

# Better Regulation and Innovation

## Budget Estimates 2019-2020

### Supplementary Questions

Questions from the Hon Mark Pearson MLC

#### General Questions

**1. It is my understanding that the greyhound racing industry is building an 'investor model' where there is shared greyhound ownership.**

**(a) Are you concerned that promoting investment in the industry without direct responsibility to care for the dogs undermines the reforms to enhance animal welfare?**

**(b) Would you consider introducing regulations whereby anyone investigating in a greyhound syndicate of this nature, be required to have a plan in place for how the greyhound will be looked after when it retires?**

**2. I have been advised that there are large numbers of young greyhounds that are abandoned when they fail to perform or are injured whilst training. The owner leaves the failed dog with the trainer and then the trainer either kills the dog or abandons the animals at the local pound.**

**(a) Is your Department aware of these practices?**

**(b) Have any investigations of trainers or inspection of council pound or RSPCA records been undertaken?**

**(c) If so, what were the findings?**

#### ANSWER

1. I am advised by the Greyhound Welfare & Integrity Commission (Commission) that:

(a) the Rules of Racing (Rules) provide for partnership and syndicate ownership of greyhounds. All partnerships and syndicates must nominate a group manager, who is the direct point of contact for the group of owners. Responsibilities of managers are set out in the Rules.

(b) managers are required to ensure that partnerships and syndicates comply with the Commission's Greyhound Rehoming Policy. All industry participants will also be required to comply with the NSW Greyhound Welfare Code of Practice when it comes into effect.

2 (a-c). I am advised by the Commission that it has no knowledge of these practices in the greyhound racing industry at this time.

The Commission regularly inspects facilities used by trainers and conducts investigations of these facilities and other locations as and when necessary.

#### Breeding

**3. The Government does not charge a fee for either a new greyhound breeding licence or a renewal of the licence. What is the policy reason behind this?**

**4. We know that excessive numbers of dogs are born into the industry, leading to wastage. Do you think that imposing a fee may act as some kind of disincentive to people obtaining a licence and adding to the numbers of greyhounds being bred?**

**5. The current fee for greyhound litter registrations is \$50. On 1 July 2019, this was reduced from \$150 due to the 'recent introduction of online services. However, my staff have called up Greyhound Welfare and Integrity Commission and been told that it is not possible to register a litter online.**

**(a) Is there some kind of financial consequence or penalty if a breeder ends up breeding a high proportion of pups who are not used for racing, thereby contributing to 'wastage'?**

**(b) How many applications there have been to allow a female greyhound to breed over three litters since the establishment of the Commission on 1 July 2018?**

**(c) How many applications have there been to allow a female greyhound over 8 years of age to breed?**

#### **ANSWER**

3. I am advised by the Commission and Greyhound Racing NSW (GRNSW) that:

- the number of greyhounds whelped annually has more than halved since 2015, with the current rate of births adequate to meet the industry's current racing needs
- the imposition of registration or renewal fees for greyhound breeders would act as an unnecessary barrier to ensuring there are sufficient breeders to meet industry racing requirements
- the Commission, in partnership with GRNSW, has held forums with experienced breeders and trainers to discuss breeding practices in the greyhound racing industry, develop initiatives to ensure that a higher proportion of greyhounds bred are able to race, and consider how to safely prolong a greyhound's racing career
- the knowledge and insights from these discussions assist the Commission and GRNSW to understand breeding data, design policy frameworks to improve breeding outcomes and greyhound welfare and support the long-term sustainability of greyhound racing.

4. I reject the premise of the question- I am advised by GRNSW that historical issues with overbreeding leading have been addressed given the number of greyhounds whelped annually has more than halving since 2015. The current rate of births adequately meets the industry's current racing needs. The Commission also actively monitors breeding numbers in the industry, and its enhanced registration framework is being designed to enhance the skills of registered breeders and trainers so the utilisation rate is increased, while concurrently ensuring all newly-bred greyhounds have a home.

5.

(a) No

(b-c) Between 1 July 2018 and 24 March 2020, it approved 123 applications for greyhound to breed more than three litters or when over eight years of age. Since 19 January 2020, when system changes made it possible to report separately on these categories, five approvals were made for greyhounds with more than three litters and six approvals for greyhounds over eight years of age.

**Silica – Reduced Workplace Exposure Standards**

**6. Why haven't you protected workers and applied reduced workplace exposure standards to its own projects, given the clear understanding of the urgent need for the implementation of the stricter standard?**

**7. Why have you allowed elevated respirable silica levels to occur at Arncliffe as recently as August 2019?**

**8. Why has SafeWork failed to take action at Arncliffe with respect to work health and safety contraventions suspected contraventions concerning dust exposure?**

**9. Why has SafeWork failed to take action at Arncliffe with respect to work health and safety contraventions suspected contraventions concerning failure to conduct air monitoring?**

**10. Why has SafeWork failed to take action at Arncliffe with respect to work health and safety contraventions suspected contraventions concerning failure to provide personal protective equipment?**

**11. Why has SafeWork failed to take action at Arncliffe with respect to work health and safety contraventions suspected contraventions concerning failure to provide signage?**

**ANSWER**

6. The Workplace Exposure Standards for Airborne Contaminants contains the list of Australian workplace exposure standards (WES). It is published by Safe Work Australia and called up in Clause 5 of the Work Health and Safety Regulation 2017.

The latest update to this document (16 December 2019) reduced the WES for silica under the model work health and safety (WHS) laws to a time-weighted average eight hours (TWA-8 hours) of 0.05 mg/m<sup>3</sup>, with it to be implemented as soon as practicable but by a date no longer than three years.

The updated WES for silica does not have effect in a jurisdiction until it is implemented by that jurisdiction. Victoria commenced in December 2019, with New South Wales, Queensland and South Australia commencing on 1 July 2020. The remaining jurisdictions have not yet published a date.

The revised standard applies to all industries: manufactured stone, tunnelling, domestic and civil construction and foundry work – on the same date.

New South Wales will implement the revised silica standard almost 2.5 years before the national implementation cut-off date.

7 - 10. The Person Conducting a Business or Undertaking (PCBU) has the obligation to ensure the health and safety of workers and to ensure safe systems of work are in place under work health and safety laws.

On 21 November 2019, SafeWork NSW responded to a complaint associated with the use of Respirable Protective Equipment (RPE) site in Arncliffe (the site). The attending Inspector observed that workers were using appropriate RPE and there was appropriate signage at the site.

The complaint concerned possible previous exposure of workers not wearing RPE to respirable dust, respirable crystalline silica and diesel particulate matter between August to October 2019. As such, SafeWork NSW made further enquiries with the Person Conducting a Business or Undertaking (PCBU) and the local area supervisors.

Following review of documents produced in response to a SafeWork Notice to the PCBU, and consultation with the air monitoring provider, SafeWork NSW determined in December 2019 the requirement for mandatory use of RPE and the need for signage regarding silica exposure risks. The required signage had been installed.

Following a further SafeWork visit on 17 December 2019, part of the site was shut down after several workers were observed to not be using RPE that had been provided. All relevant workers were required to undertake a further induction, including on the use of RPE.

On 31 March 2020, SafeWork NSW's issued a Warning Letter to the PCBU in lieu of pursuing enforcement action, after SafeWork's Serious Incident Review Panel (SIRP) considered the information and evidence available and took into account the published *SafeWork NSW Prosecution Guidelines*. SafeWork is continuing to monitor for compliance with WHS requirements.

11. On 21 November 2019, SafeWork NSW observed appropriate signage at the Arncliffe site.

On 5 February 2020, SafeWork NSW received a separate complaint about signage at the site, associated with proposed high pressure water testing in January 2020. There are standard procedures associated with such work activities, which includes for example, exclusion zones and signage. However, no signage was required as the proposed high-pressure water testing did not proceed.

#### **Work Safety Lost in Better Regulation Restructure**

**12. Why was there no stakeholder engagement with industry and unions over such significant changes to safety regulation?**

**13. How can the public, and building workers be certain that Better Regulation inspectors will not be checking \$2 shop choking hazards in the morning, dropping in on a building site to check scaffold safety at lunchtime, before heading off to the greyhound races to ensure races are being run safely for the afternoon?**

**14. Are inspectors working across different industry areas?**

**(a) How does this ensure safety is maintained in technical and dangerous areas such as checking scaffolds have been erected safely?**

**15. How much was spent on new:**

**(a) departmental names**

**(b) letterhead**

**(c) websites**

**(d) livery, uniforms**

**(e) business cards**

**(f) brochures**

**(g) signage**

**(h) any other items that needed to be changed to accommodate these changes?**

**16. How many inspectors were employed prior to the merger/changes?**

**17. How many inspectors are now employed after the merger/changes?**

**18. Can you confirm that no further inspectors will be cut in order to meet efficiency dividends and budget cuts imposed by the Treasurer and Premier?**

**19. What proportion of regulated worksites are scheduled to be physically inspected by a Better Regulation inspector?**

**20. Is this sufficient to prevent another young worker dying like Christopher Cassaniti?**

**21. Will you implement the changes that Christopher Cassaniti's mother has called for in order to protect other young workers from dying at work?**

**(a) If not, why not?**

#### **ANSWER**

12. The BRD Realignment changed the internal structure and organisational design, it did not impact the individual brands/regulatory bodies within the structure. SafeWork NSW remains the NSW workplace safety regulator, when industry and stakeholders deal with us they will still be dealing with SafeWork NSW.

13. Inspectors from SafeWork NSW will continue to be solely engaged in carrying out their responsibilities under the *Work Health & Safety Act 2011*.

14. There is no intention for inspectors to undertake work related to other legislation apart from the *Work Health & Safety Act 2011* and those which currently identify SafeWork NSW inspectors as a delegated authority. SafeWork NSW inspectors will continue to apply their detailed knowledge of workplaces and industries to ensure the safety of workers in NSW with no dilution of their specialist skills.

15. Nil.

16. 331 inspectors were employed before the realignment. The number does fluctuate slightly to take account of succession planning for known retirements. The official number is 330.

17. 330 inspectors continue to be employed following the realignment.

18. The suggestion inspector numbers have been reduced is incorrect.

19. The Better Regulation Division does not have inspection targets for inspectors. Inspections are planned on a risk-based compliance and enforcement approach according to compliance and enforcement policies. Inspections are only one of a range of compliance monitoring actions designed to achieve regulatory objectives.

Decisions about which sites to inspect are determined from both reactive complaints and notifications as well as proactive inspections based on sector and harm-based risk profiles. The SafeWork NSW and Fair Trading inspectors are also guided by respective Roadmaps that identify priority and high risk sectors and harms so that inspector resources are targeted in the most effective way.

20 & 21. In NSW, all workplaces must comply with the *Work Health and Safety Act 2011*. Work health and safety is a shared responsibility, with the primary duty of care being the person conducting a business or undertaking (PCBU). PCBUs must ensure, so far as is reasonably practicable, the health and safety of their workers, and other workers, and that the health and safety of other persons is not put at risk. This includes providing information, training, instruction or supervision that is necessary to

protect all persons from risks to their health and safety, arising from work carried out as part of the conduct of the business or undertaking. The NSW Government is committed to better addressing and preventing workplace deaths, improving support for people injured at workplace incidents and their families, streamlining investigations and clarifying important aspects of the NSW work health and safety laws. This commitment is evident through the introduction of the NSW *Work Health and Safety Amendment (Review) Bill 2019*. The Bill does not include an industrial manslaughter offence. Instead, the Bill seeks to amend the Category 1 offence to make it easier to prosecute and to insert a note to make it clear that an industrial death can be prosecuted under the manslaughter provisions of the *Crimes Act 1900*. The NSW Government has noted that this approach retains the risk-based preventative approach that underpins the WHS framework and is likely to have a greater deterrence effect. The Bill was recently examined by the NSW Legislative Council's

Portfolio Committee No. 1 which did not recommend any amendments to the key provisions in the Bill including those relating to the enhancement of the Category 1 offence. It also made no recommendation to include an industrial manslaughter provision.

The Bill also ensures that families in NSW will have access to an effective review mechanism for decisions not to prosecute and to timely updates on progress of investigations. This will enable WHS Regulators to improve the support they provide to injured workers and their families affected by a workplace incident.

#### **Fatal baby gassing charges dropped against Bankstown-Lidcombe Hospital**

**22. Why did SafeWork drop the prosecution of South Western Sydney Local Health District over the 2016 gassing incidents?**

**23. Is this because you think these incidents didn't warrant legal proceedings?**

**24. Minister do you believe that this was an appropriate course of action?**

**25. Did you instruct SafeWork to drop the legal proceedings? Why?**

**26. What confidence does the Minister have that after his proposed changes to the WHS Act, workplace accidents that result in the deaths of workers or other people will be prosecuted properly and not dealt with by enforceable undertakings?**

**27. Do you think John Ghanem and Amelia Khan deserved better than this?**

#### **ANSWER**

22. SafeWork NSW agreed to accept an enforceable undertaking from SWSLHD in lieu of the prosecution.

The *Work Health and Safety Act 2011* (WHS Act) enables the regulator to accept an enforceable undertaking in relation to a contravention, or alleged contravention, of the WHS Act in lieu of legal proceedings. In deciding to accept an enforceable undertaking in this matter, SafeWork NSW applied its *Prosecution Guidelines 2018* and its *Enforceable Undertaking Guidelines 2018*.

23-25 Legal proceedings were commenced in this matter however they were discontinued on acceptance of the enforceable undertaking from SWSLHD. The WHS Act states that, if an enforceable undertaking is accepted and in effect in relation to a contravention, or alleged contravention, of the WHS Act, no legal proceedings may be brought against a person in relation to that contravention.

Schedule 2 to the WHS Act states that decisions relating to proceedings for offences under the Act are to be made by SafeWork NSW and the regulator is not subject to the direction or control of the Minister in making these decisions.

26. SafeWork NSW makes enforcement decisions under the WHS Act in accordance with its Prosecution Guidelines 2018 and, where relevant, its Enforceable Undertakings Guidelines 2018. SafeWork NSW carefully considers the circumstances of every case, particularly where the conduct of multiple duty holders is under examination, in determining what is an appropriate enforcement outcome.

27. SafeWork NSW initiated enforcement action against a number of parties arising from the incidents at Bankstown – Lidcombe Hospital. Legal proceedings are still before the District Court in relation to some defendants.

#### **NorthConnex Mould**

**28. How many complaints have been received by SafeWork NSW with regard to the NorthConnex toll road construction site?**

**(a) How many resulted in inspections?**

**(b) How many were not inspected?**

**29. The Australian newspaper reported that "Safework NSW inspectors have conducted several audits of the 9km road project amid concerns raised about unlicensed tradesmen and high-risk activities along various sections of the roadway's construction," Can the Minister explain what the results of that audit were?**

**30. We have been told that requests were made to SafeWork to provide independent hygienists to monitor dangerous air quality and mould in these tunnels.**

**(a) Were these requests refused?**

**(b) Why were they refused?**

**(c) Was it due to a lack of resources?**

**31. Are you aware that Lendlease and Bouygues, the billion-dollar multinational companies engaged in building NorthConnex have contracted just four people to monitor and remove mould from the 9 km tunnel? is this adequate?**

**32. Can you confirm that all 9 km of the tunnel are now mould free? If not, then are you 100% confident that 4 Hygienists are sufficient to remove mould completely from the 9km tunnel?**

**33. How many times has SafeWork NSW inspected NSW government sites in the last financial year?**

**34. How many prosecutions have resulted from incidents which have taken place on NSW Government sites in the last financial year?**

#### **ANSWER**

28. During 2019, SafeWork NSW recorded five Requests for Service (RFS) on the NorthConnex site in response to these RFS:

a) SafeWork NSW inspected the NorthConnex site on four occasions in 2019.

b) On one occasion, SafeWork NSW did not attend the NorthConnex site but instead dealt with the complaint via off-site communication.

29. During 2019, SafeWork NSW conducted proactive verification visits to various NorthConnex worksites. These included three visits in December 2019 (17,18,19 December) and two in January 2020 (7 and 15 January).

This differs from the newspaper article, which quoted four visits in December 2019 and one in January 2020. However, the total visits during the period December 2019 and up to 28 January 2020 is reported as and confirmed as five.

The proactive visits were part of a verification regime to inspect major infrastructure projects. SafeWork NSW arranges the visit then inspects the site and relevant documents, conducts checks for high risk work licences and construction induction cards, sights or reads safe work method statements and issues Notices as required before preparing an inspection report.

The results of the five proactive visits up to 28 January 2020 included:

- site observations to ensure compliance with work health and safety (WHS) legislation. These included: dust suppression, fall protection, exclusion zones, guard rails, signage, ventilation, traffic control, emergency procedures, entry/exit requirements, site security and use of personal protective equipment (PPE).
- confirming records/documents associated with the worksite, such as demolition paperwork and licences, construction induction cards, high-risk work licences, Safe Work Method Statements, daily work plans.
- discussions with the PCBU and worker representatives on topics such as supervision requirements during demolition, management of risks associated with falling objects, plant and working in a restricted space, ergonomic risks, emergency procedures, effective communication, and safe systems of work.

On 15 January 2020, a Prohibition Notice was issued to one of the subcontractors on site relevant to inadequate PPE for eye protection and an associated Improvement Notice was issued to the same subcontractor regarding inadequate information in a safe work method statement. Both notices were complied with on 16 January 2020.

**30.** The responsibility of ensuring a safe working environment rests with a Person Conducting a Business or Undertaking (PCBU). SafeWork NSW does not provide occupational hygiene services on behalf of PCBUs. Consequently, no hygienist request has been refused nor has a hygienist been arranged by SafeWork NSW, relevant to the NorthConnex tunnel.

**31.** See response to Question 30.

**32.** See response to Question 30.

**33.** 249

**34.** In the financial year 2018-2019 there was one prosecution under *the Work Health and Safety Act 2011* finalised in relation to a Government site.

#### **Hazardous Air and SafeWork (Post Bushfire Season)**

**35. SafeWork NSW maintains a Code of Practice called "Managing the Work Environment and Facilities" which was updated in August 2019. Why does it contain no mention of outdoor air quality and no advice for businesses and workers?**



**36. Does SafeWork NSW have any plans to rectify this in light of this season's fires?**

**37. How many times have SafeWork NSW inspections taken place investigating poor or hazardous air quality in NSW workplaces in the current financial year?**

**38. How many reports have been made to SafeWork NSW of unsafe air quality at workplaces in the current financial year?**

**39. How many resulted in SafeWork NSW inspecting the workplace?**

**40. How many of these resulted in penalty notices, enforceable undertakings or prosecutions?**

**41. We know some unionised workforces could stop work, but many others could not or did not have the knowledge to tell their employers that they should not be outside on days like we saw. I'm talking about migrant workers, casualised labour – those working on smaller-scale sites. Besides common sense, what is SafeWork doing to help these people?**

**42. What is SafeWork NSW doing to assist in Heat safety given NSW is experiencing one of the hottest and driest summers on record and climate change will result in this trend continuing and given we know extreme heat kills?**

#### **ANSWER**

35. SafeWork NSW typically looks at indoor air quality because it is most often relevant to workplaces, while the Environment Protection Authority [EPA] is the lead agency for outdoor air quality – environmental pollution.

SafeWork NSW works very closely with both the EPA and NSW Health. These agencies both issue safety alerts or health alerts if there are issues around environmental air quality. During the bushfire season this year, SafeWork provided information about how to use that information in line with a standard risk management approach for businesses.

36. SafeWork NSW will develop resources to assist businesses to apply this information in the future. They will be made available on the SafeWork NSW website prior to Summer 2020/21. When the model Code of Practice – Managing the Work Environment and Facilities is due for review, SafeWork NSW will work with other jurisdictions and SafeWork Australia to review the national guidance available.

37. Between 1 July 2019 and 10 March 2020, SafeWork NSW conducted 13 visits related to air quality due to bushfires.

In addition to these bushfire air quality specific visits, there were 1,423 visits to workplaces in response to requests for service. These related to other poor or hazardous air quality issues. Relevant to this data, multiple visits can relate to one request for service.

38. SafeWork NSW has received 38 requests for service between 1 July 2019 and 10 March 2020 relating to air quality due to bushfires.

In addition to these bushfire air quality specific requests, SafeWork NSW received 1,571 relating to other poor or hazardous air quality issues.

39. Of the 1,571 requests for service received, 976 resulted in SafeWork NSW conducting a workplace visit. Eight of these requests for service were related to bushfires.

40. Of the 1,571 requests for service received, nil penalty notices, enforceable undertakings or prosecutions were undertaken in relation to bushfire smoke. Penalty notices are only issued for

specified offences. SafeWork NSW takes a proportionate approach to compliance and enforcement with prosecution actions undertaken for the most serious work health and safety offences.

41. SafeWork NSW Inspectors undertook a number of workplace visits from December 2019 to February 2020 to pilot a proactive workplace compliance program for workplaces where workers may be exposed to extreme heat.

In addition to these visits, the *Work Health and Safety (WHS) Roadmap for NSW 2022* includes a specific harm prevention focus to protect 'At Risk Workers', The *At Risk Workers' Strategy 2018-2022* (the Strategy), supports and protects the four identified key groups of workers that are deemed to be most at risk of harm in the workplace: migrant workers, those from culturally and linguistically diverse backgrounds (CALD), young workers and those engaged through labour hire arrangements.

The Strategy is delivering advice, information and assistance to workplaces and workers from the 'at risk' groups. Where appropriate, compliance activity occurs on worksites where there is a failure to ensure the health and safety of its workforce.

Central to the Strategy is availability of information in languages other than English to support industry WHS compliance and raise worker awareness of WHS rights, responsibilities and obligations, as well as who to seek advice and assistance from for WHS matters. SafeWork has a variety of resources available in this regard, including:

- SafeWork NSW 'service card' about its role and assistance available, translated into five languages and 8000 cards distributed.
- 'Your Rights at Work' information translated into seven languages with over 1000 printed and distributed through programs, stakeholder engagement and events.
- 'Getting Support at Work' pocket guide with quick reference information on work rights and responsibilities in NSW including WHS, developed and translated into 10 languages with 5000 printed and distributed.
- Translated industry specific guidance developed and delivered where identified by industry teams, such as LPG Fact Sheet in Korean and simplified Chinese.
- 'Talking to Your Workers' webinar explaining why, where and how to consult with workers with practical examples translated into four languages.

In addition, the 'Speak up. Save lives' app was released in October 2019. This is designed to make it easier to report dangerous work practices and risks to workers' safety via any device such as desktop computers, tablets and mobile phones. It enables workers from culturally diverse backgrounds to send their concern to SafeWork NSW through a 'google translator' function that provides accessibility in different languages.

42. In December 2018, SafeWork NSW published a "Working in Extreme Heat" page on its website providing detailed information about:

- a) raising awareness of the risks of extreme heat
- b) managing extreme heat: providing examples of how to manage heat in various scenarios
- c) heat-related illness: the signs and symptoms of heat-related illness and how to manage it
- d) Ultra-violet radiation (UVR): how UVR affects workers, and how to manage exposure.

In addition to this, SafeWork NSW Inspectors undertook a small number of workplace visits from December 2019 to February 2020, to pilot a proactive workplace compliance program for workplaces where workers may be exposed to extreme heat. This program will be expanded for the 2020/21 Summer season. SafeWork NSW is considering the development of video case studies that highlight good practice in managing working in extreme heat.

## **Workplace Inspectors**

**43. What is the expertise or special training required for inspectors in recognising unsafe worksites?**

**44. What is the difference in risk between a site that needs to be shut down immediately and one that should be served with an improvement notice?**

**45. On what basis do senior staff overturn prohibition notices and replace with improvement notices?**

**(a) Does this require any expertise or special training?**

**46. As a rule do they inspect the sites themselves?**

**47. How many SafeWork NSW inspections took place between 1 November 2019 and 3 March 2020?**

**(a) Where did these take place?**

**48. How many staff working at SafeWork NSW (as at 3 March 2020) are:**

**(a) Full-time;**

**(b) Part-time?**

**49. How many staff are on contracts (as at 3 March 2020)?**

**50. What is the total number of staff for SafeWork NSW (as at 3 March 2020)?**

**(a) How many of these are inspectors?**

**(i). How do these numbers compare to staff numbers at the same time 12 months ago (from 3 March 2020)?**

## **ANSWER**

43. All new Inspectors to SafeWork NSW complete a comprehensive 12-month training program which includes induction to their role and the completion of the Diploma of Government (Workplace Inspection). The training program includes: face to face, field based and virtual reality training; an individual mentor to provide expert guidance; and extensive assessments. The program is designed to build inspectors risk management capabilities to be able to respond to the “all hazards and all industries” scope of the *Work Health and Safety Act 2011*.

This prepares Inspectors to competently carry out their responsibilities in identifying risk and implementing appropriate action to make NSW workplaces safer.

44. SafeWork NSW inspectors may issue a Prohibition Notice where they believe an activity is occurring, will occur or may occur at a workplace, which will involve a serious risk to the health or safety of a person as a result of an immediate or imminent exposure to a hazard that is likely to contravene the *Work Health and Safety Act 2011*. The prohibition notice is limited to the activity, which may mean a part of the site or the whole site depending on the extent of the activity and hazard.

Where a notifiable incident has occurred, a Person Conducting a Business or Undertaking (PCBU) has the obligation to maintain the scene of the incident until an inspector attends. This is a legislative requirement in the *Work Health and Safety Act 2011*. During that time, maintaining the scene may significantly impact business, depending on the location and event within the workplace.

Once an inspector attends the site, they may also issue a Non-disturbance Notice, which extends the scene preservation to enable an investigation.

Improvement Notices do not shut down a business, activity or item of plant. An inspector may issue these where they reasonably believe that a duty holder is or has contravened a provision of the work health and safety legislation. These are used for non-immediate serious risk of harm matters and administrative breaches of the legislation.

The duty holder has an agreed period of time to comply with an Improvement Notice. Often a duty holder will have implemented temporary controls to reduce the risk to health and safety while the inspector is on site, which may result in an Improvement Notice being issued rather than a Prohibition Notice.

45. Section 206 of the *Work Health and Safety Act 2011* (the Act) allows an inspector to vary a Notice for clarification, to correct errors or references, or to reflect changes of address or other circumstances. Section 207 of the Act provides that a notice may only be otherwise varied or cancelled by the Regulator. Additionally, an eligible person, relevant to the notice, may seek an internal review under Part 12 of the Act.

An internal review may confirm or vary the reviewable decision or set aside the reviewable decision and substitute another decision that the internal reviewer considers appropriate. For a notice to be set aside or substituted, the notice would need to be defective or deemed to have been incorrectly issued. Should a notice be cancelled, the Regulator may consider reissuing a corrected notice based on refreshed evidence if a risk or potential risk exists.

a) The NSW Department of Customer Service's Better Regulation Division Governance and Appeals Unit internal reviewers are experienced inspectors who have completed the Diploma of Government (Workplace Inspection). They have experience across SafeWork NSW operations, including the issue of notices, responses to requests for service, incident investigations and court processes.

46. SafeWork NSW managers also are also appointed inspectors under the *Work Health and Safety Act 2011*. There are no general rules associated with how many inspectors attend sites and compliance actions are taken through a range of inputs including direct observation and evidence obtained from the site or the PCBU. At the point of allocation, a manager and inspector may identify factors which may result in a visit having one or more inspectors. These factors include known risk factors to inspectors, the type of activity to be undertaken, for example, a serious incident, and the complexity of the site or industry where the visit is to occur.

47. 5,175 inspections took place.

(a) A spreadsheet detailing locations of these inspections by postcode has been provided in response to NSW Legislative Assembly Question on Notice 2499 (information publicly available).

48.

(a) 484 (excluding contractors)

(b) 35 (excluding contractors)

49. Six members of staff are on contracts as at 3 March 2020.

50. Total staff: 519 (excluding contractors) This includes both inspector roles and non-inspector/clerical roles.

(a) 286 are filled field Inspector roles. This is the number of actual inspectors in roles as of that date. (Note: the number as at 8 April 2020 is 308 as SafeWork has successfully recruited to a further 22 vacancies. SafeWork has a further 22 positions under recruitment which when filled will achieve a total of 330 inspector positions.

(i) Twelve months ago, the figures were 471 staff including 258 inspectors and 2 contractors.

**Follow up from older workers:**

**51. In the previous estimates Mr Gravielatos acknowledged that SafeWork NSW "has not done a lot of work with older people" and protecting their safety despite "recognising that it is an issue". He gave the panel a commitment to take the advice on board - Given older workers still have the largest number of workplace fatalities in Australia:**

**(a) What has been done since the last estimates?**

**(b) Has the rate of injury to older workers reduced since the last estimates when you committed to addressing this issue?**

**(c) What are you doing to reduce incidents of death and injury for older people in the workplace?**

**(d) Do you think you are doing enough?**

**(e) How many prosecutions have taken place in the last 12 months in relation to older workers?**

**ANSWER**

51.

(a) In September 2019, SafeWork NSW released the Health Care and Social Assistance Work Health and Safety Sector Plan. The Plan aims to reduce exposure to the hazards that contribute to injuries and illnesses in this sector. The related action plan identifies key initiatives and strategies focusing on the high-risk issues in the sector. These documents are available on the SafeWork NSW website.

Older workers are highly represented in this sector and, as such, work undertaken through the Plan will contribute to a reduction of work-related injuries and illnesses for older workers.

Significant work has continued in the other sector plans (refer to response below in 51c) to reduce rates of serious injury, illness and fatalities

(b) No data is available for the 12 month period from March 2019 to March 2020, however, according to most recent Safe Work Australia (SWA) published data (Australian Workers' Compensation Statistics 2017-2018) the increase in the number of serious claims for older workers is in line with general Australian trend of an ageing population and workforce

In NSW, the incidence rate of serious injury and illness claims continues to decline, and for 2017-2018 the rate was 9.7 per 1,000 employees (provisional data, source SWA Comparative Performance Monitoring report 21st edition). This has declined from 11.7 per 1,000 employees in 2012-2013

(c) and (d) While recognising that the rates for serious claims in older workers (those aged 55 plus) is increasing, it is important to recognise that overall the rate of fatalities and serious injuries is decreasing.

SafeWork NSW through the Work Health and Safety Roadmap 2022 has committed to reducing these rates through sector plans for NSW Government, manufacturing, health care and social assistance, transport, building and construction, and agriculture. Older workers are represented across all sector plans, which means older workers, like others, will continue to benefit from the initiatives and actions undertaken by SafeWork NSW.

The Roadmap focusses on sector engagement, rather than age demographics. Although older workers are not specifically called out, NSW remains on track to achieve a reduction of 30% in fatalities, 50% reduction in reduction in serious injuries or illnesses, and 50% reduction in serious musculoskeletal injuries and illnesses.

(e) In the 12 months to 26 March 2020, prosecution proceedings were commenced against seven defendants in relation to five incidents where a worker aged 60 years or over was seriously or fatally injured.

### **Work Safety Lost in Better Regulation Restructure**

**52. Why was there no stakeholder engagement with industry and unions over such significant changes to safety regulation?**

#### **ANSWER**

52. Please refer to question 12 – duplicate question.

### **Industrial Manslaughter**

**53. How many deaths have occurred on NSW work sites since January 2019?**

**(a) How many of these have resulted in prosecutions?**

**54. Why doesn't SafeWork NSW report fatality statistics for the public similar to SafeWork Australia and other State and Territory-based bodies?**

**55. What measures are you taking to improve the number of fatalities?**

#### **ANSWER**

53. There have been 55 fatalities from 1 January 2019 to 31 January 2020, 47 during 2019 and 8 in January 2020. This data is preliminary notifiable fatalities.

(a) No prosecutions have yet been commenced in relation to fatality matters from 1 January 2019 to date. A number of relevant matters remain under investigation by SafeWork NSW.

The *Work Health and Safety Act 2011* provides a statute of limitations of 2 years to commence proceedings for an alleged offence. SafeWork NSW investigations take several months to complete. Therefore a large number of incidents that occurred 2019 would still be under investigation in 2020.

54. Since the release of the NSW *Work Health and Safety RoadMap 2022*, SafeWork NSW has been working towards defined targets to reduce the number of fatalities, serious injuries and workplace illnesses. SafeWork NSW is tracking the state's progress and publishes a status report each quarter on the SafeWork NSW website. This status report outlines how the RoadMap is influencing workplace safety in NSW, which includes preliminary notifiable fatality numbers.

One of Safe Work Australia's (SWA) functions is to compile, analyse and report on a range of work health and safety and workers compensation data. This provides a national picture of work-related injuries, fatalities and diseases. There are three key national data collections, one of which is the Work-related Traumatic Injury Fatalities (TIF) data. SWA publishes the *Work-related Injury Fatalities Report* annually which includes NSW data provided by SafeWork NSW. This report provides detailed statistics on persons who have received fatal injuries caused by work-related activity. There is often a 'lag' in this data being publicly available, as fatality data is subject to revision as further information becomes available from investigating authorities.

55. The Government's key strategy to support improved work health and safety (WHS) in NSW is the *WHS RoadMap 2022*. It is a six-year strategy which aligns with the *Australian Work Health and Safety Strategy*.

NSW has already met and exceeded the nationally agreed targets of a 20 per cent decline in work-related fatalities and a 30 per cent decline in serious injuries and illnesses, as set out in the NSW Roadmap and the national strategy, in advance of the 2022 target date. NSW has now set more ambitious targets to achieve a 30 per cent decline in work related fatalities and a 50 per cent decline in serious injuries and illnesses.

A number of SafeWork NSW initiatives have and will continue to contribute to a reduction in workplace fatalities, serious injuries and serious illnesses, including the following:

- A number of compliance and enforcement blitzes have been implemented that address high-risk work in the construction industry including, scaffolding, tower crane operators and doggers and falls from heights.
- The *Speak Up. Save lives* app has been released, designed to make it easier to report dangerous work practices and risks to workers' safety via a mobile device.
- An online digital *Making it Easy to do WHS in NSW* Toolkit was released, focused on making it easier for small businesses in NSW to comply.
- A young workers e-Toolkit is available on the SafeWork NSW website.
- Over 428 rebates have been provided to small business to make safety improvements, valued at \$202,175 to December 2019. Between July-December 2019, \$93,787 has been provided for 206 rebates.
- The Quad Bike Safety Improvement Program valued at over \$7.2 million has been implemented to reduce fatalities and serious injuries associated with quad bikes.
- Development of a website designed to support mentally healthy workplaces, including registration for free mentally healthy workplace programs and access to tools.
- A series of guides developed in collaboration with industry partners to help buyers and suppliers to think about safety throughout the supply chain.
- Regulatory changes have been announced to better protect workers from silica dust exposure and the lung disease silicosis.

#### **Work Safety Lost in Better Regulation Restructure**

**56. What is the Government doing to ensure that workplaces like aged care facilities, Hospitals, transport providers, hospitality and other industries exposed to the risk of Coronavirus are taking preventative measures to protect their workers?**

#### **ANSWER**

56. SafeWork NSW was the first state WHS regulator in Australia to provide information and guidance to employers and workers regarding coronavirus. Information was first posted to the SafeWork NSW website on 29 January 2020.

Since this time, numerous updates and resources have been provided as the COVID-19 situation has unfolded, both locally, nationally and internationally. The Commonwealth has also published a National Statement of Regulatory Intent, based on the NSW Statement of Regulatory Intent that now applies to all WHS regulators in jurisdictions that have adopted the model WHS laws.

As of 30 March 2020, the website contains a list of employer Frequently Asked Questions, case studies for various industries and situations, and provides a guide to pandemic planning for businesses. The resources focus on proactive efforts that both workers and employers should take to manage the risk of infectious diseases.

Between 1 January 2020 and 31 March 2020, SafeWork NSW has had over 1600 interactions with the public related to COVID-19.

**Fines replacing prosecutions – lack of general or specific deterrent – Soft of safety**

**57. What are the current statistics on prosecutions for the last five years under the Work Health and Safety Act 2017?**

**58. In the absence of prosecutions, how can it be said that SafeWork has not "gone soft" on safety breaches?**

**59. In the absence of prosecutions, how can SafeWork be said to have any specific, or general deterrence in place to protect workers from safety breaches in New South Wales?**

**ANSWER**

57.

<b>Financial year ending</b>	<b>No. of matters</b>	<b>No. of defendants</b>	<b>No. of charges</b>	<b>Enforceable Undertakings</b>
<b>Financial year ending 2015</b>				
Commenced	33	64	80	
Successful	67	88	97	5
<b>Financial year ending 2016</b>				
Commenced	50	72	82	
Successful	33	45	55	12
<b>Financial year ending 2017</b>				
Commenced	36	55	62	
Successful	29	32	33	10
<b>Financial year ending 2018</b>				
Commenced	48	87	130	
Successful	36	50	59	7
<b>Financial year ending 2019</b>				
Commenced	61	102	134	



Successful	31	41	59	5
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*\*Note that:*

- *“Successful outcome” means a conviction before the courts.*
- *These figures reflect prosecutions commenced and successful outcomes in a particular financial year. However, the figures in a single financial year do not necessarily relate to the same prosecutions due to the time taken for matters to proceed through court processes.*

58-59. The premise of this question show a fundamental lack of understanding of the operation of the *Work, Health and Safety Act 2011* how regulatory models work to to enforce compliance and reduce harm.

Where appropriate SafeWork NSW will take strong enforcement action. SafeWork NSW investigates serious workplace incidents and prosecutes matters where a breach has been disclosed.

The number of prosecutions commenced by SafeWork NSW in 2017 and 2018 has increased significantly compared to 2016.

Additionally, since 2013, SafeWork NSW has accepted 49 enforceable undertakings which has directed \$22.1 million towards making work health and safety improvements beneficial to workplaces, industry and community.

59. Safework NSW continues to prosecute as appropriate.

### **Regulatory capture**

**60. Under the model legislation there were provisions in Schedule 2 for tripartite consultation as per our obligations under ILO Convention 144 Tripartite Consultation. This was not implemented in NSW - What formal forums exist for tripartite consultation with SafeWork at present?**

**61. How many formal arrangements exist where you regularly meet with larger employers to consult?**

**62. How many formal arrangements exist where you regularly meet with workers and their representatives?**

**63. How many work health and safety prosecutions have SafeWork launched since January 1 2019?**

**64. How many Improvement Notices has SafeWork launched since January 1 2019?**

**65. How many prohibition Notices has SafeWork launched since January 1 2019?**

**66. How many of these improvement and prohibition notices have been applied to the Governance and Appeals Unit for a review under Section 224 of the Work Health and Safety Act 2011?**

**67. How many notices have been overturned at the Governance and Appeals Unit?**

**68. How many Provisional Improvement Notices (PIN) been issued by Health and Safety Representatives?**

**69. How many of these PINs have been referred to the Governance and Appeals Units for internal review under Section 224 of the Work Health and Safety Act?**

**70. How many Improvement Notices s191, and Provisional Improvement Notices that have gone past compliance, have been prosecuted for going overtime since January 1 2019.**

## 71. Where is the power under the WHS Act to have an inspector remove another inspector's notice?

### ANSWER

60. SafeWork NSW adopts a direct method of consultation where targeted stakeholders and customer groups are engaged for specific purposes. SafeWork NSW is committed to making its engagement timely, relevant, transparent and accessible. This approach is in line with the NSW Department of Customer Services' Better Regulation Division Stakeholder Engagement Strategy.

SafeWork NSW has a number of engagement mechanisms in place which include cross regulator, sector and individual stakeholder groups. Ongoing mechanisms include

- the Demolition and Asbestos Consultative Committee
- NSW Asbestos Coordination Committee
- Housing Industry Consultative Committee
- Formwork Industry Consultative Committee and
- Major Hazard Facilities Consultative Committee.

Periodic and particular engagements have included:

- Developing, co-designing and implementing the action areas of the *NSW Work Health and Safety (WHS) Roadmap 2022* through integral engagement and collaboration with, and contribution from, our stakeholders.
- The independent review of the *WHS Roadmap for NSW 2022* conducted in May 2018 included interviews with 15 representatives from peak employer and employee groups, and government agencies to assess the effectiveness of engagement and consultation with key stakeholders.
- Codes of Practice (COP) are developed in consultation with and with input from stakeholders with subject matter expertise. Stakeholders identify issues, highlight challenges and support SafeWork NSW to develop COP, and guidance material.
- SafeWork NSW's Centre for WHS established a Research Foundation which works together to enable improvement and change in work health and safety practices in NSW. The Foundation is a multidisciplinary advisory committee comprising of leading researchers in work health and safety, as well as representatives from business and workers associations, and government. The Foundation works closely with the Centre to promote research that is industry driven, credible, ethical, collaborative, methodologically robust, and peer reviewed. This improves translation of research, data and evaluation into regulator decisions and community practice.

61. SafeWork NSW has 35 current arrangements to engage with large employer stakeholders on a regular basis as well as ad hoc engagement as required. These mechanisms can include engagement with multiple employers or their representatives at the one time.

In addition to these formal arrangements, we also meet with various employer and other stakeholders on a regular basis for consultation purposes.

62. SafeWork NSW has 13 current arrangements to engage with large employee stakeholders on a regular basis as well as ad hoc engagement as required. These mechanisms can include engagement with multiple groups of workers and/or their representatives.

In addition to these formal arrangements, we also meet with various worker and other stakeholders on a regular basis for consultation purposes.

63. Available data is by financial year. This is provided in the answer to Question 57.

64. SafeWork NSW issued 11,513 Improvement Notices during the period 1 January 2019 to end of February 2020.

65. SafeWork NSW issued 2,351 Prohibition Notices during the period 1 January 2019 to end February 2020.

66. Since 1 January 2019, 88 Improvement Notices and 15 Prohibition Notices have been the subject of applications to the GAU.

67. Since 1 January 2019, 35 Improvement Notices and seven Prohibition Notices have been overturned by the GAU.

68. SafeWork NSW does not have records of PINs issued by Health and Safety Representatives.

69. Since 1 January 2019, no applications concerning Health and Safety Representative Provisional Improvement Notices have been received by the GAU.

70. For the date range specified there have been 12,001 Improvement Notices issued. Of these 146 have gone past compliance and the Person Conducting the Business or Undertaking (PCBU) has been issued with a Penalty Notice.

The Department does not keep records of Provisional Improvement Notices, as these are issued by Health and Safety Representatives, not SafeWork NSW staff.

71. The *Work Health and Safety Act 2011* (the Act) contains two provisions concerning the removal of a Notice issued by an Inspector:

- Section 162 of the Act provides that Inspectors are subject to the Regulator's directions, which could include the removal of an issued Notice
- Section 225 empowers the Regulator to appoint an internal reviewer (who may be an Inspector) to review decisions on applications for a review. Those reviewers may set aside the decision and substitute another decision. This may include removal of a Notice.

#### **Number of inspectors**

**72. In the period 2019 – 2020 has the number of inspectors at SafeWork NSW gone up?**

**73. How many inspections took place in the financial year 18/19? How does that compare to the previous year?**

**74. How many inspections have taken place this financial year to date?**

**75. How many prosecutions took place in the financial year 18/19? How does that compare to the previous year?**

**76. How many prosecutions have taken place this financial year to date?**

**(a) Has any of these resulted in a prison sentence?**

**77. Is this a number that you think is high enough to ensure the safety of workers in NSW?**

**78. Did the Minister commit to the parents of Christopher Cassaniti to take any action in regards to their calls for the introduction of Industrial Manslaughter Laws in NSW?**

**(a) If yes – How then does the Minister intend to fulfil this promise?**

**(b) If no – Why not?**

**79. Minister, Unions NSW wrote to the Premier in December after information showing that almost 1 in 10 jobs at SafeWork NSW remained vacant; can the Minister confirm whether this is still the case? And if so, what action is being done to rectify this?**

**80. What reasons does the Minister think are the reason for this decline? Is it understaffing, or related to the fact that 1 in 10 jobs sit vacant in SafeWork?**

**ANSWER**

72. SafeWork NSW has 330 field Inspector positions. The number remains the same however vacancies against these positions varies throughout the year due to vacancies, and succession planning for notified departures and retirements.

73. Total inspector activity for 2018/19 was 43,201.

Total inspector activity for 2017/18 was 43,973.

74. Total inspector activity for the period 1 July 2019 to 29 February 2020 is 32,393 inspections.

75. See answer to question 57.

76.

Financial year ending	No. of matters	No. of defendants	No. of charges	Enforceable Undertakings
<b>Financial year ending 2020 – up to 26 March 2020</b>				
Commenced	51	89	111	-
Successful	44	50	64	9

*\*Note that:*

- “Successful outcome” means a conviction before the courts.

- These figures reflect prosecutions commenced and successful outcomes in a particular financial year. However, the figures in a single financial year do not necessarily relate to the same prosecutions due to the time taken for matters to proceed through court processes.

(a) No – nil have resulted in prison sentences.

77. See answers to questions 57-59.

78. Through the NSW *Work Health and Safety Amendment (Review) Bill 2019*, the NSW Government has committed to better address and prevent workplace deaths, improve support for people injured at workplace incidents and their families, streamline investigations and clarify important aspects of the NSW work health and safety laws. The Bill seeks to amend the Category 1 offence to make it easier to prosecute and to insert a note to make it clear that an industrial death can be prosecuted under the manslaughter provisions of the *Crimes Act 1900*. The Bill was recently examined by the NSW Legislative Council’s

Portfolio Committee No. 1 which did not recommend any amendments to the key provisions in the Bill including those relating to the enhancement of the Category 1 offence. It also made no recommendation to include an industrial manslaughter provision.

The NSW Government has noted that this approach retains the risk-based preventative approach that underpins the WHS framework and is likely to have a greater deterrence effect.

79. A response was provided to Unions NSW on 5 February 2020 addressing the matters raised in their correspondence of 24 December 2019. The response advised that, as at 5 February 2020, there was a recruitment process underway for 46 SafeWork inspectors.

I am pleased to advise that as of 31 March 2020, 16 of these roles have been filled with active recruitment underway for the remaining roles.

80. Recruitment is undertaken when vacancies are identified, in line with business requirements.

#### **People Matter Employee Survey – Bullying at SafeWork**

**81. Is there ongoing problems with workplace bullying at SafeWork?**

**82. How many reports of workplace bullying have been made:**

**(a) This financial year**

**(b) Last financial year**

**(c) In the last 5 years**

**83. What is the process for investigating bullying at SafeWork NSW?**

**84. The People Matter Employee Survey is conducted now every year. Can you provide the data for the responses comparing by Directorate to Directorate for Question 13a and 13b?**

**(a) Q13a. In the last 12 months I have witnessed bullying at work**

**(b) Q13b. In the last 12 months I have been subjected to bullying at work**

**85. As the regulator required to regulate workplace bullying do you think that your organisation is performing well in relation to this work health and safety risk of workplace bullying?**

**86. Is it true that SafeWork hired a workplace investigator who was asked to identify (amongst other things) who had responded to this question in a positive way?**

**87. How many workplace external investigations into conduct/misconduct of inspectors have occurred since January 1 2019?**

**88. How much money was spent on external investigations into inspector conduct?**

**89. How many of these matters were found to have been proven?**

**90. How many matters were referred to ICAC since January 1 2019?**

**91. How many matters did ICAC investigate and find to be proven since January 2019?**

#### **ANSWER**

81. The data as detailed below does not indicate ongoing problems with workplace bullying at SafeWork NSW.

82.

(a) This financial year = 1.

(b) Last financial year = 7.

(c) In the last 5 years = 19 (including a and b).

83. The Positive and Productive Workplace Policy supports the Department of Customer Service, its leaders and employees to encourage early grievance reporting and ensure, as far as possible, speedy and effective local resolution. This policy applies to all workplace grievances, such as conflict, bullying, harassment, discrimination etc. Good workplace grievance management prevents minor workplace issues from escalating into more serious matters. Such a system allows staff to raise legitimate workplace concerns early, with the option for informal local resolution where appropriate, while always retaining the protection of more formal procedures where required.

84. (a)

SafeWork Specialist Services – 21.2%  
SafeWork Operations – 27.10%  
(compared to the NSW Public Sector Overall = 33%)

84. (b)

SafeWork Specialist Services – 11.5%  
SafeWork Operations – 16.6%  
(compared to the Public Sector Overall = 18%)

85. Yes. Refer to 81.

86. No.

87. Two.

88. \$45,077.19.

89. There has been one finding of unsatisfactory conduct and one matter is still under investigation.

90-91. No matters relating to workplace bullying were referred to ICAC.

#### **Junior Staff Working dangerous hours**

**92. Can you advise me if Safe Work NSW is taking any action about unsafe working hours for junior staff in white-collar jobs?**

**93. Does Safe Work NSW have a program monitoring this?**

#### **ANSWER**

92. Yes it is.

93. The SafeWork NSW At Risk Workers - Young Workers Project has identified six priority risk areas that are being addressed to better support and protect workers up to 25 years of age. SafeWork NSW are continuing to work with young people and stakeholders that represent them, to develop solutions to the priority areas that can be applied across all industries.

The SafeWork NSW *Young Workers e-Toolkit* is a key resource which targets four specific groups: young workers, employers, parents and guardians and educators. The Young Workers content provides information on rights and responsibilities at the workplace and specific information in a range of formats, including videos, vox pop interviews and fact sheets. It also includes information on both Bullying and Mental Health, in particular, where to get help. The e-toolkit launched December 2018 and has had 4603 downloads and hits. The e-toolkit and its resources are regularly updated.

SafeWork NSW routinely attends various events including safety shows, jobs/skills expos, and apprenticeship and traineeship expos.

SafeWork NSW has also developed and distributed a number of resources through many channels in print and digital format including a '*Getting support at work*' pocket guide, *The Basics – Your Rights and Responsibilities* fact sheet, and a SafeWork NSW postcard size product that summarises who we are and what we do. The resources are pitched to provide advice and information for young workers on their rights, responsibilities and where to seek support or guidance if required.

Workers can report concerns of work-related fatigue to SafeWork NSW. It will respond to requests for service and incidents. SafeWork NSW has a Psychological Health and Safety Team of specialist inspectors who advise both the wider inspectorate and workplaces on their management of risks associated with work-related bullying, stress, violence and fatigue.

While SafeWork NSW does not have a specific program to monitor unsafe working hours among young workers, its *Mentally Healthy Workplace Strategy* assists all workplaces to build their capability to address factors which may affect mental health at work.

#### **GIPA – SafeWork**

**94. Since September 1 2019, how many formal GIPAs has your Department received?**

**(a) How many of those have you determined to:**

**i. Grant full access to the information?**

**ii. Grant partial access to the information?**

**iii. Not grant access to the information?**

**(b) Out of those GIPAs where partial information or no information was granted, how many have decided to appeal?**

**i. Out of those who have decided to appeal, how many have decided to use:**

- The agency's internal appeals' mechanism?
- Review by the Information Commissioner?
- Review by NCAT?

**ii. How many of those GIPAs have been overturned on appeal?**

- Internal appeals' mechanism?
- Review of the Information Commissioner?
- Review by NCAT?

**95. Since September 1, in regard to GIPAs that have been granted full or partial access, how many appear on the agency's disclosure log?**

**96. Aside from GIPAs asking for personal information, what is the rationale for not putting GIPAs on the agency's disclosure log?**

**97. Have any GIPAs that appeared on the agency's disclosure log been taken down?**

**(a) Why ?**

#### **ANSWER**

94. Since 1 September 2019, 478 formal GIPA requests have been received.

(a)

i. Nine

ii. 217

iii. 150, noting access may not be granted because the information is not held by the agency, or the

matter may be a current investigation

(b) Seven

i. Of these:

- Five were reviewed through the agency's internal appeals mechanisms
- Two were reviewed by the Information Commissioner
- Nil were reviewed by NCAT

ii. Those which were overturned on appeal are as follows:

- internal appeals' mechanism: Nil
- Information Commissioner: one
- NCAT: Nil

\* Note: All possible access outcomes haven't been included in the question. Further access outcomes are referred to in section 58 of the *GIPA Act*.

95. Nil appear on the agency's disclosure log. There is currently no active disclosure log on the SafeWork NSW website.

The NSW Department of Customer Service, of which SafeWork NSW is an agency, publishes decisions they make in relation to SafeWork NSW corporate services (including People and Culture).

The majority of SafeWork NSW GIPA applications are in relation to injured workers. Another level of consultation may need to occur to publish these decisions, due to the sensitive nature and the need to protect personal health information. Prior to the current DCS Better Regulation Division organisational changes, the SafeWork NSW Right to Information team ensured priority was given to active applications and making timely decisions. GIPA arrangements will be reviewed under the current BRD functional realignment.

Work has recently commenced on the development of the web page to publish suitable decisions, and a process for conducting further consultations if required. This project is running concurrently with a review of the Agency Information Guide.

96. See answer to Question 95.

97. Yes

(a) While there is currently no active disclosure log on the SafeWork NSW website, one GIPA item was removed from the DCS website after a staff member had concerns for another staff member's health and wellbeing. The GIPA decision application involved was a SafeWork NSW corporate services GIPA that was managed by the central DCS right to information team.

#### **NSW Fair Trading - Residential tenancies**

**98. How much has the Department budgeted for implementation of amendments to the Residential Tenancies Act beginning on 23rd March 2020. Specifically, how much has been budgeted for the following activities:**

**(a) Community education,**

**(b) Training of tenant advocates**

**(c) Increased demand for tenants' advice and advocacy services,**

**(d) Implementation of the 'rectification orders' system**



**99. Given the growth in the number of tenants across New South Wales, how is the Department ensuring the Tenants' Advice and Advocacy Services have sufficient resources to meet community needs?**

**100. What are the reasons for the closure Parramatta NCAT?**

**(a) How much consultation has taken place?**

**(b) How it can be justified when the area between Parramatta Road, Granville and Victoria Road Parramatta has the highest concentration of tenants in Australia, at over 70%?**

#### **ANSWER**

98. There is no separate budget allocated for the implementation of amendments to the Residential Tenancies Act as this work is considered core business of the agency.

99. NSW Fair Trading provides \$24 million annually to non-government organisations across the state for the delivery of advice and advocacy services to help vulnerable consumers. These services include Tenants' Advice and Advocacy, Financial Counselling, Home Building Advocacy, Aged-Care Supported Accommodation, Strata Collective Sales Advocacy and the No Interest Loan Scheme.

For the current period (2019/20), the Tenants' Advice and Advocacy Program (the Program) receives \$11.92 million. The Program receives an annual CPI increase of 2.5 per cent, as well as a Treasury mandated equal remuneration order adjustment. Funding under the Program is approved to continue until 30 June 2022.

The NSW Government appreciates the impact that growth in the sector has on tenants' demand for assistance and recognise the importance of these services in partnering with the NSW Government to deliver protections to NSW citizens. The NSW Government continues to explore opportunities to better meet the needs of vulnerable citizens in NSW.

100. NCAT is administered by the Department of Justice. The question should therefore be referred to my colleague, the Attorney General, the Hon Mark Speakman MP.

#### **NSW Fair Trading**

**101. How many staff working at NSW Fair Trading (as at 3 March 2020) are:**

**(a) Full-time;**

**(b) Part-time?**

**102. How many staff are on contracts (as at 3 March 2020)?**

**103. What is the total number of staff for NSW Fair Trading (as at 3 March 2020)?**

**(a) How many of these are inspectors or frontline workers?**

**(b) How do these numbers compare to staff numbers at the same time 12 months ago (from 3 March 2020)?**

#### **ANSWER**

101. Note - responses below are correct as at 29 February 2020 due to the reporting system

(a) 429

(b) 38

102. Six contractors were paid by NSW Fair Trading as at the last pay of February 2020.

103. 467

(a) 73.65% are frontline workers (including inspectors)

(b) There were 465 total staff in Fair Trading in March 2019 and 74.53% were frontline workers.

#### **NSW Fair Trading/Real Estate - REI NSW/RERG**

**104. What is the purpose of the Real Estate Reference Group (RERG)?**

**105. Who sits on the RERG currently?**

**106. Would you say that the RERG has confidence in Fair-trading's ability to regulate their industry?**

**107. Why does the Real Estate Institute of NSW no longer sits on the Real Estate Reference Group?**

**108. Is the Minister aware that the Owners Corporation Network, The Australian Livestock and Property Agents Association, The Real Estate Institute of New South Wales, The Property owners Association of NSW, Strata Community Australia (NSW), Estate Agents Co-operative, Australian Institute of Conveyancers, Property Owners Association and the Real Estate Buyers Agents Association have all written on multiple occasions to the Premier asking to be removed from the regulatory control of the Department of Fair Trading?**

**109. How can Fair Trading adequately protect consumers and support the property industry, when the entire industry has confidence in Fair Trading's ability to do so?**

**110. Has the Minister had any discussions with the Industry Bodies in relation to the creation of a dedicated commissioner for property services?**

**111. Does the Minister know how long it takes to gain the required education to enter the Industry today (pre 23 March)?**

**112. After receiving the one weeks training and entering the industry, does the Minister know how many people leave the industry in the first 12 months?**

**113. Does the Minister know who sets this standard?**

**114. When the industry reforms were announced, the Government it was quick to take credit. Does the Minister know that the Reforms were driven by industry and took five years with active resistance from Fair Trading?**

#### **ANSWER**

104. The Real Estate Reference Group provides a forum to enable consultation between NSW Fair Trading and key industry associations representing real estate practitioners.

105. The Real Estate Reference Group consists of representatives from Australian Institute of Business Brokers, Australian Resident Accommodation Managers' Association, Australian Livestock and Property Agents Association, Estate Agents Co-operative and Strata Community Association.

106. The NSW Government actively engages in close consultation with key real estate and property industry associations to ensure there are opportunities for input into regulatory and policy developments.

The Real Estate Reference Group has made significant contributions to the Government's policy development process and this has resulted in the commencement of significant reforms on 23 March 2020 representing the most significant change to the licensing and qualification of practitioners, improved supervision requirements and compliance powers and enhanced trust account management to better protect consumers.

107. The Real Estate Institute of New South Wales resigned from the Real Estate Reference Group by letter to the then Minister for Innovation and Better Regulation dated 24 September 2018.

108. The Minister is aware of correspondence from industry associations seeking appointment of a Property Services Commissioner. He is also aware that many signatories to that letter no longer support that position.

109. The NSW Government is committed to a regulatory framework for the real estate and property industry that is reasonable and responsive to the economic, social and environmental needs of NSW. NSW Fair Trading has officers dedicated to regulation of the real estate and property industry. These officers have extensive experience, knowledge and insight regarding regulation of the real estate and property industry. Fair Trading undertakes regular compliance and enforcement action across NSW to examine compliance with real estate and property legislation and ensure consumers are treated fairly.

110. My office and I regularly discuss a number of matters with a variety of stakeholders.

These meetings are disclosed in accordance with my ministerial obligations.

111. Yes. The Property, Stock and Business Agents (Qualifications) Order 2009 sets out the required qualifications for entry to the industry prior to 23 March 2020.

112. NSW Fair Trading's data reporting does not capture this specific information.

113. The NSW Government is responsible for determining the appropriate qualifications from the national training package. The education requirements are set out in the Property, Stock and Business Agents (Qualifications) Order 2009.

The minimum education requirements are based on units of competency and qualifications in the Property Services Training Package. The qualifications comply with the Australian Qualifications Framework and are recognised nationally.

114. Yes the reforms were delivered in close consultation with stakeholders.

#### **Real Estate - Continuing Professional Development (CPD):**

**115. Given that real estate agents are required to do 4 hours continuous professional development and some of the approved courses run by some RTOs can be completed in as little as 3.5 minutes, what additional professional development do you require them to undertake for the remaining 3 hours 56.5 minutes to meet the required 4 hours?**

**116. What is the standard for Real Estate CPD in NSW? How is this determined, and what is required?**

**117. Who checks the quality and how do you verify this quality to renew licenses?**

#### **Underquoting for Auctions**

**118. With house prices reaching high levels again, is underquoting of expected property sale prices by real estate agents increasing?**

**119. If underquoting is increasing or expected to increase, is the Department allocating more officers to ensure that the changes introduced by the Parliament in 2016 are complied with?**

**(a) Are these undercover officers as "mystery shoppers" or attending auctions?**

**i. If not, why aren't undercover officers being sent out to stop home buyers being misled by real estate agents like they do in Victoria?**

## **ANSWER**

115. The real estate reforms introduced a number of changes to the continuing professional requirements. Under the reforms, approved providers must comply with the Continuing Professional Development (CPD) - Conditions of approval which includes, among other requirements, complying with any request of NSW Fair Trading to conduct an inspection, audit or investigation relating to the delivery of compulsory learning topics. The Secretary (defined as the Commissioner for Fair Trading) may revoke a provider's approval for the delivery of compulsory learning topics at any time.

Training providers generally have mechanisms in place to estimate the length of time it would take a learner to read and comprehend material and undertake any set assessments required from the learning. Training providers may trial or test online learning products or validate the assessment process and base their timeframes on the outcome of the trial or testing. Although all participants learn at a different rate, timeframes should be based on the number of hours required by the average participant to be able to learn and/or achieve competency in the topic or unit.

116. Compulsory learning topics are determined annually by NSW Fair Trading in consultation with the Real Estate Reference Group (RERG). The topics are aimed at addressing compliance and consumer protection matters identified by Fair Trading and industry associations.

The CPD sub-committee of the RERG develops a course outline, desired learning outcomes and assessment requirements for each compulsory topic.

Compulsory learning topics are delivered by industry associations, government agencies and other providers approved by Fair Trading. Elective topics and business skills topics may be delivered by any training provider. The provider does not need to be approved by Fair Trading.

Industry associations, government agencies and other approved providers for the delivery of compulsory learning topics are required to consent to, and comply with, the Continuing Professional Development (CPD) - Conditions of approval published on the Fair Trading website.

117. Licence and certificate holders must retain their own records of any compulsory, elective or business skills topics completed. Certificate of registration holders must retain the statement of attainment issued by a registered training organisation for each unit completed from the relevant Certificate IV for their area of practice.

Licence holders (class 1 and class 2) must retain all records for three years. Certificate of registration holders must retain all records for four years.

Licence and certificate holders are required to provide evidence to Fair Trading that they have completed the required continuing professional development (CPD) topics. Failure to comply with CPD requirements may result in the suspension or cancellation of the person's licence or certificate. Under the reforms and new CPD framework, providers of compulsory topics may be required to submit their training for examination by Fair Trading.

118. With the exception of a slight increase in 2019, there has been a steady decline in complaints from consumers regarding underquoting practices since the introduction of new laws in 2016.

2016: 268 complaints  
2017: 121 complaints  
2018: 93 complaints  
2019: 118 complaints

119. NSW Fair Trading undertakes regular compliance and enforcement action across NSW to examine compliance with legislation and ensure consumers are treated fairly. Fair Trading is adequately resourced to investigate complaints of underquoting.

(a) In addition to targeted compliance programs, Fair Trading undertakes regular compliance and enforcement action across NSW to examine compliance with legislation. A dip sample of sales files is inspected during all compliance activities to ensure compliance with the underquoting provisions.

Fair Trading determines on a case-by-case basis whether attendance at an auction or any additional compliance activity is necessary as part of its assessment of a report of possible underquoting.

### **Coronavirus – Fair Trading**

**120. Can the Minister advise what Fair Trading is doing to protect consumers from the run of essential medical equipment and supplies and price gouging as a result of the Coronavirus outbreak?**

**121. Is there a plan to police the sale of counterfeit or inadequate masks, particularly online, being passed off as suitable products to prevent infections?**

**122. Given this is a very serious issue that many people are anxious about and we know irrational stockpiling can also lead to price gouging, shouldn't Fair Trading should be stepping in to protect consumers like they did when there were shortages and runs on Infant Milk Formula?**

**123. If events are postponed not cancelled, what is the timeframe under which consumers can consider it a permanent postponement and seek a refund?**

### **ANSWER**

120. Businesses that inexplicably set unfair prices for essential items such as food or toilet paper in response to COVID-19 risk being publicly listed under a new initiative announced recently by the NSW Government.

Fair Trading is protecting consumers by monitoring the market for any conduct that breaches the Australian Consumer Law during the COVID-19 crisis. This includes businesses that make misleading claims about the reason for price increases. Information about consumer's rights is available on the NSW Fair Trading website.

On the issue of medical and supply shortages, supermarkets and pharmacies are responding to increased demand by placing restrictions on the purchase of essential goods. NSW Fair Trading encourages businesses to continue to monitor supply and demand and respond appropriately to shortages, particularly for vulnerable groups.

121. Regulatory regimes for intellectual property (counterfeit goods) are prescribed in Commonwealth Legislation containing infringement offences including the *Copyright Act 1968* and the *Trade Marks Act 1995*. The Australian Border Force (Customs) has jurisdiction in this area – the enforcement of Commonwealth Legislation.

Fair Trading's Investigations and Enforcement area has not received any matters involving misleading and deceptive conduct in relation to the sale of face masks or defective products. The Department of Health may also have jurisdiction in this area. Should we receive complaints that substantiate breaches of the Australian Consumer Law, Fair Trading will conduct a review and potentially

investigate the matter, if appropriate. We will also determine any issues regarding masks are part of an Australia-wide problem, and work with our state, territory and Commonwealth counterparts in developing a strategy to address any confirmed issues.

122. NSW Fair Trading cannot place restrictions on the purchase of essential goods to prevent stockpiling. Businesses in Australia operate in a free market and have already responded appropriately to stockpiling of goods by placing limits on the purchase of certain goods.

For example, supermarkets have placed restrictions, per transaction, on the purchase of goods such as toilet paper, hand sanitiser and pasta. Also, the Therapeutic Goods Administration have advised that pharmacies may limit the supply of essential prescription medicines and other medicines subject to excessive demand.

This is consistent with the industry-led response that addressed the run on infant milk formula. At that time, infant milk formula suppliers and retailers implemented limits on the amount of formula that could be purchased per transaction.

123. Given the current government restrictions on public gatherings due to the COVID-19 outbreak, there is uncertainty about when events will be able to be held again. It is important that the health of the community be prioritised during this time. If an event has been postponed because of COVID-19 government restrictions, a consumer may not be entitled to a refund under the Australian Consumer Law.

Consumers should speak to their ticket provider in the first instance and check the terms of the agreement. Given the exceptional circumstances, NSW Fair Trading encourage businesses to treat consumers fairly.

#### **Fake Fur**

**124. Minister, are you considering the Mayor of Sydney's request to set up a fake fur taskforce?**

**(a) If not, Why not?**

**125. Does the department have a plan to police instances where real animal fur is incorrectly labelled as fake fur?**

#### **ANSWER**

124. No.

(a) The Better Regulation Division has a range of existing compliance and enforcement mechanisms and is fully equipped to investigate matters arising under the Australian Consumer Law, including the labelling and sale of fur.

125. Incorrect labelling of products may be in breach of the Australian Consumer Law, including misleading and deceptive conduct and provisions relating to giving false and misleading information. The Department investigates misleading claims and has a range of compliance and enforcement tools to sanction traders that are non-compliant. I encourage the Lord Mayor to refer any specific examples she may have to Fair Trading.

#### **Strata Issues**

**126. How much is currently in the rental bond trust?**

**127. How much interest is expected to be earned on renters' bond money held in trust?**

**(a) How much is this interest expected to increase over the next 3 budget years?**

**(b) Is the interest accruing being used by the Government to fund other programs?**

**(c) What does happen to all of the interest accrued prior to funds held in trust being returned to tenants?**

**(d) Are there any plans for this to change over the next 3 budget years?**

**128. What process do tenants need to go through to access their bond money held in the trust at the end of the lease period?**

**(a) Has this process changed over the last 3 years?**

**(b) Are there any plans to change this process?**

**(c) Have you considered any plans to make the process easier for tenants?**

#### **ANSWER**

126. \$1.715 billion as at 29 February 2020.

127. As at 29 February 2020, the interest revenue forecast is \$56.4 million for the 2019/2020 financial year. However, current market conditions and recent interest rate cuts are expected to impact the March 2020 forecast.

(a) Interest revenue is expected to decrease due to uncertain market conditions and low interest rates.

(b) Section 186 of the *Residential Tenancies Act 2010* (the Act) sets out the purpose for which funds in the Rental Bond Interest Account can be used.

(c) See B

(d) Rental bond monies and income will continue to be invested and used in accordance with the provision of the *Residential Tenancies Act 2010* and the *Public Authorities (Financial Arrangements) Act 1987*.

128. (a) After a tenancy has terminated, the tenant or landlord/landlord's agent can make a claim for the bond. NSW Fair Trading encourages all parties to discuss any claims with each other, including any issues or outstanding payments, prior to submitting a claim for the bond.

#### **Bonds not lodged through Rental Bonds Online (RBO)**

The paper Claim for refund of bond money form can only be used for bonds that were not lodged using RBO. The form should include bank details for the refund, as refunds are by direct deposit only. If the tenant or landlord/landlord's agent cannot get the other party to agree to sign the form, they should lodge the form without the other party's signature. The completed form can be emailed to [bondclaims@customerservice.nsw.gov.au](mailto:bondclaims@customerservice.nsw.gov.au), posted to Locked Bag 9000, Grafton NSW 2460 or lodged at any Service NSW Centre.

#### **Bonds lodged using RBO**

To submit a claim for a bond refund in RBO, tenants need to log on to their RBO account and access their bond details. Tenants can click on 'Submit a claim' and follow the instructions. Tenants will need their mobile phone to receive an SMS code to verify the claim. All refunds for online bonds will be paid by direct deposit into the bank account nominated in RBO. For shared tenancies (two or more

tenants on the bond), only the principal tenant with an RBO account can submit the claim on behalf of the other tenants.

If a landlord/landlord's agent submits a claim releasing the whole bond to the tenant, the tenant does not need to take any action. The tenant will receive an electronic notification advising of the claim and that payment is being processed. The tenant should allow two working days for the funds to appear in their nominated bank account.

If an amount of the bond is being claimed by the landlord/landlord's agent, a notice of claim will be emailed to the tenant giving the tenant 14 days to respond. The tenant can respond in RBO, and may choose to:

- Agree to the landlord's claim
- Tell Fair Trading within the 14-day notice period they have applied for a hearing with NCAT (if they are disputing the landlord's or landlord's agent's claim)
- Provide evidence via RBO within the 14-day notice period of an agreement between the tenant and landlord/landlord's agent for a different deduction
- Take no action and the bond will be released as per the landlord's or landlord's agent's claim after the notice period expires.

(b) There are no plans to change the process for claiming bonds lodged with NSW Fair Trading at this time.

(c) The NSW Government is committed to providing better digital services, overcoming constraints to online transactions and enabling new transactions to be conducted online, wherever possible.

Section 186A of the *Residential Tenancies Act 2010* commenced in February 2019 and provides that the regulations may establish a rental bond rollover scheme. Such a scheme may enable tenants to transfer a bond from their old rental property to their new rental property, before the first bond has been released. Further consultation would be required before progressing.

### **Resourcing, Delays and problems post natural disasters**

**129. Given that it is well known that Fair Trading's caseload increases after natural disasters, and given we have been experiencing unprecedented spate of fires, droughts and floods – why hasn't there been an increase in funding and/or staffing to accommodate this? And if there has been, how come there are still delays?**

**130. Has Fair Trading experienced a pick up in the amount of work it is receiving following the bushfires?**

**131. Is the Minister aware of any delays to the work of the Department of Fair Trading over the last several months in light of both the bushfires and now Covid 19?**

**(a) Is there a strategy to communicate any delays to the public?**

**132. Has there been any increase in funding or resources to fair trading following the bushfires? Please outline where these are directed?**

### **ANSWER**

129-132. Fair Trading's Building Inspections Branch workload remains steady. There has not been an increase to the number of investigations currently on-hand. This may be due to a number of factors, including the COVID-19 which may have limited work currently being conducted, and therefore limited complaints relating to that work.



Fair Trading's Investigation, Review and Analysis Branch has not seen an increase in matters escalated to Investigations and Enforcement. Possible offences that may be escalated are broader than home building, and include offences relating to building work, real estate, Australian Consumer Law, motor dealers & repairers and tow truck operators. Thus far, funding and staffing matters have not changed.

The heavy rainfall received in February resulted in flooding causing water ingress to some properties therefore there has been an increase of water ingress-related complaints. This has not impacted business and as such additional staffing has not been required.

### **Retirement Villages**

**133. The Vasey Case (NCAT decision) highlights the problems under the Retirement Villages Act 1999 for residents when an operator has not secured all planning approvals before they seek to terminate the contracts of residents and relocate them. In this case, two elderly gentlemen were forced to move to another village, even though the operator had only obtained a demolition order for the existing village under a proposed multistorey development. How is the Government planning to address this under the Act to make clear that all planning approvals must be achieved before an operator can seek to evict residents?**

**134. NCAT is unable to enforce its own orders when residents are successful with awards for compensation and work orders for maintenance and replacement. Where an operator refuses to undertake the work, they must file a renewal application and have the case heard again, and if an operator will not pay the compensation, they must enforce the NCAT order before the Local Court. Is the Government going to address this issue?**

**135. Resident Committees often struggle at budget time dealing with the village accounts and interpreting these. These are important annual exercises as they determine the monthly recurrent charges for the ensuing year. What assistance does the Government intend to provide to Residents Committees to assist in this regard?**

**136. NCAT has ruled (that village operators may, in the administration of a village budget, transfer funds from monies intended to be allocated to a Capital Works Fund to other line items to meet shortfalls in those line items. This could result in the CWF not accumulating sufficient funds as would enable adequate funding for capital item maintenance to be available. In turn, this offers an operator the opportunity to unfairly avoid liability to make good a budget deficit which would otherwise emerge. What does the Government intend to do to address what is clearly an unfair situation emerging in the future?**

**137. With a rapidly ageing population, has resourcing for the regulation of retirement villages increased?**

### **ANSWER**

133. The NCAT decision in the Vasey Case found that the Vasey Housing Association NSW had complied with all of the requirements of Section 136 of the *Retirement Villages Act 1999*. The case is distinguishable on its particular facts and the provisions of the Act are sufficient to protect the interests of residents faced with similar situations. Section 136(2)(b) clearly states that before approving the termination of a resident's contract, NCAT must be satisfied that development consent and all necessary planning approvals have been obtained.

134. NCAT is administered by the Department of Justice. The question should therefore be referred to my colleague, the Attorney General, the Hon Mark Speakman MP.

135. NSW Fair Trading publishes information on its website to assist retirement village residents in understanding their rights and responsibilities, including village budgets and financial accounts.

Village residents can lodge enquiries and complaints with Fair Trading for further assistance. When Fair Trading receives a complaint, it will either recommend mediation, proceeding with the retirement village complaint service or going straight to the NSW Civil and Administrative Tribunal. Fair Trading will also consider whether there is a possible breach of legislation requiring further assessment. Fair Trading offers free and voluntary onsite mediation for retirement village disputes, including regarding budgets and financial accounts. Mediation is an informal negotiation with a neutral and qualified mediator whose role is to help identify the issues in dispute and find options that could address everyone's concerns.

Fair Trading also provides funding to the Seniors' Rights Service which provides free, confidential advocacy, advice, education and legal services to older people in NSW. This includes advice to residents of retirement villages about retirement village disputes.

Further, the Retirement Village Ambassador, appointed by the Minister, is an advocate for retirement village residents across NSW, providing residents with information about retirement village reforms and dispute resolution pathways and reporting key and emerging issues to the Commissioner for Fair Trading and the Minister for consideration and appropriate action.

136. The Retirement Villages Regulation 2017 permits the operator to use funds in the Capital Works Fund under certain prescribed circumstances. This includes the residents consenting to such expenditure by special resolution. The *Retirement Villages Act 1999* allows for contingencies to be included in annual budgets.

Fair Trading recognises that village operations can be fluid and require funds to be made available at short notice for the benefit of residents if they approve. The Sector Review conducted by Ms Kathryn Greiner AO in 2017 identified the issue of asset management, including the operation of Capital Works Funds as being of major concern to village residents. A discussion paper, *Retirement villages - a proposal for asset management* was subsequently released for public and stakeholder comment in late 2019. Among the proposals for amendment of the *Retirement Villages Act 1999* were requirements for asset management plans containing increased information to be developed by operators in order to increase transparency, including the movement of funds.

The feedback from consultation on the discussion paper is currently under consideration by Government.

137. Fair Trading is adequately resourced to assess, mediate and investigate complaints, perform proactive compliance operations and respond to enquiries regarding retirement villages. Further, the Retirement Village Ambassador has a dedicated role providing education to residents about retirement village reforms and dispute resolution pathways and reporting key and emerging issues to the Commissioner for Fair Trading and the Minister.

## Horse Racing

**138. What is the Minister doing to support drought affected horse trainers and owners in NSW?**

**139. How much is the government spending on drought programs specifically to help those doing it tough in the racing industry?**

**140. What is the process or mechanism to record injuries and incidents to riders and trainers working on NSW race tracks?**

**141. Given the danger involved in the thoroughbred industry, please outline SafeWork NSW's Strategy to monitor safety on regional and remote race tracks?**

**142. Does the Minister support a National Traceability Register for all thoroughbred horses? What is being done to progress this?**

**143. Minister - what discussions have you had with the Australian Turf Club about the ban on mass gatherings and its huge impact on the Autumn Racing Carnival?**

**144. How many people have been injured at racetracks across New South Wales in the each of following financial years:**

**(a) 2016-17;**

**(b) 2017-18;**

**(c) 2018-19;**

**(d) 2019-20 (as at 26 February 2020)?**

**145. Are there any departmental projects that are helping to reduce these numbers?**

#### **ANSWER**

138. The NSW Emergency Drought Relief Package (the Relief Package) is administered by the Department of Primary Industries in consultation and collaboration with the Department of Planning, Industry and Environment, Roads & Maritime Services, NSW Health, Service NSW, Water NSW, Local Land Services, the Department of Premier and Cabinet and NSW Treasury.

The Relief Package offers assistance for those affected by drought, including those who own and train horses. Questions about the Relief Package should be directed to the Minister for Agriculture.

The NSW racing industry has targeted support for race horse trainers and owners, including:

- an allocation of \$1 million by Racing NSW towards assisting NSW thoroughbred racing participants suffering financial hardship due to the drought
- the provision of \$845,000 of drought relief assistance to harness racing trainers, stud operators and breeders from Harness Racing NSW (HRNSW).

139. Questions about the Relief Package should be directed to the Minister for Agriculture.

140. In relation to thoroughbred racing, Racing NSW has advised that:

- industry employers, such as clubs and trainers, are required to notify the Racing NSW Workers Compensation Section as soon as possible after becoming aware of an injury, with notifications required within 48 hours of the employer becoming aware of the incident
- notifications can be provided by using Racing NSW forms, or by telephone, email or other means. Notifications may also be provided Racing NSW stewards, welfare officers or any other party
- following notification, claims are registered and are allocated to a case manager within three days. The case manager will contact the relevant parties in order to make an early liability decision and attend to the payment of medical expenses and any lost earnings.
- for more serious incidents the Racing NSW Safety Officer is also involved in the reporting process:
  - if an incident occurs on a race day, Stewards provide the Safety Officer with details of the incident. Details are also provided to relevant parties including the Racing NSW Workers Compensation Section. If further medical assistance is required, Racing NSW has a Medical Liaison Officer who is provided with relevant details and may make recommendations in relation to medical care.

- if an incident occurs during trackwork, in addition to race day measures the employer is required to complete necessary reporting paperwork for the Racing NSW Workers Compensation Section and SafeWork NSW. They are also required to maintain a register of all incidents and injuries related to their workplace.
- Racing NSW enters reports provided by race clubs into the Australian Racing Incident Database (the AIRD), a national database designed to record information about injury to personnel or horses in racing.
- the AIRD provides reliable up-to-date information on injuries at race meetings and training centres to assist with the control of occupational health and safety of people working at racetracks and any racing associated facilities, and the welfare of horses at race meetings and venues.
- further information on WHS injury reporting and other employer requirements and guidelines can be found on the Racing NSW website (<https://www.racingnsw.com.au/rules-policies-whs/work-health-safety-whs/>).

In relation to harness racing, HRNSW has advised:

- if an injury or incident occurs during racing at a harness racing track in NSW, stewards inform HRNSW management
- HRNSW contacts the harness racing club and works to ensure that relevant documentation is lodged with iCare
- the HRNSW Integrity Unit and, where relevant, the HRNSW Youth Development Officer are also informed
- if an incident occurs at a NSW harness racing track outside of racing, it is treated of a personal accident claim and HRNSW may or may not be informed.

141. SafeWork NSW regulates workplace health and safety across all industry sectors in NSW, including the horse racing industry. It offers advice on improving work health and safety, investigates workplace incidents and enforces work health and safety laws. SafeWork NSW has a particular focus on providing advice and support for new and inexperienced riders and handlers of horses. (Response drafted by Office of Racing and Approved by Lisa Foley, Director WHS Regional, SafeWork).

142. On 27 November 2019, the Commonwealth Government's Senate Standing Committees on Rural and Regional Affairs and Transport (Committee) published its report on the feasibility of a National Traceability Register for all horses (National Register).

The NSW Government, along with all other states and territories, supported the development of a National Register and agreed to work with the Commonwealth Government towards its implementation.

I am advised that the February 2020 meeting of the Agriculture Ministers Forum agreed for the Queensland and Victorian agricultural departments to co-lead the establishment of the working group to progress development of the National Register.

143. A record of my diary is published quarterly. The Australian Turf Club and Racing NSW have developed protocols and measures, in accordance with social distancing and mass gathering restrictions imposed by the Commonwealth and NSW Governments, to reduce the risk of the spread of COVID-19 in the community and within the racing industry.

144. Race meetings are conducted by racing clubs registered by the relevant controlling body (Racing NSW, Harness Racing NSW or Greyhound Racing NSW). The NSW Government does not hold information on the number of people injured at New South Wales racetracks.

145.

Race meetings are conducted by racing clubs registered by the relevant controlling body (Racing NSW, Harness Racing NSW or Greyhound Racing NSW).

The Department of Customer Service does not hold information on the number of people injured at New South Wales racetracks.

#### **Legislative Admin**

**146. What, if any, planned reviews are being done over the next 2 years for any of the acts and/or their regulations administered by the Minister for Better Regulation and Innovation?**

**147. Which regulations that fall under these acts are due to cease as at 1 March 2020, and 1 March 2021?**

**148. Given that various regulations, as set out under the Subordinate Legislation Act, cease five years after being published, what mechanisms have you set up to ensure that regulations which are required to be maintained after this 5 year period remain in force?**

**149. Which acts in this portfolio are yet to commence?**

**150. Are there any acts that have commenced but have provisions that are yet to commence?**

**(a) What are they?**

**151. In terms of each of the acts, are there any provisions that need clarifying for the department/agency/office to be able to better support the Minister?**

**(a) What amendments have been proposed?**

**152. In terms of the jointly administered acts, how is the responsibility shared between the Ministers and their departments/agencies/offices?**

**(a) With the Minister for Customer Service?**

**(b) With the Minister for Families, Communities and Disability Services?**

**(c) With the Attorney General and Minister for the Prevention of Domestic Violence?**

**(d) With the Minister for Police and Emergency Services?**

**(e) With the Treasurer?**

**(f) With the Minister for Water, Property and Housing?**

**(g) With the Minister for Energy and the Environment?**

**(h) With the Minister for Planning and Public Spaces?**

**153. How are these jointly administered acts operationalised between the Ministers and their departments/agencies/offices?**

**154. What happens when there is a conflict in the administration of these acts between the Ministers and their departments/agencies/offices?**

**(a) Other than matters that are referred to Cabinet, what is the mechanism to solve conflicts between the Ministers who share responsibility?**

## ANSWER

146. Statutory reviews planned for:

- *Mutual Recognition (Automatic Licensed Occupations Recognition) Act 2014;*
- *Motor Dealers and Repairers Act 2013.*
- *Boarding Houses Act 2012 (already underway and due to be completed by mid 2020)*
- *Biofuels Act 2007 (already underway and due to be completed by mid 2020)*
- *Strata Schemes Management Act 2015*
- *Residential (Land Lease) Communities Act 2013*
- *Greyhound Racing Act 2017*
- *Registered Clubs Act 1976*
- *Betting and Racing Regulation 2012*
- *Totalizer Regulation 2012*

*Staged repeal reviews:*

- Building and Construction Industry Security of Payment Regulation 2008
- Charitable Fundraising Regulation 2015
- Co-operative Housing and Starr-Bowkett Societies Regulation 2015
- Co-operatives (New South Wales) Regulation 2014
- Entertainment Industry Regulation 2014
- Explosives Regulation 2013
- Pawnbrokers and Second-hand Dealers Regulation 2015
- Tow Truck Industry Regulation 2008
- Betting and Racing Regulation 2014
- Boarding Houses Regulation 2013
- Conveyancers Licensing Regulation 2015
- Dangerous Goods (Road and Rail Transport) Regulation 2014
- Home Building Regulation 2014
- Motor Dealers and Repairers Regulation 2014
- Mutual Recognition (Automatic Licensed Occupations Recognition) Regulation 2014
- Property, Stock and Business Agents Regulation 2014
- Racing Appeals Tribunal Regulation 2015
- Registered Clubs Regulation 2015
- Residential (Land Lease) Communities Regulation 2015
- Tattoo Parlours Regulation 2013

147. None

148. The *Subordinate Legislation Act 1989* allows for the postponement of the automatic repeal of Regulations on 1 September 2020 each year under certain circumstances. The automatic repeal of a Regulation can be postponed up to five times. There are government and agency processes in place that ensure required Regulations are maintained by either re-making them or postponing their automatic repeal.

149.

- *Building and Development Certifiers Act 2018* (proclaimed to commence on 1 July)
- *Building Professionals Amendment Act 2008* (to be repealed on 1 July)
- *Community Gaming Act 2018*
- *Charitable Fundraising Amendment Act 2018*
- *Fair Trading Amendment (Commercial Agents) Act 2016*
- *Fair Trading Amendment (Short-term Rental Accommodation) Act 2018* (proclaimed to commence on 10 April)

- *Strata Schemes Management Amendment (Building Defects Scheme) Act 2018*

150. Yes

(a)

- *Better Regulation Legislation Amendment Act 2019* commenced except for - schedule 1.4, 1.8 & 1.10
- *Fair Trading Legislation Amendment (Miscellaneous) Act 2018* - commenced except for schedule 3
- *Fair Trading Legislation Amendment (Reform) Act 2018* - commenced except for parts of schedule 1, 2 and 4
- *Retirement Villages Amendment Act 2018* - commenced except for schedules 1[2] & [11] and 2[3]
- *Casino Control Amendment Act 2018* commenced except for Schedule 1 [28] – Section 74(5)

151. The Department takes a stewardship approach to the legislation it has administrative responsibility for. This means that from time to time amendments are required to legislation to clarify intent and ensure all legislation in the portfolio is operating as efficiently and effectively as possible.

(a) The Better Regulation Legislation Amendment Bill 2020 is currently awaiting the second reading debate in the Legislative Assembly. It contains a number of proposed amendments to legislation in the portfolio.

152. All Responsibility for jointly administered Acts is clearly set out under the *Allocation of the Administration of Acts*.

153. The administrative responsibilities are clearly assigned to Ministers through the Allocation of the Administration of Acts.

154. (a) Ministers and their Departments consult with each other about matters concerning Acts for which there is shared ministerial responsibility.

Questions from Mr David Shoebridge MLC

### SafeWork NSW

**155. How many Inspectors are there in the SafeWork NSW Inspectorate today?**

**156. How many Inspector positions are vacant in the SafeWork NSW Inspectorate today?**

**157. How many other positions are vacant in SafeWork NSW today? How many of these other vacancies are project officers, for example?**

**158. The other workplace safety regulator in NSW is the Resources Regulator. On their website the Resources Regulator publishes detailed information about their projects and enforcement actions in the following areas:**

- **Weekly incident summary**
- **Safety alerts**
- **Investigation reports Compliance activities and reports**
- **Enforceable undertakings**

**The Resources Regulator website states:**

**"We produce and share reports on our activities in order to:**

ensure a consistent and responsive regulatory approach provide increased transparency and confidence in our compliance and enforcement activities promote voluntary compliance by industry"

**(a) Why doesn't SafeWork do the same?**

**159. Why doesn't SafeWork publish its investigation reports or Improvement Notices, for example?**

**160. SafeWork NSW applies a triaging system to safety incident reports. What percentage of responses to incident notifications that involve actual harm to a person receive an Inspector response?**

**(a) How does this response rate vary across different industry sectors?**

**161. Do all incidents that are required to be notified under section 35 of the WHS Act result in an Inspector visiting the workplace?**

**(a) If not, why not?**

**(b) If not, then what is the response provided?**

**(c) If not, what percentage of Notifiable Incidents receive an Inspector response?**

**(d) If not, does SafeWork need more Inspectors?**

## **ANSWER**

155. As at 31 March 2020, SafeWork NSW currently has 330 field inspector roles. The number does fluctuate slightly to take account of succession planning for known retirements. The 330 roles are the number of funded positions that can be recruited. The filled number (286) is always less due to vacancies and retirements and a lag in filling these positions while recruitment is carried out and also to schedule bulk intakes for the new inspector training program.

156. As at 31 March 2020, 30 Inspector positions are vacant with active recruitment underway.

157. As at 31 March 2020, 11 other positions are vacant. Two of these are Project Officer roles.

158. SafeWork NSW produces and releases a wide range of workplace health and safety information to workplaces and the community of NSW.

This includes an e-newsletter which provides general WHS information, and regularly includes information on serious workplaces incidents, prosecutions and enforceable undertakings.

SafeWork NSW also shares information via its social media channels about incidents, enforcement outcomes and to promote good WHS practice.

159. SafeWork NSW does not release investigation reports into the public domain because of legal and statutory obligations to ensure protections around this information.

160. The triage system applied by SafeWork NSW is based on the nationally accepted arrangement published by Heads of Workplace Safety Authorities (HWSA) "*Framework for a common approach to work health and safety regulator event triaging*" (the national Framework). The primary principle of the national framework is to ensure resources are targeted toward the areas of greatest need and are also guided by the *National Compliance and Enforcement Policy*. This policy identifies the need to



ensure that any regulatory response is proportionate to the risks identified in the narrative presented at the time of notification.

For the period 17/18 and 18/19 45% of injury and illness incident notifications resulted in an inspector response.

Note: not all injury/illness notifications received are notifiable under the *Work Health and Safety Act 2011*. The types of injury/illness notifications that are received vary in seriousness and often are recorded as minor cuts, abrasions, soft tissue injuries.

(a) The inspector response rate for injury/illness in high risk industries such as construction, manufacturing, transport and agriculture occurs in approximately 60% of injury/illness notifications.

161.

(a) All incidents notified to SafeWork NSW receive a regulatory response (also see response to question 160). Those incidents that present with a higher risk profile will receive an inspector response. As a matter of course, workplace fatalities and serious injury incidents, will result in an inspector response and investigation.

(b) SafeWork NSW has adopted the national Framework approach of responding to notified incidents that present a lower or lesser risk profile through an Administrative Response determination. SafeWork NSW provides instructions to the business on the steps that are required to be undertaken in response to the incident. These instructions state that an investigation of the incident should occur, the investigation should be completed in consultation with the workers (and/or their WHS representatives), a copy of the investigation with the letter is to be kept for five years.

SafeWork NSW routinely follows up with a business by allocating an inspector to attend the workplace to ensure that they have responded appropriately to the incident notification.

(c) For all incidents notified to SafeWork NSW during the period 17/18 and 18/19, the inspector response rate was 41%.

Note: Incidents notified to SafeWork NSW includes work related fatalities, serious injury and illness, minor injury and dangerous incident notifications. A percentage of businesses that have received an Administrative Response determination by SafeWork NSW will also receive an inspector verification visit. SafeWork NSW selects businesses for follow up aligned to its regulatory priorities. Over the past three years, 629 incidents have been subject to this process.

(d) SafeWork NSW applies a risk based national Framework to triaging workplace incidents and complaints. It is neither desirable or necessary to have an inspector visit every workplace where an incident has occurred or that is the subject of a complaint. SafeWork NSW has established through its administrative response verification program that businesses do as a matter of course proactively and positively respond to the administrative response decision.

## Silicosis

**162. What are you doing to transition workers who have been diagnosed with silicosis out of the stone industry?**

**163. Given that the parliamentary inquiry into dust diseases has heard evidence that there is no safe level of exposure to silica dust, why won't you consider banning the product entirely?**

**164. The CFMEU wrote to the NSW govt in 2015 warning them about flammable cladding. It wasn't until 2018 and after the 2017 Grenfell Tower fire that the govt banned the product. Why do you think the government took so long to respond?**

## ANSWER

162. Of the diagnoses this financial year 2019/20 (85), 94% (80/85) are still working with 81% (69/85) of these workers at 1% disability, five workers at 5-10% disability, four at 11-30% disability and two at 40-50% disability. Of the five that are no longer working, three workers are over 85 years of age, one worker is 50-59 years and one is deceased.

At 1%, workers are generally asymptomatic. The treating professional determines whether work in the industry can continue. Any work adjustments, including whether the worker can continue to carry out this type of work will be determined in the health monitoring report by the medical practitioner. Health monitoring (lung screening) is generally carried out by icare Dust Diseases Care (NSW Government subsidised service), however, local practitioners and specialists may also be used.

The *Work Health and Safety Regulation 2017* (clauses 374 & 376) requires that the health monitoring report must be obtained by the PCBU, who then must provide a copy to the worker. A copy must also be provided to the WHS regulator (SafeWork NSW) where there is an adverse result or a recommendation that remedial measures including whether the worker can continue to carry out the work. SafeWork NSW monitors the PCBU's remedial measures. Ongoing health monitoring is essential for these workers and ensuring the work environment is compliant with the safety control requirements.

Return to work plans and workplace adjustments are developed between the business and the treating medical professionals for the circumstances where this is required, with compensation also available through icare Dust Diseases Care for 1% disability or more.

The State Insurance Regulatory Authority (SIRA) and icare administer the compensation and return to work legislative framework.

163. In relation to banning the product, it is important to note that manufactured stone products are not manufactured in Australia, they are imported. Commonwealth action would be required to prohibit imports under the Commonwealth Customs (Prohibited Imports) Regulations 1956. In addition, the majority of the NSW Manufactured Stone Industry Taskforce members (1 July 2018 - 30 June 2019) did not support this option raised by the Construction Forestry Mining and Electrical Union (CFMEU).

It is also important to note that although it is the current focus of the problem, workers are exposed to silica when working with materials other than manufactured stone. High levels of silica are also present in natural sandstone and building products such as concrete and bricks, in various industries such as tunnelling, stonemasonry, domestic and civil construction, mining and foundry work. The statistics show that the problem is not restricted to manufactured stone. This would need to be taken into account in any ban based on the silica content of a material.

Inspector visits have shown that exposures can be controlled with appropriate safety controls. Bans are usually considered as a last resort when effective risk controls are not available. For example, as at 29 February 2020, 96 per cent of NSW manufactured stone sites have complied with the requirements, with all sites in NSW visited (246). Follow up visits are being completed for the remaining four per cent, noting that almost half relate to health monitoring (screening). Wait time with icare is approximately three months at the Pitt Street clinic and four months for the mobile lung bus.

Instead, SafeWork NSW is taking steps to strictly enforce the prohibited activity of uncontrolled dry-cutting of all silica containing materials by issuing a prohibition notice whenever it encounters the practice, with on-the-spot fines to come into effect on 1 July 2020 for manufactured stone. SafeWork's website at [www.safework.nsw.gov.au/silica](http://www.safework.nsw.gov.au/silica) has further information.

164. The NSW Government has been working on measures to address the fire safety risks associated with unsafe cladding since the Lacrosse fire in Victoria in late 2014, including by issuing alerts to industry practitioners and consent authorities about the existing requirements of the Building Code of

Australia. The building product use ban under the *Building Products (Safety) Act 2017* imposes additional restrictions on the use of aluminium composite panels and complements the other work by the Cladding Taskforce to identify affected buildings and drive remediation.

### **Industrial manslaughter**

**This parliament heard evidence from the mother of Christopher Cassanti and 18 year old crushed to death on a construction site.**

**She said the penalties currently in place to hold directors and those responsible accountable are appalling and do not bring justice to the victims.**

**165. Will you commit to introducing a charge for industrial manslaughter?**

**(a) If no, why?**

### **ANSWER**

165. The NSW *Work Health and Safety Amendment (Review) Bill 2019* does not include a provision for an industrial manslaughter offence. Instead, the Bill seeks to amend the Category 1 offence to make it easier to prosecute and to insert a note to make it clear that an industrial death can be prosecuted under the manslaughter provisions of the *Crimes Act 1900*. The NSW Government has noted that this approach retains the risk-based preventative approach that underpins the WHS framework and is likely to have a greater deterrence effect. The Bill was recently examined by the NSW Legislative Council's

Portfolio Committee No. 1 which did not recommend any amendments to the key provisions in the Bill including those relating to the enhancement of the Category 1 offence. It also made no recommendation to include an industrial manslaughter provision.

Varying models for an industrial manslaughter offence have recently emerged across some Australian jurisdictions. NSW does not want to add to the growing diversity on the issue when an industrial death can currently be prosecuted under the Crimes Act.

The Bill also introduces an increase to the maximum penalties for offences in the WHS Act to reflect increases in the Consumer Price Index. This will ensure penalties retain their deterrent value and keep pace with the costs of compliance and community expectations.