

Questions on Notice and Supplementary Questions
Legislative Council Standing Committee on Law and Justice
2019 Review into the Dust Diseases Scheme

11 February 2020 hearing – SafeWork NSW

QUESTIONS ON NOTICE

QUESTION 1

The Hon. DANIEL MOOKHEY: *One of the things which, I think, Ms Webb, you elucidated it in your statement was the improved rate of compliance with prohibition notices. Is it possible – either on notice or not – that we get this Standing Order [SO] 52 return updated to reflect the date of compliance from the date of enforcement, given that you and/or the Minister has said that since this SO 52 was provided there has been a sharp turnaround in improvement? So we can get this updated to get the latest dates of compliance?*

ANSWER

The response to the SO52 was submitted on 28 November 2019. At this date:

- SafeWork NSW had completed 523 manufactured stone visits at the 246 fabrication sites:
 - 699 notices had been issued, of which 656 were improvement notices and 43 were prohibition notices.
 - 531 of the 656 improvement notices related to silica, and follow-up visits confirmed 88 per cent (621 of 699) had fully complied with the notice requirements.
 - Follow-up visits were being scheduled for the remaining 78, noting the majority of these related to health monitoring (screening) and the wait time was March 2020 at the Pitt Street clinic and April 2020 for the lung bus.

As at 11 February 2020:

- A further 39 matters have been completed, with follow-up visits now confirming 94 per cent of all notices (660 of 699 have fully complied with the notice requirements).
- Follow-up visits for the remaining 39 notices are underway (31 improvement, 8 prohibition).
- 13 of the 31 improvement notices relate to health monitoring (screening), noting the wait times listed above.
- The other improvement notice follow-ups relate to personal protective equipment, safety data sheets, falls, hazardous chemical registers and electrical.
- Of the 8 outstanding prohibition notices, 5 relate to falls, 2 relate to the removal and replacement of equipment and 1 relates to revised cleaning procedures/processes.



SO52 SafeWork
NSW interventions - r

QUESTION 2

The Hon. DANIEL MOOKHEY: *Are you aware that the ACCC is due to make its interim finding sometime this month and public submissions have closed?*

Ms McCOOL: *Yes, a letter was received yesterday.*

The Hon. DANIEL MOOKHEY: *I am looking at the organisations that provided submissions to the ACCC about this question. I see WorkSafe Victoria, your equivalent body in Western Australia and*

South Australia but I cannot see anything from SafeWork NSW or anything from any New South Wales government agency to the ACCC. Queensland has. Did you provide a submission to that?

Ms McCOOL: We did not provide a submission, we provided a letter of support for the industry initiative.

The Hon. DANIEL MOOKHEY: Will you table that letter of support because it is not public, therefore, if you did not provide it in the submission.

Mr DAVID SHOEBRIDGE: And also the letter you received yesterday from the ACCC?

ANSWER

Please find the SafeWork NSW letter of support dated 4 September 2019 and the email received from the ACCC on 10 February 2020. SafeWork NSW has subsequently requested the ACCC to publish the 4 September 2019 letter on its website (request sent 18 February 2020).



AESAG -Industry
accreditation scheme



Australian
Engineered Stone Adv

Further information concerning the AESAG initiative was captured in the NSW Manufactured Stone Industry Taskforce Final Report – section 8.1, page 20 – that was previously provided as a Question on Notice to the Committee. Please find a further copy of the report for reference.



FINAL REPORT -
Manufactured Stone I

QUESTION 3

The Hon. ROD ROBERTS: You paid for this: we have paid for this. Did you provide instructions as to when they go out to survey these organisations, these are the organisation heads we need to speak to and these are the areas we need to survey or did you just send them out and say “Survey these people.”

Ms McCOOL: No there are terms of reference which we can provide on notice.

ANSWER

The mid-point evaluation was undertaken to provide evidence-based recommendations to refine the current five-year project plan with a focus on its four key components – awareness (campaigns), interaction program (Inspector visits and events/presentations), research and legislation.

In terms of the Inspector visits, the following cohorts were surveyed:

- Employers (77), supervisors (18) and workers (16) - 111 surveyed.
- SafeWork NSW Inspectors – capability/training (9).

Please find the survey questions for:

- Employers, supervisors and workers
- SafeWork NSW Inspectors.



2787_SafeWork
NSW_Hazardous Chem



2787_Hazardous
Chemicals_Inspector I

QUESTION 4

The Hon. DANIEL MOOKHEY: But the Construction, Forestry, Maritime, Mining and Energy Union [CFMEU] has come before us and said that they recommended that dry cutting be banned and that they have advanced the proposition to the task force.

Ms MCCOOL: No. The CFMEU recommended that manufactured stone be banned.

The Hon. DANIEL MOOKHEY: Yes and incidentally in addition to that dry cutting. They gave that evidence to us directly as well. So when you say that was what the task force recommended, was that a unanimous finding of the task force or was it a majority finding if the task force?

Ms MCCOOL: I will have to go back but my recollection, knowing that the report is now somewhat a few months ago, was that it was around banning manufactured stone. That was the motion put to the task force.

ANSWER

Section 8.4 (CFMEU motions) of the NSW Manufactured Stone Industry Taskforce states (page 21):

On 5 November 2018, the CFMEU sought Taskforce support for the “prohibition” of manufactured stone. The majority of the Taskforce did not support this request.

All Taskforce members were advised that any views differing from the majority of the group could be raised separately with the Minister responsible for Taskforce - the Minister for Innovation and Better Regulation. The CFMEU met with the Minister on 10 December 2018.

As the Model WHS laws were under review at the time, the CFMEU were advised to raise a submission to Safe Work Australia, noting the various products that contain silica (natural and manufactured), safety data sheets and labelling (safety instructions) that are supplied with products and the various industries involved.

At 22 February 2019 Taskforce meeting the CFMEU proposed a motion for the Taskforce to write a letter to the Minister for NSW to adopt Safe Work Australia’s proposal for the silica exposure standard for all NSW Government construction contracts now, rather than wait for the National consultation period result. The motion was considered out of scope of the Taskforce’s terms of reference as it does not relate to Manufactured Stone and was also raised by the CFMEU in the NSW Government pre-election caretaker period where SafeWork NSW and other NSW Government members advised that they are required to abstain from participating in any significant policy decisions.

On 3 May 2019, the CFMEU requested the Taskforce to support the “substitution” of manufactured stone. Substitution in the hierarchy of controls is already available. Businesses and consumers can instead choose marble, granite, sandstone and other stone materials from the market.

QUESTION 5

The CHAIR: Are you aware of what New South Wales’ position was on the 0.05 versus 0.02 exposure standard?

Ms WEBB: Yes. We supported the ultimate recommendation that Safe Work Australia made.

The CHAIR: The 0.05?

Ms WEBB: Yes.

The Hon. DANIEL MOOKHEY: That brings us to an issue because they were disputing whether they made that recommendation or whether they were actually channelling the views of their members. Can you clarify that for us? Was that a Safe Work Australia recommendation or did you all provide a view and then they collated it and reported back to you?

Mr DAVID SHOEBRIDGE: We are now going to have a philosophical discussion about what Safe Work is because they were saying that their council came up with the recommendation, not the CEO and their staff.

The Hon. TREVOR KHAN: I do not think it takes us terribly far.

The CHAIR: *To be fair, Ms Webb is not a member at the moment.*

Ms WEBB: *I could take it on notice from someone who was at the meeting and try to find out, if you like.*

ANSWER

In April 2019, both SafeWork NSW and the NSW Resources Regulator (the NSW WHS regulators) provided a submission to Safe Work Australia's national review of the silica workplace exposure standard (WES), as did several of our counterparts in other jurisdictions.

There were over 4,000 visits to the public comment web page and Safe Work Australia received 67 submissions for the silica WES. A wide range of stakeholders provided input including industry groups, unions, mining stakeholders, academics, government agencies, occupational hygienists, medical experts, peak bodies and laboratories.

On 30 May 2019, the public comment results were presented to the National Strategic Issues Group for Work Health and Safety (SIG-WHS). The majority of submissions were confirmed as not supporting the proposal for 0.02 mg/m³, with a third of these recommending 0.05 mg/m³. Reasons cited included the limitations of a health-based evaluation (cumulative assessment preferred), measurement and analysis reliability at 0.02 mg/m³ particularly for extended work shifts (more than 8 hours); and compliance and enforcement.

Following extensive discussion, SIG-WHS agreed to recommend to Safe Work Australia (SWA) Members:

- a reduction in the workplace exposure standard to a time-weighted average (TWA) – 8 hours of 0.05 mg/m³
- that the reduction be implemented as soon as practicable but by a date no longer than three years from any ministerial decision, and
- that investigation be undertaken into measurement and practical considerations that would enable a future reduction to 0.02 mg/m³ by WHS Ministers.

Both SIG-WHS and SWA Members have a regulatory representative from each jurisdiction, as well as two worker representatives (2 x Australian Council of Trade Unions) and two business representatives (Australian Chamber of Commerce and Industry & Australian Industry Group).

The SWA Members supported the above position on 31 July 2019 and referred to WHS Ministers for decision. In November 2019, the majority decision by WHS Ministers also supported the above. Victoria commenced under the reduced WES in December 2019, with New South Wales, Queensland and South Australia to commence on 1 July 2020.