water in terms of firefighting exercises. We believed that the risk of exposure — —

Ms WARD — So the CFA told you that they were not re-using water from the dam, that they were not recycling it, that all the water that was being used in their firefighting was from the mains system — from town water?

Ms AMIES — I believe so, yes. I would have to confirm if you have different information to what I have. As I said before, I made the decision, knowing I was coming here today, to speak to our inspectors to find out what their role is, but particularly in relation to Fiskville. It is clear that in terms of their assessment whether there is a breach of the OHS act, they looked at the use of dam water and it was confirmed that town and mains water was actually in use, not dam water.

Ms WARD — I just want to go back again to the independent advice you are saying that the CFA sought. They sent the water off to be tested at Central Highlands Water. The water comes back and then they submit the test results to the EPA for analysis?

Ms AMIES — I believe back to the CFA.

Ms WARD — Back to the CFA. Do you know who at the CFA was interpreting the results from Central Highlands Water?

Ms AMIES — No, I do not have that with me.

Ms WARD — Do you know if there has been any conversations around that?

Ms AMIES — In terms of the individual who was assessing that, I do not know. I will leave it there. I will let you ask the questions.

The CHAIR — I am just a bit concerned because in asking you to come here and give evidence, the committee did say what it was seeking was to be able to ask questions and get information on the investigations conducted by WorkSafe and its predecessor, the health and safety organisation, relating to the Fiskville site and the findings and outcomes of those investigations, including any legal proceedings against the CFA and further about its responses. It seems that because you were not there, you are not able to give us details of that investigation. I am just wondering whether we might need to call some of those who were directly involved as well to give us that information, because it is a bit difficult if we are asking you for information and you are unable to answer it because you were not there and you have not been briefed on it in preparation for here.

Ms AMIES — I would say I have been briefed and I have had a look at the background, but I do not know things like people's names and who they were speaking to and who the responsible person is, that is correct. That is the level of detail I do not have in front of me.

The CHAIR — References to these incidents are in the briefing paper that was provided to the committee so we are going on what you have given us as to the sequence of events as well.

Ms WARD — In 2011, when WorkSafe visited Fiskville, did they look to see where mains water taps or hydrants were in relation to the PAD and how easily they could be accessed?

Ms AMIES — The inspector went through a detailed process in terms of the inspection on that day and, as I said, went back a number of times, collected multiple materials and that did confirm a number of things. Firstly, that the CFA was adhering to the quality standards for water that was agreed with the Department of Health and the EPA, that they had engaged an independent expert to test the water, and that they were using town water. Also I think, added to that, the equipment that is used, but also that there were no illnesses or any other reports to us at that time. In terms of how the water is being used at the PADs, my understanding is that the inspector would have seen that being done through town or mains water, not through dam water.

Ms WARD — Why then were tanks installed in 2012 to comply with and create mains water on the site?

Ms AMIES — Further follow-up indicated that there were some further issues in terms of the testing and particularly around the source. I believe that was a response by the CFA in terms of ensuring that there was no cross-contamination when those changes were made.

Ms WARD — What do you mean by issues with the source?

Ms AMIES — In terms of when the tanks were installed, to ensure that there was no contamination in terms of the use of the mains and it going back into the tanks that had previously had dam water.

Ms WARD — But the tanks were not installed until 2012. In 2011 they are saying that mains water is being used, so where is the source for the mains water coming from if the tanks were not installed until 12 months or more later?

Ms AMIES — That is a level of detail I do not have in front of me, but I understand in terms of at the point in time that we are there and what we are looking at and then further information that is collected in 2012. There was ongoing information as we went through the process, as you can appreciate, over the time, so that as information came in we would go back out, we would revisit the CFA and we would confirm that they were responding to new information to ensure the health and safety of people on that site.

Ms WARD — Thank you, but I still do not understand where the mains water was coming from in 2011 if they needed to create a facility for that water 12 months or more later.

Ms AMIES — I cannot give that answer to you here today.

Ms WARD — It is possible that your inspectors did not find a location for the mains water that was around near the PAD that could have been used?

Ms AMIES — It is possible at that time in 2011. I do not have that as a record in terms of us finding that.

Ms WARD — Do you think it was enough for the Joy report to end in 1999, or do you think it should have gone further?

Ms AMIES — Can you qualify what you mean in terms of that?

Ms WARD — Yes. The Joy report covers only 60 percent of the period of Fiskville's history. There is a 40 percent gap in our knowledge, if you like, that part of what we are doing here is trying to work through. Do you think it would have been helpful for WorkSafe for the Joy report to go beyond 1999?

Ms AMIES — I think in hindsight that it may have been helpful for us to have had a report that went through the full life and life span; there is no doubt about that. I think in any of these long-term investigations there is always hindsight and lessons and ways for us to improve.

Ms WARD — I just want you to turn your mind to the submission that WorkSafe sent through to us. Section 29 says:

WorkSafe established ...

... the CFA had sought expert advice from water treatments consultants in relation to dam 1 at Fiskville ...

... the CFA had developed a management plan and water quality standards for firefighting water used at CFA training grounds and in particular Fiskville —

and that —

... the CFA was regularly testing the water in order to ensure that it met those standards.

What was put in place by WorkSafe to monitor these claims by the CFA?

Ms AMIES — The CFA was providing us with a record of those test results and the reports, and also our inspector would follow up with them in terms of any action that they would take based on those results.

Ms WARD — We have seen results, for example, from 2007, which show exceedingly high unacceptable levels of *E. coli* and *Pseudomonas aeruginosa* in the dams, and this goes on over a number of years, and the dams appear to have remained heavily polluted for a very long time. Is it enough for WorkSafe to make judgements based solely on what the CFA told you or should other action have been taken considering that the pollution was endemic and continued year after year after year?

Ms AMIES — I would say there are two things. The first in terms of what I am responding to is our involvement from 2011 and absolutely making sure that they had ongoing testing. I believe what you are referring to is a report that went back in time, and we were not engaged with looking at the water quality at that time.

Ms WARD — When your inspectors are going onto the site they are not seeking water testing as well as other items. They are just looking to see if people are wearing appropriate equipment, using appropriate equipment, gear, that kind of thing?

Ms AMIES — Not until 2011 we did not look at water quality.

Ms WARD — In section 31 it notes that:

... some of the test results for firefighting water (dating back to 2010) ...

Sorry, I might have already asked this question. Is it a concern that firefighters at work, being trained and being trainers, were exposed to contaminated water that exceeded standards year after year, and that you now have that evidence before you?

Ms AMIES — We have a report that indicates that they may have been exposed to that water. There is no doubt and absolutely that would be a concern — —

Ms WARD — How do you mean ‘may’?

Ms AMIES — I will finish. That would be a concern. Our role in terms of the investigation is to determine that that would stand in terms of court, the evidence trail in terms of how it is collected, and that it absolutely would have resulted in a prosecution in terms of our role.

Ms WARD — Correct me if I am wrong, from WorkSafe’s viewpoint there is not enough conclusive evidence to show that recycled water was being used from the dams and being used by firefighters in drills?

Ms AMIES — Our investigation concluded that beyond reasonable doubt we did not have the evidence, that is correct. I am not denying that the water was used from the dams and that there are reports that suggest that it may have been contaminated or not. The issue for us in terms of our investigation is absolutely to prove beyond reasonable doubt that there has been a breach and that we have the evidence that will support that prosecution.

Ms WARD — We have got factual evidence that talks to us about the contaminants that were in the dam over a number of years, and you have got anecdotal evidence around the uses of the water. Those anecdotal stories do not hold up; is that what you are saying?

Ms AMIES — We have to ensure that the evidence we collect to take to a prosecution will stand the test in a court, and if we do not believe we have that evidence then that is correct, we would not pursue prosecution.

Ms WARD — Stories by firefighters of where the water was sourced are not enough for WorkSafe?

Ms AMIES — We would have to collect evidence of that and that the water was contaminated and used at the time, that is correct. Not only is that in terms of the testing, but that the testing also meets the standard in terms of ensuring that we can guarantee that how that water was collected and how it was tested and those results would stand up in court.

Ms WARD — You have said that the CFA was conducting testing as required, that the testing was to EPA standards and that they sought independent advice on that. Therefore the results that we all have — you, us — in our possession is the correct testing and is testing that would hold up in a court of law, I would have thought then, because otherwise you are discrediting all of the tests that have been received thus far.

Ms AMIES — What I am saying is that we have to make sure that when that is collected it is done in a way that would ensure that there was no compromise to that evidence.

Ms WARD — What would be the compromise to the evidence when you have told us that you stand by the test that you have received from the CFA and that WorkSafe deemed it to be safe?

Ms AMIES — That is correct, we did in terms of that they had an independent group looking at that. In terms of it going through to a prosecution and ensuring that we can confirm prosecution, we need to determine that how that water was collected was done in a way that would not compromise, or we would not be challenged in the courts, in terms of the collection of that water and therefore the testing of it.

Ms WARD — But then that means that you have got no certainty over how safe or unsafe it was not any point?

Ms AMIES — I can appreciate that that is your view. There is no doubt, I understand that. I think we did not start to look at water until 2011, and in terms of the investigation we needed to determine that that testing was done in a way that would stand the test of a court. In terms of how we do that and conduct our health and safety role and the role of the inspectors, there was a company doing that testing who was the specialist or the expert in that area. At that time we were not looking at that as evidence to be used in prosecution. Further to that, we also determined that they were not using the contaminated water; they were not using the dam water from 2011.

Ms WARD — So essentially you are saying that we could question all of the test results that have come from the CFA because there is no conclusive evidence to show that they are accurate?

Ms AMIES — I am saying for it to stand the test of a court then, yes, we may have been challenged around how that water was collected.

Ms WARD — I will turn to section 33. Why did it take so long for the CFA to install signage and/or fencing around the firefighting PAD and dam 1? Further, in section 34 it is noted that WorkSafe identifies that it was not satisfied that the signage was sufficient, requiring an improvement notice. What do you make of this? Why was the CFA unable to follow WorkSafe's directions, and are you confident that the CFA has followed your directions all the way through this process?

Ms AMIES — Clearly that is an example where they did not, and an improvement notice was issued. What is important in terms of our role is follow-up and making sure that there is compliance. The first part of our role is to advise and support the employer to make sure they have the standards in place. If they do not comply, there are a number of tools we can use to enforce compliance, and an improvement notice was issued to enforce compliance.

Ms WARD — Section 33(e) notes that Central Highlands Water was now taking weekly water samples from various locations at Fiskville. Do you know these locations?

Ms AMIES — I do not have them with me, no.

Ms WARD — We have received evidence from Central Highlands Water that they only tested the perimeter external boundaries; other testing was commissioned by the CFA. Are you confident of this process?

Ms AMIES — Can I — —

Ms WARD — Central Highlands did their own testing, which was around the external perimeter of Fiskville.

Ms AMIES — That is right.

Ms WARD — The other testing that they did was commissioned by the CFA, again as I said to you, which they just handed back to the CFA, and the CFA then interpreted it. Are you confident in this process of the CFA conducting its own tests and investigating itself?

Ms AMIES — As I have said before, the CFA did commission that to an expert water tester, so they did have a firm doing that. It is the obligation of the employer under our legislation that they are doing everything they can to know that they are protecting the health and safety of people on that site, so it is the role — —

Ms WARD — Do you think the CFA did that?

Ms AMIES — I believe to the best of their knowledge it sounds as though they were doing the right thing by having an independent expert to have a look at that. From our perspective, they had actions in place — —

Ms WARD — By 'independent expert' do you mean the EPA?

Ms AMIES — No, it was an independent. The EPA did not provide that advice. I am referring to — —

Ms WARD — So who was the independent expert?

Ms AMIES — The water testing — how they had commissioned their water testing. They had independent experts do the water testing for them. They were not doing the water testing themselves.

Ms WARD — No, that is right, it was Central Highlands Water. But who interpreted those results for them? Who explained to them what the results meant?

Ms AMIES — You would have to speak to the CFA about that.

Ms WARD — Going back to the testing, it is carried out by a NATA-accredited lab, so why would it not stand up in court?

Ms AMIES — The issue with the evidence is not just in terms of the test itself. It is how it is collected, how it is transferred and how it is transported for it to be tested. So we look at the entire chain of events in terms of being able to test water in terms of evidence.

The CHAIR — Can I just ask, just quickly on the water testing, what you are saying is that it is the employer's responsibility to ensure a healthy and safe environment for employees and therefore they are required to monitor whatever it is that may be of risk to an employee; is that correct?

Ms AMIES — The duty on employers is to ensure that they have done everything reasonably practicable to maintain for employees a working environment that is safe and without risk to their health.

The CHAIR — And WorkSafe do not do particular tests or whatever because they expect the employer to do that testing to ensure that the environment is safe?

Ms AMIES — The obligation is on the employer. Our role is to ensure that the employer complies — that they have done everything reasonably practicable to ensure the health and safety of their workers.

The CHAIR — In that reasoning, and what has just been said, it is an incentive to an employer not to do the testing correctly because then they cannot be prosecuted as the evidence will not stand up in court.

Ms AMIES — I think in hindsight there is no doubt that that could be a conclusion drawn. However, they did organise the testing to be done independently. We are not experts in that either in terms of the testing. What does that mean in terms of, if a prosecution is going to take place, what advice and guidance needs to be given to employers? That is something that WorkSafe does — provide advice and guidance — so this is something for us to consider in the future.

The CHAIR — How serious is that — that an employer does not do the right thing by doing proper testing and therefore they are rewarded for it because they cannot be prosecuted. Surely this is an urgent and immediate thing that WorkSafe would have been looking at when they were doing the investigation, so you would have given some consideration to that problem by now, would you not?

Ms AMIES — At the time I think what we were doing was managing the investigation in terms of what evidence we had in place. Absolutely I agree in terms of how that is collected. I think we do not go into every situation in terms of inspections with the outcome that it may lead to prosecution. However, in this case I agree that there is some role for WorkSafe to ensure and work with other regulatory bodies around how we actually collect evidence, and importantly ensure particularly with such complex issues where employers are required to have independent expert advice.

Ms WARD — Section 35 says that WorkSafe took steps to ensure there were safe systems of work for the taking of water samples. How did you do this?

Ms AMIES — This means that they were taking water samples and that they were taken from multiple sources — —

Ms WARD — Sorry; who is 'they'?

Ms AMIES — The CFA through the contract they had in terms of water testing — and that they were taking them from multiple sites, not just one source.

Ms WARD — So under your own recommendations they are still engaging in testing practices that still would not hold up in a court of law.

Ms AMIES — We know that now.

Ms WARD — Why did you not know it then?

Ms AMIES — I cannot answer that, because I was not there at that point, but obviously, with such a long investigation with a lot of detail and a lot of thinking about the approach, then I can say that we can say that we know that now. But at the time I believe to the best intent we were working with the CFA to ensure that they complied and that they were testing from multiple sources.

Ms WARD — Do you feel that firefighters were kept safe at Fiskville?

Ms AMIES — I think that firefighters clearly do not believe so. There is no doubt. There has been a lot of attention about that. I think that what is important in terms of this case is understanding what safety means for workers as much as it means in terms of the obligation on the employer. The record in Victoria in terms of us having such a good outcome in terms of safety is when workers and employers work together and have a conversation and understand what that means. I think that for me to have an opinion about whether firefighters are safe or not is based on — —

Ms WARD — Were safe.

Ms AMIES — For WorkSafe to have an opinion on that, at this time we believe that the CFA did have practices in place that would have maintained their safety. However, as more and more information came out and decisions have been made about the site, the complexities of the site and the contamination of the site, the government has made the decision that it is unsafe.

Ms WARD — Where is your investigation up to regarding the storage of water in tanks at Fiskville?

Ms AMIES — We have an ongoing investigation, so I do not think it is appropriate for me to comment on a current investigation.

Ms WARD — How much longer does it have to go? And how long has it been going for?

Ms AMIES — I think that, as I have said, what is important for us is that we do a thorough investigation that ensures that it will result in a successful prosecution.

Ms WARD — When did the investigation into the tanks begin?

Ms AMIES — I do not have the date in front of me.

Ms WARD — Do you know if a planning permit was issued to locate these tanks and what planning was put in in terms of how to situate the tanks and what was the safest place to put them based on the pollution that was on the site?

Ms AMIES — No, I am not aware.

Mr RICHARDSON — Just going to the Act, under section 7, subsection (c), it imposes an obligation to monitor and enforce compliance with the Act and the regulations, and then under (d), to administer, examine, review and make recommendations. How often during that 1991 period through to present-day was WorkSafe and its equivalent actively monitoring and examining Fiskville?

Ms AMIES — I am aware because I did confirm how many visits. From 1991 to 2011 we had visited the Fiskville site 117 times. Once WorkSafe became aware of the concerns around water quality, as I said, we attended immediately at that time, and then obviously through the investigation there has been a significant number of visits to that site.

Mr RICHARDSON — One-hundred and seventeen visits from 1991 through to 2011. It sounds as well that WorkSafe was relying on the CFA and their independent advice or expert advice; is that standard practice for private sector employers to rely on their independent advice or their assurances?

Ms AMIES — In terms of the water testing?

Mr RICHARDSON — Generally in terms practices of safety, their assurances — —

Ms AMIES — We would expect employers would absolutely be seeking advice in terms of risk and the reduction of risk to hazards. We also expect that they would be referencing standards, both state and national standards. It does not take away the obligation on the employer, though.

Mr RICHARDSON — How do you enforce that?

Ms AMIES — With any visit from an inspector our role is to look at, and with Fiskville we looked at, known hazards and risks at the time, and we confirmed that the CFA had put in place a safe system of work around ensuring a reduction to the risks associated with any hazard on site. If they did not, we would also reference them to standards or guidance material as well as using the different tools we have to enforce — so improvement notices.

Mr RICHARDSON — I take that to the point of those 117 times. Obviously there is a power under section 98, the power to enter under the act, it allows to enter immediately and undertake risk assessments, so for each and every one of the 117 incidents is there a report generated?

Ms AMIES — That is correct.

Mr RICHARDSON — In each of those 117 occasions — and I know I am asking in general here — was there non-compliance?

Ms AMIES — Not in all, but in some. There were improvement notices issued over the course of that time on different issues and follow-up to confirm that they had complied. I would like to say that we do not only talk to the employer; we also talk to employees. We also look at records and documentation to confirm that there are systems in place.

Mr RICHARDSON — The powers under section 99 are quite expansive with photographing evidence and documentation. Is that sensitive material? Can that be provided to the committee?

Ms AMIES — In terms of the 117 visits I thought we had submitted some information against all the reports on those, but are you saying that you believe you have not received the full — —

Mr RICHARDSON — No, so they are not protected. We can have access to that information?

Ms AMIES — Yes.

Mr RICHARDSON — Leading to those sections, are you familiar with the Monash Health study that was commissioned by the CFA in 2014, and do you accept that its findings found a link between 16 deaths of firefighters during the time at Fiskville?

Ms AMIES — I do not question the report, no.

Mr RICHARDSON — Given that evidence, would you say that WorkSafe was complicit in the practices at Fiskville that led to the findings of the Monash study?

Ms AMIES — I do not believe we were complicit in terms of our role and what we were going out and doing from that time. One of the things that I know in terms of working at WorkSafe is that our inspectors and our investigators take their role incredibly seriously, and they do believe that they have high integrity and they do not want to compromise not only their role but also any aspect of the requirement in terms of their ability to regulate workplaces against the Act.

Mr RICHARDSON — Sure. From the evidence tabled so far there seems to be consistency in relying on the statutory authority to undertake that work and trusting the word of the statutory authority that they were complying. So with the statutory authority where those findings have been made, how does WorkSafe then sit in that regard where there is a link, where an independent health study, commissioned by the statutory authority, found that the practices were wanting?

Ms AMIES — A health study by the CFA, or by — —

Mr RICHARDSON — Commissioned by the CFA, that was undertaken by Monash.

Ms AMIES — CFA, not by us, yes, sorry.

Mr RICHARDSON — How does that fit in then with WorkSafe, where we now have a situation where that study says that there could be a link between the casualties at Fiskville? How does WorkSafe then sit in that regard with those findings?

Ms AMIES — It is not for me to question the findings of a research proposal.

Mr RICHARDSON — Taking you back to section 21, which is a very strict obligation of reasonability — and let us acknowledge that firefighting training is a risk in itself — if there are unacceptable risks in that regard and if there is a link that has been found, would you conclude that the CFA could have done more in their reasonability to have averted those circumstances over those years?

Ms AMIES — We would have to do our own assessment against what is reasonably practicable for an employer to ensure that they are absolutely maintaining to the highest standard the health and safety of their employees. So we would take into account any findings or any evidence, as I have said before, in terms of any future guidance material or information that we believe needs to be provided to employers.

Mr RICHARDSON — So relying on the advice of the CFA, and I have a letter here that is signed off by Jarrod Edwards, who is the director of the workplace hazards and hazardous industries group, on WorkSafe letterhead. It talks about this:

WorkSafe was advised that control of risk to health and safety from the use of recycled water is being achieved by the exclusive use of mains/town water ...

And that is something that has been touched on. It then goes on to say:

CFA also advised that an environmental consultant has been retained to assist management in reviewing and addressing health, safety and environmental issues relating to recycled water at Fiskville.

Is that assurance from a person commissioned by the CFA enough for WorkSafe?

Ms AMIES — Sorry, I am not quite sure what you are — —

Mr RICHARDSON — Is it enough that a third party commissioned by the CFA advising WorkSafe that everything is fine: is that generally sufficient?

Ms AMIES — I am not sure — —

Mr RICHARDSON — Does WorkSafe do any further investigations or independent assessments itself?

Ms AMIES — In terms of challenging the expert advice that has been given to the CFA?

Mr RICHARDSON — No, compliance — ensuring compliance under section 7(c) and (d). Is that the only stipulation then that WorkSafe would rely on? Is that the practice across the sector, where advice commissioned by the employer is sufficient for WorkSafe?

Ms AMIES — There would be multiple things that we would be looking at in terms of compliance. It would not be just one aspect of compliance. I do not have the letter in front of me. Usually we would look at multiple issues to confirm compliance. If the issue was on one aspect — if the compliance notice was on that water testing was conducted by an expert, then that might be what it is referencing.

Mr RICHARDSON — Is it a case that WorkSafe would simply never dare to question the authority of the CFA to run their own facility and would not dare step onto Fiskville and issue notices against a statutory authority?

Ms AMIES — Since 1991 we have been issuing improvement notices, so we would absolutely continue to do that in terms of our ability to regulate all workplaces in the state.

Mr RICHARDSON — Would you say, then, that given the conclusions reached over time in the Joy report that WorkSafe was in their obligations to enforce section 21 and section 22, deficient in that responsibility, given what we have seen in 117 inspections yet we have some significant findings of practices just not being followed?

Ms AMIES — The 117 inspections were not in relation to the water quality. As I have said, the water quality in terms of our role and our inspections only started in 2011, so that is what you are referencing, I believe, from the Joy report — the water quality and contamination.

Mr RICHARDSON — Broadly. It is no secret in the Joy report as well the suggestion of chemicals being buried and covered up. Has WorkSafe done anything to investigate that during that time? Was there any assessment by WorkSafe? That is written in the Joy report. What did WorkSafe do to ensure that those issues and those chemicals were not posing a risk?

Ms AMIES — As part of our investigation in terms of the 131 and ongoing investigations, that is something that we confirm. So that is ongoing.

Ms WARD — So you are still looking to prosecute the CFA in the future possibly?

Ms AMIES — We have a second investigation currently; that is correct.

Mr RICHARDSON — In light of the Monash study and the findings from the Monash study, is WorkSafe undertaking any investigation into those practices throughout that time and their effects particularly on those people?

Ms AMIES — We have got a second investigation. We have done a current investigation and that is currently sitting with the DPP as part of the 131 to confirm any recommendation from the DPP. So I do not think it is appropriate for me to discuss any aspect in detail about the investigations, because they are ongoing.

The CHAIR — I think we understand, and we do not want in any way to jeopardise or call into question any ongoing legal actions or potential actions. So we understand that.

Mr RICHARDSON — Just going quickly to section 22, ‘Duty of employers to monitor health and conditions etc.’, under subsection (1):

An employer must, so far as is reasonably practicable —

...

(c) provide information to employees of the employer ... concerning health and safety at the workplace ...

Are you familiar with the circumstances of Alan Bennett, a CFA firefighter who for many years tried to obtain those details, those health records and the assessment of those issues? How does WorkSafe ensure compliance with disseminating that information to an aggrieved party?

Ms AMIES — Our role from 2011 in terms of the requirement to test the water, the CFA was required to report that. That was from 2011. We did make a requirement that they had to report those test results, and they did that because we continued to follow up and confirm, based on the results and any changes in those results.

Mr RICHARDSON — That is some 15 years on. This was a circumstance through the late 80s and into the 90s, an incident. This was not related to water; this was related to chemicals. How does WorkSafe ensure and enforce that an employee is able to access that information under subsection (1)(c)?

Ms AMIES — If we were notified by the employee that the employer was refusing to release information that confirmed that they were working in an environment in terms of its health and safety, we would definitely visit and look at that issue. That could result in an improvement notice or any other action in terms of our ability to make sure that employers are complying with the Act.

Mr RICHARDSON — Extrapolating that further beyond the boundaries of Fiskville and then to the general community, under section 23, ‘Duties of employers to other persons’, are you familiar with the circumstances facing the Lloyds, adjacent to Fiskville?

Ms AMIES — I am aware.

Mr RICHARDSON — Are you aware of any steps that the CFA had undertaken to disseminate that information to the Lloyds in regard to practices at Fiskville that impacted upon on those persons and their property?

Ms AMIES — I think in relation to the complaints received in terms of concerns by neighbours, that absolutely there is a number of regulators involved in that. Unfortunately, I believe that that was not handled as

well as it possibly could have been. I think in the future and what we have put in place already is a better relationship with the EPA, so we have made decisions in terms of the review and strengthened our MoU. We have gazetted under section 10 of the OHS act our ability to release information and share information with the EPA and other bodies.

I think in terms of better improvement and cooperation across all of those involved — so ourselves, EPA, the Department of Health and local councils — absolutely is something that I am taking forward and that we are actively working on with those groups, and I think that that is a good outcome but it does not resolve in terms of the complaints of the past.

Mr RICHARDSON — Has WorkSafe had any contact with the Lloyds?

Ms AMIES — There has been a number of complaints by — sorry, there was another neighbour that we have received complaints from, Callow. We have had a number of interactions with Callow in terms of the complaints that we have received. We have obviously referred and indicated in terms of their follow-up with the EPA or with local council. As I said, I believe that what we did not do is also follow up that that occurred and that they were satisfied with that response. As I said, we are actively engaged now with the EPA and we are working very closely together to ensure that consistently where we cross over we are working better together.

Mr RICHARDSON — So you cannot confirm whether adjacent properties have been contacted by WorkSafe?

Ms AMIES — Not the Lloyds. Not today, I cannot, no. But again I can provide it; I do not believe we have provided that information.

The CHAIR — That would be good, thank you.

Mr RICHARDSON — Just going back to the duties of employers to employees under the act and in light of the Monash study and the references to prosecution, given the reliance on the individual or the relevant employer and that compliance, what threshold would WorkSafe have to satisfy to then undertake actions or proceedings?

Ms AMIES — To prosecute, you mean?

Mr RICHARDSON — As a general term.

Ms AMIES — The role of any of our investigations and our prosecutions is to be able to prove beyond reasonable doubt that there has been a breach to the OHS Act and that we are able to gather the evidence required for possible prosecution that would actually determine that that prosecution would be successful.

Mr RICHARDSON — How many prosecutions does WorkSafe generally undertake in a year?

Ms AMIES — It is over 100.

Mr RICHARDSON — Is that generally mostly in the private sector? What is the breakdown? How many statutory authorities has WorkSafe engaged in proceedings with?

Ms AMIES — I do not have that in front of me in terms of the breakdown. I know the total number, but I do not have the breakdown in terms of those prosecutions.

Mr RICHARDSON — Do you accept that it would have been very difficult for WorkSafe to initiate proceedings against a statutory authority such as the size of the CFA or any other statutory authority?

Ms AMIES — I understand what you are saying. I do not believe that the reason not to prosecute had anything to do with it being a statutory authority.

Mr RICHARDSON — And that is despite the 117 visits, some issuing improvement notices under the Act and then the findings later on in the Monash report that you do not challenge?

Ms AMIES — In terms of our role in terms of enforcement, improvement notices are part of our enforcement activity under the Act, so again we do not make decisions around whether or not to prosecute based on who the duty holder is.

Mr RICHARDSON — Just one final question. There is a letter from the CFA that I just wanted to refer to that talks about a letter of assurance coming from WorkSafe of safe practices towards the end of 2012. Is it common practice for WorkSafe to issue assurances on behalf of employers?

Ms AMIES — I believe that I know the letter you are referring to, and that is not a letter of assurance and it is not our practice to provide letters of assurance.

Mr RICHARDSON — So WorkSafe does not engage in providing letters of assurance; it is upon the employer as a strict liability?

Ms AMIES — That is right. Often when there has been an improvement notice we do follow up to confirm that they have complied with the improvement notice. This is factual information around what improvement was required and therefore whether they have complied with that. That is not a letter of assurance. What we did is we acknowledged compliance — in terms of the letter we have acknowledged compliance within the improvement notice. We have not provided assurance.

Mr RICHARDSON — Clarifying that again, in this letter of 3 October from Jarrod Edwards, the last paragraph says:

WorkSafe acknowledges the continued operation of the Fiskville training facility in accordance with the risk controls and assessments with dangerous goods and firefighting water presented during [the inspection on] ... 6 December 2011.

Would you say that is not an assurance?

Ms AMIES — That is right. I am saying that is a letter acknowledging, because the first two paragraphs indicate quite clearly. They are very factual: there was an improvement notice, and it is acknowledging that they have complied with that improvement notice.

Mr RICHARDSON — So what is the point of issuing an improvement notice if there is no ability to assure its compliance? What is the point?

Ms AMIES — It is acknowledging that it has been complied with. We do not give assurances, ever, that any workplace is free from risk or harm. That is the role of the employer and at any time, and in this example, we can see new information comes out and things change. It is important that we absolutely stay independent as a regulator and not provide assurance.

Mr RICHARDSON — So if you cannot make an assessment, how does that accord with section 7(c) that says the overarching principles and functions of the authority are ‘to monitor and enforce compliance’?

Ms AMIES — That is correct.

Mr RICHARDSON — How do you enforce compliance if you cannot acknowledge whether the regulations have been met or not?

Ms AMIES — I am agreeing with you. It is about acknowledging that there is compliance.

Mr RICHARDSON — So really, what you are saying, then, is if you cannot enforce, then there is no ability ever to prosecute?

Ms AMIES — No. We do enforce. There is a number of tools that we have to enforce, and we use them on a daily basis.

Mr RICHARDSON — So you cannot then make an assessment whether that has been enforced, but you acknowledge that it could be enforced?

Ms AMIES — In the letter you are referring to we have acknowledged that they have complied,

Mr RICHARDSON — Generally.

Ms AMIES — Any improvement notice that we would issue, we would follow up to ensure that there was compliance. If there was not compliance, that may result in a prosecution.

Mr RICHARDSON — Okay, thank you.

Mr RAMSAY — I just have a quick question. I want to go back to the standards for E. coli bacteria in some of the water storages around Fiskville. In the documents WorkSafe provided to the committee there were two letters — and I have one here — from Wynsafe Occupational Health Services in 2009.

The CHAIR — We will just provide a copy of that.

Mr RAMSAY — It is about a CFA proposal to change the standard of safe levels of E. coli bacteria from 10 organisms per 100 millilitres to 150. The understanding I had is that the CFA were having significant problems in meeting that standard, in fact the CFA, not just at Fiskville but in fact at a whole number of training sites right across Victoria, were having trouble meeting that standard. There was a response, but I was quite interested to know whether WorkSafe had some discussions with the health department and the EPA about these requests from CFA to list the standard 15 times greater, actually, than the current standard for safe levels. I have to say that other countries have higher levels of E. coli that are deemed safe for firefighter use training, so it is not unusual. I am just wondering where WorkSafe sits with that request and what discussions you have had with other regulatory bodies?

Ms AMIES — It is not our role to regulate in terms of the standards. It is appropriate that the CFA has written to the Environment Protection Authority, and it is not our role to engage in any influence over their role as a regulator in terms of water standards.

Mr RAMSAY — It was more in line with there was quite a large amount of evidence presented to this committee about firefighters that have been surveyed having rashes and other things associated with bacteria in the water storages. I guess from a WorkSafe point of view, an occupational health and safety point of view, you might have some concern, I would have thought, on the CFA wanting to increase the E. coli standard to 15 times greater than what was the accepted standard at the time. I am not asking you to provide a regulatory comment, more a comment about that there seems to be enough evidence to suggest that the bacteria in the water was having some impact on the health of the firefighters.

Ms AMIES — We would definitely look at the risk of exposure and what the CFA was doing to ensure there was reduced risk of exposure, but I am not an expert or it is not our responsibility to determine what those standards are. Our role is to ensure that if that is the standard and it is causing harm to obviously investigate and look at that.

Mr RAMSAY — Was there any discussion between WorkSafe and the EPA or the Department of Health in relation to that request?

Ms AMIES — Not that I am aware of, no. As I have said earlier, I think that in terms of my time in the role we have been engaged very proactively, as has the EPA with us. As I said, we have gazetted our ability to share information between the two agencies, and we think that out of not only the Fiskville example but where we cross over as two regulators it is important that we work together in the future, and we have already embarked on that. But at this time, no, I do not believe that we did have any conversations around any decision around this.

The CHAIR — Thanks for the time today. I will just go back to when we first started our discussions. I referred to a letter from Davies Lawyers. This was regarding section 131. Do you have a copy of that letter as yet?

Ms AMIES — Not in front of me, no.

The CHAIR — We paused on that questioning because you did not have the letter. I just thought we had better not forget about it.

In terms of what we have been discussing today and the evidence that you have provided, I have noted that you have said on a number of occasions ‘in hindsight’, ‘doing things differently’. I go back to that first question I asked, which was: do you think that there has been a failing of regulatory bodies and that this has been highlighted and shown to be the case in what has occurred at Fiskville?

Ms AMIES — I think I can comment on WorkSafe Victoria, not all regulatory bodies, and I think that when we undertake any complex investigation or have a long history in terms of our inspections and our role with an employer and with the volume of reports that we have available to us, that I would not be sitting here saying that there is nothing that we could do differently and there are no lessons to learn in terms of going forward. So there is definitely ability for us to learn from all of these situations to ensure — as I have said a few times, it might be guidance material, it might be a range of ways that we may ensure — that we are able to adhere to and administer the intent of the legislation.

The CHAIR — Okay, but I guess the concern is that in the meantime people are exposed to dangerous situations, and it has taken a long, long time. But getting onto the issue about section 131 of the Occupational Health and Safety Act — and, just to remind everybody, that is the provision whereby an organisation or a person can request a prosecution, that WorkSafe mount a prosecution. In this case it was the United Firefighters Union seeking, through their legal representatives, for a prosecution against the CFA in respect of the water quality and other matters at Fiskville. You were talking about the process that WorkSafe undertakes when there is a request, and I think you were saying that you do not think the law was broken; is that correct?

Ms AMIES — I understand that in terms of the legislation the requirement is three months. However, as I have stated before, where there are very complex investigations that require us to look back over a significant amount of time, we would contact the party who had requested the section 131 and consult them on that this would take longer than the three months.

The CHAIR — And as I understand that, you did. There is a list. I think we have a number of pieces of correspondence, I think four or five pieces of correspondence, where WorkSafe was advising the UFU that they had not finished the investigation. But I suppose the concern is that the letter that you have just been provided with, dated 25 March 2013 — and that is, as I said, written by Davies Lawyers on behalf of the UFU — and I go down to dot points (d) and (e), where it says:

You are aware that our client requires the issues concerning Fiskville to be fully and properly investigated.

You are also aware that WorkSafe is currently in breach of its statutory obligations concerning its requirement to respond to our client within a 3-month deadline.

How did you respond to that?

Ms AMIES — I do not have the — are you asking me, ‘How do I now?’?

The CHAIR — Yes, or how did WorkSafe respond to this?

Ms AMIES — I do not have a letter in terms of our response to this, so — I do not have that letter in front of me in terms of how we did respond.

The CHAIR — Okay.

Ms AMIES — But we would have responded.

The CHAIR — I guess the thing is there is legislation that says there is a requirement for WorkSafe to investigate within three months. You have an aggrieved party, where they have asked for that investigation. It has not happened. There is concern about those that they represent being at risk and in danger. Where do they go? They say that you are breaching the legislation. You say, ‘Can’t be helped’. What should happen?

Ms AMIES — Well, as I have said, I think that in terms of and included in the letter, for us to be able to fully and properly investigate, we would not have been able to do that in the three-month term, and that is clearly a limitation in terms of our ability for very complex investigations that go over a significant amount of time and that require quite an extensive collection of documents and evidence. So I absolutely appreciate that it has taken much longer — it did take much longer — than what the section 131 requires, but our intent was

always to do a proper and thorough investigation and to ensure that beyond reasonable doubt we could collect evidence for a successful prosecution. That was the intent and that is what the focus of our investigators was.

The CHAIR — Yes, but as the chief executive officer, who I assume has responsibility for the governance of an organisation, do you believe that it is good governance that the organisation that has a piece of legislation that it is required to adhere to is able to breach that legislation when and if it sees fit?

Ms AMIES — I think — —

The CHAIR — Because this is what has happened. You might have fantastic reasons, or WorkSafe may have had fantastic reasons to delay — I am not saying they did, but they may have — yet is that good governance for that organisation to be able to then say to itself, ‘Well, we’ve got good reasons; we don’t need to follow the law in this case’?

Ms AMIES — I think for us to do a thorough and full investigation, that if it takes longer, that we need to consult and advise that it would take longer. As I have said earlier — —

The CHAIR — Should the law be changed, then?

Ms AMIES — That would be a matter for the government.

The CHAIR — But there is no commitment from you that you will follow the law in future?

Ms AMIES — We absolutely are committed to follow the law in future. And as I have said earlier — —

The CHAIR — In particular — —

Ms AMIES — And I have said earlier — —

The CHAIR — clause 131, the three-month limitation?

Ms AMIES — That is a — there is a limitation to our ability for very complex cases to be done within the three months. I have acknowledged that, and I agree with you, but that is very difficult in terms of the current legislation. So our response has always been to conduct a full investigation, and sometimes — not just in Fiskville, there are other cases where we have requested — it will take longer.

The CHAIR — So more than one. It just seems —

Mr RICHARDSON — Is it regrettable that it took the United Firefighters Union to commission this investigation or get this investigation underway rather than a proactive approach from WorkSafe to occupational health and safety?

Ms AMIES — There is a number of ways that we can commission an investigation. I would not want to take away that the United Firefighters Union actually brought this to our attention and that it was important that we absolutely investigate it based on that. In terms of our role and our ability to have investigated and made that decision, at that time there was not a referral made for an investigation internally. Those are the facts; that is absolutely right.

In terms of whether that is regrettable or not, I cannot change the facts of that, and I do respect that there are multiple ways that an investigation can occur and it can occur by an external body bringing that to our attention. There is a large number of workplaces across the state and we rely on our employers, employees, employer representatives and industry groups and unions to work with us to ensure the health and safety of workers in the state is absolutely a no. 1 priority and is paramount in this state.

So I think that in terms of the intent, we get multiple ways that people will come to us with information that then we will embark on investigating that information with the focus to ensure a successful prosecution, and that would not change.

Mr RICHARDSON — If it had not been for the UFU in that situation, WorkSafe would have been absent in the field, there would be no investigation, and the assurances from the CFA might have carried through to present day?

Ms AMIES — That did not happen. You are right; it took the UFU letter for us to investigate.

Mr RICHARDSON — Thanks.

The CHAIR — Just in wrapping up, in terms of the investigation and the length of time it took, I am assuming you got some advice to say that the sampling was not to be relied on; is that correct?

Ms AMIES — I want to be careful in terms of that sitting with the DPP.

The CHAIR — All right. Sure. Okay.

Ms AMIES — But what I am saying is that all evidence — —

The CHAIR — Was it just one opinion? One of the things that has come up many times here is that —

Ms AMIES — How many opinions?

The CHAIR — only one opinion has ever been received, and there are all these disputes and disagreements about various things, so more than one opinion on that one?

Ms AMIES — We seek legal counsel, and within our own organisation as well.

The CHAIR — But there was more than one opinion?

Ms AMIES — We seek multiple opinions around and conference around our approach to prosecutions and making sure that we are staying focused on what we believe we can prosecute an employer against in terms of the act.

The CHAIR — Okay. Thanks.

Ms WARD — I have just got a very quick one about the dams. You are aware that the MFB stopped using Fiskville in July 2012 because of concerns regarding the quality of the water and how it was being used in training. How does this correspond with WorkSafe believing that mains water was being used from 2011?

Ms AMIES — At the visit in 2011 the CFA confirmed that they were using towns and mains water.

Ms WARD — But in July 2012 you have got the MFB taking the unprecedented step of saying, ‘We can no longer use this facility because of the quality of the water here because you’re using recycled water from the dam’. How is WorkSafe able to reconcile that it is still using mains water?

Ms AMIES — So that is part of the — obviously in terms of any investigation at that time, it would have been looking at that they absolutely had informed us that they were using the town and mains water, and we would confirm that. So, again, it is collecting the evidence so that we can confirm that that was occurring.

Ms WARD — So is it possible that the CFA lied to you?

Ms AMIES — I cannot comment on that, because that is about collecting evidence and ensuring that the information that we receive is correct at the time we receive it.

Ms WARD — Okay. Thank you.

The CHAIR — Thank you very much for your time today.

Committee adjourned.