

Better Regulation and Innovation

Public Accountability Committee – Inquiry into the NSW Government’s management of the COVID-19 pandemic

Friday 12 June 2020

Questions taken on notice

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| Q1. | <p>The Hon. JOHN GRAHAM: One of the questions I might ask you to come back to and answer is: What were those items that the Commonwealth regulated?</p> <p>Ms WEBB: Yes, absolutely. I think it was hand sanitiser, face masks and things like that. But we can absolutely identify the regulation for you and show you.</p> <p>The Hon. JOHN GRAHAM: The key ones that CHOICE are drawing attention to.</p> <p>Ms WEBB: That is right.</p> <p>The Hon. JOHN GRAHAM: The Commonwealth chose to regulate a number of those. Has there been any assessment of how effective that has been?</p> <p>Ms WEBB: As I mentioned, the agreement between all the jurisdictions has been that should we come across any item of concern in that category that we would refer them immediately to the Australian Federal Police. I am not aware of any ending up with any law enforcement action being taken—I am just checking with my colleagues. We can check that and see if they have taken any action under that regulation.</p> <p>The Hon. JOHN GRAHAM: So you are not aware of any action in relation to—</p> <p>Ms WEBB: No.</p> <p>The Hon. JOHN GRAHAM: Were there referrals from New South Wales?</p> <p>Ms WEBB: I do not think so but I will double-check and let you know. I am not aware that we ended up referring anything, but I will check with our team to make sure.</p> <p>The Hon. JOHN GRAHAM: But such a referral would have come through Fair Trading?</p> <p>Ms WEBB: Yes, it would have been the Fair Trading team. We have the protocols that we agreed with all the jurisdictions about how the matters would move from the jurisdiction to the Australian Federal Police. They were not going to have to come via me but I can check and see whether that happened.</p> | 27 |

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| | <p>ANSWER</p> <p>The Federal Government's <i>Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Essential Goods) Determination 2020</i> came into effect on 31 March 2020. The determination is made under subsection 477(1) of the <i>Biosecurity Act 2015 (Cth)</i>.</p> <p>The determination prohibits persons, such as private sellers, from reselling essential goods at excessive prices. It applies to persons who purchase the goods in a retail transaction and then supplies, or offers to supply, the goods at more than 120% of the purchase price.</p> <p>The determination considers essential goods to be disposable face masks, disposable gloves, disposable gowns, alcohol wipes, hand sanitiser, goggles, glasses and eye visors. The goods are considered essential because they prevent and control the spread of COVID-19 and protect vital services, including health workers, pharmacists and law enforcement, that are required to deal with individuals who carry a high risk of transmission.</p> <p>NSW Fair Trading regularly meets with Commonwealth, other States and Territories regarding consumer issues, including the Australian Competition and Consumer Commission and the Australian Federal Police. It also communicates with consumer-related organisations, such as CHOICE, regarding goods and services.</p> <p>NSW Fair Trading has reviewed a number of traders to determine what enforcement action, including trader education and notices to traders, is appropriate in an effort to ensure that consumers are informed and protected.</p> <p>SafeWork NSW has proactively engaged with businesses, such as distilleries, which were known to have re-tooled to manufacture alcohol-based hand sanitisers, and which had received significant quantities of ethanol or isopropyl alcohol. Some of these engagement activities were conducted with NSW Environment Protection Authority, which addressed issues relating to the transport of dangerous goods, such as ethanol.</p> <p>SafeWork NSW has responded to Requests for Service (RFS) relating to alcohol-based hand sanitisers and, where applicable, checked compliance with relevant requirements. SafeWork NSW has also developed a technical guide targeted at businesses intending to manufacture, decant, import, supply or store alcohol-based hand sanitisers. The Guide is available at www.safework.nsw.gov.au.</p> | |
| Q2. | <p>The Hon. JOHN GRAHAM: So you have given us an overall picture but what about in relation to those products which you say the Commonwealth has felt it might need to regulate and those products that CHOICE says New South Wales should specifically regulate—can you give us any picture in relation to things such as face masks, gloves, gowns, sanitiser?</p> <p>Ms WEBB: No. I can recollect someone showing me one photo of some hand sanitiser at what looked like an inflated price, but, as I said, when we got down to the shop to check the details of it, the price had gone back down again. There was one relating to toilet paper but, again, it was found out that these were industrial rolls of toilet paper and the price relevant to the quantity was correct. I am not sure about face masks but we could check. I do not know that we have had any but we could find out.</p> | 28 |

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| | <p>ANSWER</p> <p>NSW Fair Trading has received 50 complaints and 191 enquiries for the period 1 January 2020 to 5 June 2020 which were recorded as relating to pricing and COVID-19. A review of these records shows 38 of the 241 complaints and enquiries were about masks, hand sanitiser, toilet paper or general grocery items.</p> | |
| Q3. | <p>The Hon. ADAM SEARLE: How many prosecutions?</p> <p>Ms WEBB: Overall for Fair Trading? I did not bring those figures because I thought we were talking about COVID-related matters, but I can get that on notice for you.</p> <p>The Hon. ADAM SEARLE: Okay, during the COVID period, then. During the period of the public health orders, which is what we looked at. What are the prosecutions—</p> <p>Ms WEBB: They were not COVID-related prosecutions. But how many prosecutions—</p> <p>The Hon. ADAM SEARLE: How do you know? You say that, but what were the prosecutions for?</p> <p>Ms WEBB: Unlicensed building, defrauding people from trust accounts—</p> <p>The Hon. ADAM SEARLE: Okay. But in the traditional Australian consumer affairs?</p> <p>Ms WEBB: Australian Consumer Law prosecutions? I can get those figures on notice for you on how many Australian Consumer Law related matters we have dealt with.</p> | 29 |
| | <p>ANSWER</p> <p>Since 1 January 2020, prosecutions of two traders, comprising six Australian Consumer Law offences, have been concluded, resulting in six convictions. One trader was sentenced to an intensive correction order, including 90 hours of community service, as well as a \$2,800 fine. The other was fined \$15,000.</p> | |
| Q4. | <p>The Hon. JOHN GRAHAM: And you are aware of the examples that were canvassed in the media about mask supplies?</p> <p>Ms WEBB: Yes, and followed them up when we heard about them, yes.</p> <p>The Hon. JOHN GRAHAM: Talk us through those examples when you followed those up. What was specifically going on with face masks?</p> <p>Ms WEBB: I cannot talk about a specific case—I will take that on notice.</p> | 29 |
| | <p>ANSWER</p> <p>NSW Fair Trading and SafeWork NSW are aware of media reports alleging the sale of imported face masks claiming compliance to an overseas standard.</p> <p>The <i>Therapeutic Goods Act 1989</i> provides that the Australian Minister for Health, or his delegate, may exempt certain kinds of medical devices that are not included in the Australian Register of Therapeutic Goods from various provisions of the Act so that those devices can be made available urgently to deal with public health emergencies.</p> | |

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| | <p>On 22 March 2020, the acting Secretary for Health in the Australian Government of Health, as a delegate of the Minister, made the <i>Therapeutic Goods (Medical Devices—Face Masks and Other Articles) (COVID-19 Emergency) Exemption 2020</i>, to support the purchase of certain kinds of medical devices by the Australian Government Department of Health for the National Stockpile. The exemption may be viewed on the Federal Register of Legislation at www.legislation.gov.au.</p> <p>In relation to any items of concern, SafeWork NSW issued a safety alert, in conjunction with NSW Fair Trading, for the purchase of face masks in this demand period, to ensure that they meet NSW work health and safety and consumer protection requirements. The alert is available at www.safework.nsw.gov.au. SafeWork NSW and NSW Fair Trading have also responded to Requests for Service (RFS) relating to face masks; and, where applicable, checked compliance with the above requirements.</p> <p>NSW Fair Trading will continue to work with SafeWork NSW to investigate and test the safety and performance of face masks and take action to remove any products that falsely claim a level of performance, protection or certification.</p> | |
| Q5. | <p>The Hon. JOHN GRAHAM: And how many additional complaints were in the misleading and deceptive category? Presumably they are additional—</p> <p>Mr GAVRIELATOS: I do not have that breakdown.</p> <p>Ms WEBB: We would have to take that—</p> <p>The Hon. JOHN GRAHAM: And those that are captured on the complaints register?</p> <p>Ms WEBB: So sorry. I used the word complaints register in a general term there. We do have a specific complaints register that we publish each month. I meant the internal complaints data that we get every day as people ring up with complaints or put complaints in through our system.</p> | 30 |
| | <p>ANSWER</p> <p>NSW Fair Trading has identified 37 complaints in the misleading and deceptive category in its database as at 23 June 2020. These comprise 10 concerning misleading and deceptive conduct and 27 concerning misrepresentation related to COVID-19.</p> | |
| Q6. | <p>The Hon. JOHN GRAHAM: Just turning to that remote communities question. You have given us a view about what might be one thing that is easing that. I am interested in the agency's view about whether this is still a problem at the moment and whether it was a problem in the months previous. The shortages, obviously not price gouging given what you have told us, but shortages in particular. Is that a problem? Was it a problem?</p> <p>Ms WEBB: As a general proposition, people in remote communities often have less consumer choice so I absolutely acknowledge that is a problem and that prices may tend to be higher for them. Whether we had any particular reports in relation to and during the COVID-19 period, the shortages being exacerbated by that, I will have to take on notice. I know from reading the newspaper and the media reports that certainly some regional areas did have issues getting supplies so I would not be surprised if that was the case. But I would have to check whether we had specific people bringing specific examples to our attention.</p> | 31 |

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| | <p>ANSWER</p> <p>NSW Fair Trading has identified 31 complaints about the supply of items from customers in regional areas. No complaints were identified from remote areas. Of the 31 complaints, five complaints were about the delay or partial supply of online orders for toilet paper, facemasks, and hand sanitiser.</p> | |
| Q7. | <p>Mr GAVRIELATOS: In terms of total complaints in online inquiries, we have received 19,067 complaints in the year to date.</p> <p>The CHAIR: That is from 1 January?</p> <p>Mr GAVRIELATOS: That is from 1 January.</p> <p>The CHAIR: How many prosecutions have been launched?</p> <p>Ms WEBB: Unfortunately, we did not bring our general list of cases and prosecutions with us so we will have to take that on notice.</p> <p>The CHAIR: There have been repeated, not just coming from the education Minister, but I think you could not have had your eyes and ears open to have not heard repeated concerns about shortages particularly in regional New South Wales. What if anything has your office done to seek to address that? It may be that you have not done anything because you have not had a formal complaint made in that regard but what—if anything—has been done?</p> <p>Ms WEBB: I do not think we have had a formal complaint but I will check that.</p> | 31 |
| | <p>ANSWER</p> <p>Complaints data is provided in the answer to question six.</p> <p>Since 1 January 2020, NSW Fair Trading has commenced prosecutions against 18 defendants laying a total of 66 charges. Five of the 66 charges commenced since 1 January 2020 allege contraventions of the Australian Consumer Law.</p> | |
| Q8. | <p>The CHAIR: So if that panic buying and the shortages have become chronic there was no part of the New South Wales Government responsible for stepping up and ensuring the supply of critical products—hand sanitiser, toilet paper—</p> <p>Ms WEBB: I am not an expert in the Public Health Act. It may have some powers in these circumstances to enter into the market and direct the market a bit more but I would have to take it on notice. I have no knowledge of that. Maybe the State's Emergency Powers Act, the police or something. I am sorry I just do not know.</p> <p>The CHAIR: I ask this question because in other jurisdictions, Taiwan for example, they saw early on there was going to be critical shortage in hand sanitiser and they mobilised resources to ensure adequate amount was produced. But there is no machinery that you are aware of—that you can point to now—that would have assisted that.</p> <p>Ms WEBB: I do not want to sell NSW Procurement short because I understand what they did do was to mobilise some resources for people to manufacture hand sanitiser and that is why the supply increased. But I am just talking about this from my reading generally.</p> <p>The CHAIR: I am more than happy for you to take it on notice.</p> | 32 |

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| | <p>ANSWER</p> <p>During COVID-19, supermarkets, retailers, chemists and manufacturers initiated a market-led response that was successful in dealing with panic buying of various household goods that had led to artificial shortages.</p> <p>Supermarkets and retailers responded to panic buying by implementing quantity caps for sought after items. Producers of goods also increased production to meet the increased demand. As a result, essential goods have become accessible in stores within a reasonable amount of time and regulatory intervention was not warranted.</p> <p>To assist supermarkets in meeting the needs of their communities and to reduce panic-buying, NSW Fair Trading introduced a one-off exemption to the <i>Retail Trading Act 2008</i>. The exemption allowed supermarkets to remain open on restricted trading days over the Easter long weekend and ANAC day this year, as they would normally be required to close on these days.</p> <p>The NSW Government has also implemented initiatives to help ensure the supply of critical products. For example, the Minister for Planning and Public Spaces made the <i>Environmental Planning and Assessment (COVID-19 Development – Extended Operation) Order 2020</i> on 25 March 2020. The order allows for retail premises such as supermarkets, pharmacies and corner stores to operate 24 hours a day. This provides retailers the flexibility to adjust and extend their hours of operation to ensure that the community has easy access to food, medical supplies and essential household goods.</p> <p>The <i>State Environmental Planning Policy (COVID-19 Response)</i> allows supermarkets and other retail outlets across the State to receive deliveries 24 hours a day. The policy overrides local planning restrictions that limit the timing and frequency of truck deliveries to ensure consistent supply of essential goods to communities right across the State.</p> | |
| Q9. | <p>The CHAIR: What if any financial autonomy does he have?</p> <p>Ms WEBB: He has a separate budget. He has a budget for his office and then he has a budget for this project of doing this activity under the RAB Bill. Then he has another budget for various of the other pillars of his work program.</p> <p>The CHAIR: What is his office budget?</p> <p>Ms WEBB: I just did not come with any of that information. I am really sorry. I did not expect to be asked these questions. I will have to take them on notice.</p> <p>The CHAIR: What is the RAB project budget?</p> <p>Ms WEBB: Exactly the same. I will have to take that on notice.</p> <p>The CHAIR: You can probably anticipate my next question. What if any other budgets does he have and what projects or work do they attach to?</p> <p>Ms WEBB: We will see what we can do.</p> | 33 |

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| | <p>ANSWER</p> <p>For the financial year 2019/20 the Office of the Building Commissioner (OBC) was provided with a budget of \$7 million. This comprised \$3 million from NSW Treasury and \$4 million from the Department of Customer Service. It was also provided with resources distributed from within the Department of Customer Service.</p> <p>Funding and resources necessary to implement the <i>Residential Apartment Building (Compliance and Enforcement) Act 2020</i> are to be allocated from the budgets of the OBC and the Better Regulation Division within the Department of Customer Service.</p> | |
| Q10. | <p>The CHAIR: So in terms of obtaining a budget for the Building Commissioner's work, where is that budget being allocated from? Is it money redistributed within the current department budget? Is it fresh money? Where is the money coming from?</p> <p>Ms WEBB: I understand it is a combination of all of those. I will have to take that on notice.</p> <p>The CHAIR: There may be two different answers so if you could provide the answer for this financial year and provide the answer for the future financial year.</p> | 34 |
| | <p>ANSWER</p> <p>The Office of the Building Commissioner (OBC) budget for the financial year 2019/20 is provided in the answer to question nine.</p> <p>Departmental budgets for financial year 2020/21, including the budget of the Office of the Building Commissioner, have not yet been confirmed by NSW Treasury.</p> | |
| Q11. | <p>The CHAIR: Mr Tansey, you say you have these letters. I would ask you to table or provide on notice the letters of thanks that you have from the industry that underpins that assertion.</p> <p>Mr TANSEY: I am happy to.</p> <p>The CHAIR: I will hand it to the Opposition. All of them, Mr Tansey.</p> | 35 |
| | <p>ANSWER</p> <p>The letters referred to in evidence have been identified. The authors of the respective letters have been asked whether they consent to those letters being produced to the Committee. The requests are still in progress and no response has been received from the authors to date. Where the authors' consent is received the letters will be provided to the Committee out of session.</p> | |
| Q12. | <p>The Hon. JOHN GRAHAM: Let us come back to where you are more comfortable, to price gouging. One of those anecdotes, one of those stories about price gouging did relate to facemasks. It was about the facemasks normally— In particular I think it was the P95 facemasks which would normally be sold for around \$40 for about 20, were reported as being sold for \$786 by a company, Livingstone International. Are you aware of that report, that anecdote, that instance?</p> <p>Ms WEBB: I cannot recall that I have heard that specific one. That is not to say that Fair Trading might not have heard about it or that I did not know about it at one particular point in time. Right off the top of my head, no I cannot recall that one.</p> | 36 |

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| | <p>The Hon. JOHN GRAHAM: But presumably if it had been the subject of actual referral—you said you do not think they have been referrals—it might be more familiar to you?</p> <p>Ms WEBB: That is probably right but I would have to check.</p> <p>The Hon. JOHN GRAHAM: Feel free to take it on notice.</p> | |
| | <p>ANSWER</p> <p>NSW Fair Trading has identified three complaints in its complaints database about Livingstone International from 1 January 2020 to 23 June 2020. One matter related to misleading advertising, one related to the supply of incorrect goods and one related to non-or partial supply of goods.</p> | |
| Q13. | <p>The Hon. JOHN GRAHAM: Their prices were up from \$40. They were at about \$80. So double. In a very constrained market and we acknowledge that there were real problems here. So competitors were selling them for double the price but this company is selling it for \$786.</p> <p>Ms WEBB: That would be very good evidence that they were putting a very high margin on it which tends to show it is something like price gouging I absolutely agree.</p> <p>The Hon. JOHN GRAHAM: Is the agency aware of this example?</p> <p>Ms WEBB: I cannot speak on behalf of the agency but we will take it on notice and just check if we had heard of it.</p> | 37 |
| | <p>ANSWER</p> <p>Refer to answer to question 12.</p> | |
| Q14. | <p>The Hon. JOHN GRAHAM: I was about to make the point that this is a company headquartered in New South Wales not far from here in Mascot. It has been publicly reported. It was the subject of quite a lengthy public report. Why has this not come to the department's attention?</p> <p>Ms WEBB: I think I said that I was not sure whether it has or has not. I will take on notice whether it has. I will find out what we did or did not do about it and take all of that on notice and let you know.</p> | 37 |
| | <p>ANSWER</p> <p>Refer to answer to question 12.</p> | |
| Q15. | <p>The CHAIR: I did listen carefully to the question and it was phrased in the context—and I think it is a valid context—about issues about working from home. I myself will probably have some questions about issues around working from home and SafeWork's role in that regard. So I do think it is within the terms of reference. How it is answered though is a matter for the witnesses. So the question was in order if you remember it, Ms Webb.</p> <p>Ms WEBB: What progress has been made? I am not sure if Mr Dunphy came equipped with his statistics but he may be able to answer it a little bit.</p> | 38 |

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| | <p>The Hon. ADAM SEARLE: I am happy for you to take it on notice.</p> <p>The CHAIR: Mr Dunphy, the question was action in relation to—</p> <p>Ms WEBB: Sorry, Mr Tansey.</p> <p>Mr TANSEY: The task force has absolutely continued to meet. We met for the 64th meeting yesterday and we are continuing to meet every three weeks routinely. I am just looking to call up the statistics and compare it for arguments sake back to whenever you might consider that we went into the COVID-19 period. Let us say February sometime. I am happy to try and get the statistics here from my files. As you know they are published every week to the cladding task force website so if you wanted to find them yourselves they are also available there. Sorry, the parliamentary network appears to be very slow.</p> <p>The Hon. ADAM SEARLE: That is okay. I am happy for you to come back to that.</p> | |
| | <p>ANSWER</p> <p>The Taskforce has continued to drive the assessment and remediation of buildings, which remains a priority despite the COVID-19 pandemic. The Department of Customer Service hosted its second forum for council officers dealing with combustible cladding on 28 February 2020. At the forum it was noted that, through the work of local councils, 91 per cent of buildings had reached or passed the point of an expert assessment being formally requested or completed, or had been cleared. This rate now exceeds 98 per cent.</p> <p>As of 14 February 2020, there were 462 outstanding potentially high-risk buildings. Since then, 45 have been cleared, with 417 remaining as of 19 June 2020. 59 of these remaining buildings are at the point of an action plan for remediation being developed, and 104 are subject to remediation orders or approval by the consent authority.</p> <p>The Cladding Support Unit remains in close contact with local councils and has continued to provide support and assistance throughout the COVID-19 pandemic and the associated changes to work and economic activity. It has surveyed councils about these impacts and is tailoring ongoing assistance accordingly.</p> | |
| Q16. | <p>The Hon. ADAM SEARLE: You would be aware that on 18 March the Fair Work Commission released a statement indicating that employees who do not work because they have a reasonable concern about an imminent risk to their health and safety are not taking industrial action. You are aware of that ruling?</p> <p>Mr DUNPHY: I am not particularly aware of the details of that.</p> <p>The Hon. ADAM SEARLE: Will you make yourself aware of that ruling and follow it to an investigative role you are undertaking?</p> <p>Mr DUNPHY: Certainly I am sure in terms of the broad look of the investigation that probably is something that the investigation team has looked at. But, yes, we can have a look at that.</p> <p>The Hon. ADAM SEARLE: Okay. Is it the case that on 27 March SafeWork served a notice on Qantas informing the airline it is under investigation and may face prosecution in relation to this matter?</p> <p>Mr DUNPHY: We do not normally send notices saying "You are under investigation." It may be a matter of seeking further information so they would—normally in the process of an investigation we will seek notices requiring the provision of information or documents.</p> | 39 |

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| | <p>The CHAIR: Did that happen, Mr Dunphy, on that date? It is a simple question—27 March?</p> <p>Mr DUNPHY: I am sorry?</p> <p>The CHAIR: Did that happen on that date regarding Qantas?</p> <p>Mr DUNPHY: I would need to confirm that so I cannot say one way or the other.</p> <p>The Hon. ADAM SEARLE: Okay. I am happy for you to take that on notice and come back to the Committee and would ask you to produce to the Committee any notice that was issued to Qantas.</p> <p>The Hon. TREVOR KHAN: This is a matter that is currently under investigation.</p> <p>The Hon. ADAM SEARLE: Well, if he wants to take that point, he can.</p> <p>The CHAIR: I assume Mr Dunphy will take it on notice. Is that right, Mr Dunphy?</p> <p>Mr DUNPHY: I will take it on notice. In terms of if we have issued a notice I certainly can advise whether that has occurred. If it is part of the investigation obviously—</p> <p>The Hon. ADAM SEARLE: Obviously I am not asking you to do anything that would jeopardise any investigation. I am just trying to find out the information.</p> <p>Mr DUNPHY: Yes.</p> | |
| | <p>ANSWER</p> <p>SafeWork NSW correspondence to Qantas is provided at Tab A.</p> | |
| Q17. | <p>The CHAIR: At any point was the Minister advised of the fact that there had been the improvement notice issued?</p> <p>Mr DUNPHY: I do not have the information to hand at present. I do not believe that we notify of every matter that occurs but there may have been, in terms of general information that may have been communicated, but I would need to check that.</p> <p>The CHAIR: So you will check that and provide an answer on notice?</p> <p>Mr DUNPHY: I can check that, yes.</p> <p>The CHAIR: And provide an answer on notice?</p> <p>Mr DUNPHY: Yes.</p> <p>The CHAIR: Was the Minister advised of the request for an internal review?</p> <p>Mr DUNPHY: I am not aware of that. The internal review is not done within an area that I have responsibility for so I am not too sure what the arrangements were.</p> <p>The CHAIR: Who does? Who has who is sitting here? Mr Gavrielatos?</p> <p>Mr GAVRIELATOS: Recently that area has come into my group. I am not aware whether the Minister would have been told of that or not.</p> <p>The CHAIR: Will you find out and let us know?</p> <p>Mr GAVRIELATOS: I can ask that question.</p> <p>The CHAIR: Did the Minister have any involvement in any of the investigation, the issuing of the improvement notice or the request for and/or obtaining of an internal review? Did the Minister have any involvement at any stage?</p> | 40 |

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| | <p>Mr GAVRIELATOS: Not that I am aware of.</p> <p>The CHAIR: All right. But you may not be aware of that. You may not be aware of the Minister's involvement, given your state of knowledge. Is that right, Mr Gavrielatos?</p> <p>Mr GAVRIELATOS: I cannot answer. It is up to the Minister to answer that question, not me, what his involvement might be. But certainly from our perspective, from the department's perspective, at least in terms of my recently taking over that area, I am not aware of anything that has gone to the Minister about that.</p> <p>The CHAIR: All right. Will you check that?</p> <p>Mr GAVRIELATOS: I will check, yes.</p> <p>The CHAIR: Will you check on notice and provide an answer based upon the departmental records?</p> <p>Mr GAVRIELATOS: Yes. Absolutely, yes.</p> | |
| | <p>ANSWER</p> <p>SafeWork NSW issued two improvement notices to Qantas Airways Limited and Qantas Ground Services Limited regarding notification of COVID-19 matters to the regulator. Both notices were internally reviewed and set aside.</p> <p>The SafeWork NSW Governance and Appeals Unit (GAU) is independent of SafeWork NSW operations and the internal reviewers are highly qualified, trained and experienced Inspectors. All reviews are conducted independently of the business areas responsible for the investigation and issue of any notice or penalty.</p> <p>The Minister was not involved in the investigation, issue of the improvement notices or review process.</p> | |
| Q18. | <p>The CHAIR: Do you have an organisational chart that you can share which will show where these officers sit?</p> <p>Mr DUNPHY: I believe the Building Commissioner has published one on his website. There is one that is now available which is available on the website, which I can provide.</p> | 42 |
| | <p>ANSWER</p> <p>The Office of the Building Commissioner organisational chart is provided at Tab B.</p> | |
| Q19. | <p>The CHAIR: Right. I am just having trouble squaring your evidence, Ms Webb, with what Mr Gavrielatos just told us about the rental bond figures. Can you tell me—</p> <p>Ms WEBB: Sorry. Mr Gavrielatos is not a member of the Rental Bond Board. I was just referring to the fact that at the meeting last week they did show some figures and it did not seem to show anything particular, but we will continue to keep an eye on them.</p> <p>The CHAIR: Can you provide us with the figures?</p> <p>Ms WEBB: Yes, absolutely.</p> <p>The CHAIR: Are the figures done on a weekly or a monthly basis?</p> <p>Ms WEBB: I see them at the Rental Bond Board meeting but the rental bonds is online so I think we can almost do that daily. But I will find that out and give you a figure—the most recent. Over time—</p> | 44 |

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| | <p>The CHAIR: I do not know if I want a figure. I want to know what has been happening.</p> <p>Ms WEBB: You want over a time series.</p> <p>The CHAIR: And compared to what we would have expected, absent COVID-19.</p> <p>Ms WEBB: Compared to this time last year or something like that.</p> <p>The CHAIR: Correct.</p> <p>Ms WEBB: Okay. We can do that.</p> <p>The CHAIR: Mr Tansey, do you have anything to add?</p> <p>Mr TANSEY: Yes, Chair. I was going to follow up to the other element where we are trying to monitor this. I think you personally inquired into this the last time we were here. It was through the rental bond survey that we ran.</p> <p>The CHAIR: Correct.</p> <p>Mr TANSEY: And we did. I think we took some questions on notice last time, but I can confirm that we also extended that survey specifically in an attempt to capture the COVID environment. Although the originally designed survey, as it remains, was not designed—none of us knew that COVID was coming so it was asking a consistent set of questions that were not particularly predicting COVID. But we did send just over 24,000 invitations in the survey period from April onwards when the survey was extended. So far we have got 2,835 responses for that period as well. I think that sample was particularly between April and May thus far, so we are going through the process at the moment of cleansing and analysing that data. As I said, although the survey was not originally designed to capture COVID-related matters, it does still ask questions about why tenancies ended. So we are hoping to get some insights through that process as well.</p> <p>The CHAIR: To the extent that any data is available, some substantive analysis of that, are you able to provide that on notice, Mr Tansey?</p> <p>Mr TANSEY: Yes. Look, happy to do that. As I said, we are literally undertaking the cleansing and analysis now.</p> <p>The CHAIR: I understand.</p> <p>Mr TANSEY: So it might take a little time; but, yes, happy to take that request on notice and provide the data when it is available.</p> <p>The CHAIR: And, Ms Webb, you will provide the numbers?</p> <p>Ms WEBB: Yes. I will get some more rental bond data as well for you.</p> <p>The CHAIR: Mr Gavrielatos, will you endeavour to—</p> <p>Mr GAVRIELATOS: Speak to the tribunal?</p> <p>The CHAIR: Obtain the data from the tribunal?</p> <p>Mr GAVRIELATOS: I will do so and also the housing report is available on the Family & Community Services website in terms of dwellings, medium weekly rents and bonds lodged.</p> | |
|--|--|--|

ANSWER

The rental bond survey data is currently being analysed and DCS will provide the requested data, once available.

NSW Fair Trading sought information from the NSW Civil & Administrative Tribunal and the Office of the Sheriff of NSW about the number of termination orders made and executed. The data provided is listed below.

NSW Civil & Administrative Tribunal Data**Applications Finalised & Termination Orders made**

| | Termination applications finalised | Termination Orders Made |
|------------|------------------------------------|-------------------------|
| Jan-20 | 1807 | 820 |
| Feb-20 | 1724 | 748 |
| Mar-20 | 1442 | 567 |
| Apr-20 | 580 | 116 |
| May-20 | 1657 | 491 |
| June 1-13 | 736 | 191 |
| June 14-20 | 334 | 98 |

| | Termination applications finalised | Termination Orders Made |
|--------|------------------------------------|-------------------------|
| Jan-19 | 1489 | 625 |
| Feb-19 | 1809 | 734 |
| Mar-19 | 1828 | 733 |
| Apr-19 | 1545 | 682 |
| May-19 | 1833 | 809 |

NSW Sheriff's Office Data

| Evictions | NCAT - Metro & Greater Metro (SMET) | | | WOP- Metro & Greater Metro (SMET) | | | NCAT- Regional NSW | | | WOP - Regional NSW | | |
|-----------|-------------------------------------|----------|--------|-----------------------------------|----------|--------|--------------------|----------|--------|--------------------|----------|--------|
| | Scheduled | Actioned | Stayed | Scheduled | Actioned | Stayed | Scheduled | Actioned | Stayed | Scheduled | Actioned | Stayed |
| Jan-20 | 132 | 116 | 16 | 54 | 26 | 28 | 65 | 61 | 4 | 22 | 15 | 7 |
| Feb-20 | 180 | 165 | 15 | 24 | 10 | 14 | 83 | 70 | 8 | 8 | 5 | 3 |
| Mar-20 | 172 | 139 | 33 | 49 | 15 | 34 | 77 | 68 | 9 | 23 | 11 | 12 |
| Apr-20 | 76 | 53 | 23 | 30 | 6 | 24 | 41 | 34 | 7 | 25 | 5 | 20 |
| May-20 | 50 | 7 | 43 | 8 | 7 | 1 | 32 | 8 | 24 | 6 | 5 | 1 |

| Evictions | NCAT - Metro & Greater Metro (SMET) | | | WOP- Metro & Greater Metro (SMET) | | | NCAT- Regional NSW | | | WOP - Regional NSW | | |
|-----------|-------------------------------------|----------|--------|-----------------------------------|----------|--------|--------------------|----------|--------|--------------------|----------|--------|
| | Scheduled | Actioned | Stayed | Scheduled | Actioned | Stayed | Scheduled | Actioned | Stayed | Scheduled | Actioned | Stayed |
| Jan-19 | 90 | 81 | 9 | 0 | 0 | 0 | 62 | 58 | 4 | 0 | 0 | 0 |
| Feb-19 | 158 | 139 | 19 | 21 | 4 | 17 | 79 | 73 | 6 | 14 | 4 | 10 |
| Mar-19 | 138 | 122 | 16 | 38 | 12 | 26 | 90 | 80 | 10 | 27 | 7 | 20 |
| Apr-19 | 125 | 112 | 13 | 34 | 9 | 25 | 64 | 52 | 12 | 23 | 5 | 18 |
| May-19 | 93 | 67 | 26 | 74 | 10 | 64 | 64 | 57 | 7 | 52 | 22 | 30 |

Rental Bonds Data

The Rental Bond Board report to April 2020 is provided. This is the latest data as at June 2020 and includes both pre-COVID-19 and COVID-19 periods.

1. Rental Bond Holdings 2020

| Month | No. of bonds | Value of bonds held | Average \$ bond size |
|--------|--------------|---------------------|----------------------|
| Nov-19 | 904,048 | \$1,658,011,810 | \$1,834 |
| Dec-19 | 904,352 | \$1,659,319,917 | \$1,835 |
| Jan-20 | 906,709 | \$1,666,302,801 | \$1,838 |
| Feb-20 | 910,154 | \$1,674,809,583 | \$1,840 |
| Mar-20 | 910,861 | \$1,676,690,719 | \$1,841 |
| Apr-20 | 906,284 | \$1,663,178,880 | \$1,835 |

2. Rental Bond Lodged Fully Online

| Month | Online | Paper Lodgement | Total Bond Lodged | % Online of total lodgement |
|--------|--------|-----------------|-------------------|-----------------------------|
| Nov-19 | 20,090 | 8,569 | 28,659 | 70.1% |
| Dec-19 | 17,241 | 8,933 | 26,174 | 65.9% |
| Jan-20 | 21,659 | 6,365 | 28,024 | 77.3% |
| Feb-20 | 22,587 | 9,341 | 31,928 | 70.7% |
| Mar-20 | 21,821 | 9,073 | 30,894 | 70.6% |
| Apr-20 | 18,102 | 7,240 | 25,342 | 71.4% |

3. Rental Bond Lodgements

| Month | 2016-17 | 2017-18 | 2018-19 | 2019-20 |
|--------------|----------------|----------------|----------------|----------------|
| Jul | 26,353 | 28,032 | 30,666 | 31,328 |
| Aug | 28,385 | 29,105 | 32,220 | 33,304 |
| Sep | 28,144 | 27,996 | 27,403 | 30,360 |
| Oct | 25,296 | 26,465 | 30,446 | 30,957 |
| Nov | 26,850 | 28,074 | 28,944 | 29,907 |
| Dec | 25,980 | 25,354 | 26,887 | 27,510 |
| Jan | 23,615 | 27,033 | 27,303 | 28,801 |
| Feb | 30,863 | 30,879 | 34,180 | 33,572 |
| Mar | 31,382 | 29,974 | 31,675 | 32,086 |
| Apr | 23,633 | 24,757 | 27,756 | 26,608 |
| May | 29,017 | 30,225 | 29,463 | |
| Jun | 27,164 | 27,813 | 27,217 | |
| Total | 326,682 | 335,707 | 354,160 | 304,433 |

4. Rental Bond Refunds

| Month | 2016-17 | 2017-18 | 2018-19 | 2019-20 |
|--------------|----------------|----------------|----------------|----------------|
| Jul | 22,525 | 24,210 | 27,950 | 28,845 |
| Aug | 24,240 | 26,066 | 28,712 | 28,833 |
| Sep | 22,865 | 22,625 | 23,590 | 26,849 |
| Oct | 21,560 | 24,230 | 27,485 | 28,774 |
| Nov | 23,122 | 24,252 | 25,584 | 26,516 |
| Dec | 22,055 | 21,950 | 24,538 | 27,206 |
| Jan | 21,736 | 24,973 | 26,079 | 26,444 |
| Feb | 23,221 | 25,715 | 28,913 | 30,127 |
| Mar | 26,592 | 25,385 | 27,947 | 31,379 |
| Apr | 20,465 | 23,679 | 25,094 | 31,188 |
| May | 25,182 | 27,147 | 28,853 | |
| Jun | 23,680 | 23,570 | 24,004 | |
| Total | 277,243 | 293,802 | 318,749 | 286,161 |

5. Guarantee of Service

| Column1 | Column2 | Column3 | Target % | Dec-19 | Jan-20 | Feb-20 | Mar-20 | Apr-20 |
|---|---------|---------|----------|--------|--------|--------|--------|--------|
| Straight Direct Deposit Claims Paid with Gos (2 days) | | | 90% | 99% | 99% | 100% | 99% | 99% |
| Notice Bond Refunds Paid within GoS (20 days) | | | 90% | 100% | 98% | 100% | 100% | 99% |
| Total Bond Refunds paid within GoS | | | 90% | 99.5% | 98.5% | 100% | 99.9% | 99% |
| Bond Lodgements Banked on day of receipt (GoS) | | | 90% | 100% | 100% | 100% | 100% | 100% |

6. Bond Phone Enquiries

| Month | Bond Enquiries | Tenancy Enquiries | Total Enquiries |
|--------|----------------|-------------------|-----------------|
| May-19 | 2,658 | 9,561 | 12,219 |
| Jun-19 | 1,957 | 7,931 | 9,888 |
| Jul-19 | 2,069 | 9,269 | 11,338 |
| Aug-19 | 1,606 | 8,595 | 10,201 |
| Sep-19 | 1,479 | 8,603 | 10,082 |
| Oct-19 | 1,558 | 8,770 | 10,328 |
| Nov-19 | 1,437 | 8,122 | 9,559 |
| Dec-19 | 1,158 | 6,186 | 7,344 |
| Jan-20 | 1,360 | 7,706 | 9,066 |
| Feb-20 | 1,273 | 7,668 | 8,941 |
| Mar-20 | 1,290 | 10,912 | 12,202 |
| Apr-20 | 1,046 | 12,372 | 13,418 |

| | | |
|-------------|--|-----------|
| Q.20 | <p>The Hon. ADAM SEARLE: Okay. Mr Dunphy, can you indicate whether Qantas has notified any COVID-19 incidents to SafeWork?</p> <p>Mr DUNPHY: I am not able to confirm at this point whether they have. I would need to check that but I can take that on notice.</p> <p>The Hon. ADAM SEARLE: If you could, take it on notice whether they have and if so what the dates were of those notifications and, if you are able to do so, what those notifications were. In</p> | 45 |
| | <p>ANSWER</p> <p>Qantas has not notified any work related COVID-19 cases to SafeWork NSW.</p> | |
| Q.21 | <p>The Hon. ADAM SEARLE: Yes, I understand that but there has to be a connection of work. You cannot be injured at home on the weekend or playing sport and make a workers' compensation claim, Mr Dunphy, can you?</p> <p>The CHAIR: Well, there are some deeming provisions in COVID-19 so—</p> <p>The Hon. ADAM SEARLE: Well, we will leave that to one side.</p> <p>The Hon. TREVOR KHAN: Well done.</p> <p>The CHAIR: That is my memory.</p> <p>Mr DUNPHY: There are since then and I think there is also the issue of in a no-fault claim. You can make a claim but whether it finally gets accepted at the end is another matter. But in terms of the review, the review would have purely been looking at the obligations under the Work Health and Safety Act and whether the notice was properly issued or not.</p> <p>The Hon. ADAM SEARLE: Okay. Are you able to provide us with a copy of that review decision?</p> <p>Mr DUNPHY: I can check. I would need to confirm that. I do not—</p> <p>The Hon. ADAM SEARLE: I am happy for you to take that on notice.</p> <p>Mr DUNPHY: Yes.</p> | 46 |
| | <p>ANSWER</p> <p>The document is a response to an applicant who requested internal review and it is not appropriate for it to be published generally. It is also noted that the matter is currently under external review in the Industrial Relations Commission.</p> | |
| Q.22 | <p>The Hon. JOHN GRAHAM: Given this other matter might be the subject of some discussion, if you could update it—that is, price gouging powers—if you could update us about the drop in complaints, that would be useful.</p> <p>Ms WEBB: Sure.</p> | 48 |
| | <p>ANSWER</p> <p>NSW Fair Trading has run a number of reports to monitor complaints about pricing. The number of complaints recorded this year as being in relation to pricing and COVID 19 are as follows:</p> | |

| | | | | | | | | | | | | | | |
|--------------------------------|--|--------------------------------|----|----------------------------|----|--------------------------|---|---------------------------|---|---------------------------|---|--------------|-----------|--|
| | <table><tr><td>1 January 2020 – 14 April 2020</td><td>11</td></tr><tr><td>14 April 2020 – 7 May 2020</td><td>33</td></tr><tr><td>7 May 2020 – 14 May 2020</td><td>1</td></tr><tr><td>14 May 2020 – 22 May 2020</td><td>2</td></tr><tr><td>23 May 2020 – 5 June 2020</td><td>3</td></tr><tr><td>Total</td><td>50</td></tr></table> | 1 January 2020 – 14 April 2020 | 11 | 14 April 2020 – 7 May 2020 | 33 | 7 May 2020 – 14 May 2020 | 1 | 14 May 2020 – 22 May 2020 | 2 | 23 May 2020 – 5 June 2020 | 3 | Total | 50 | |
| 1 January 2020 – 14 April 2020 | 11 | | | | | | | | | | | | | |
| 14 April 2020 – 7 May 2020 | 33 | | | | | | | | | | | | | |
| 7 May 2020 – 14 May 2020 | 1 | | | | | | | | | | | | | |
| 14 May 2020 – 22 May 2020 | 2 | | | | | | | | | | | | | |
| 23 May 2020 – 5 June 2020 | 3 | | | | | | | | | | | | | |
| Total | 50 | | | | | | | | | | | | | |
| Q.23 | <p>The Hon. JOHN GRAHAM: Thank you for that distinction. That is one of the issues that we should consider. Can I ask about what I read was the very successful former Minister Kean's intervention into the baby formula market. The Minister received quite a lot of publicity about his crackdown.</p> <p>The Hon. TREVOR KHAN: He often does.</p> <p>The Hon. JOHN GRAHAM: You will be unsurprised to hear the Minister got very good publicity about his crackdown—</p> <p>The Hon. TREVOR KHAN: He works hard at it.</p> <p>The CHAIR: At least one of them does—positive publicity anyway.</p> <p>The Hon. JOHN GRAHAM: —on baby formula sales. What happened here? What form of regulation did the agency end up adopting?</p> <p>Ms WEBB: I am pretty sure that occurred before I became the Fair Trading Commissioner so maybe one of my colleagues who was around at the time might have a little bit more background. I am just sort of not aware of the whole position that he took.</p> <p>Mr TANSEY: No. It was mainly driven through an enforcement campaign, which personnel was not involved in.</p> <p>Ms WEBB: We would have to take some detail on notice for that one.</p> <p>The CHAIR: It was a standard practice that followed a well-tried formula.</p> <p>The Hon. JOHN GRAHAM: I will not press the case then. But I might ask you because I think it would be helpful if you could take it on notice whether any regulation actually changed.</p> <p>Ms WEBB: Okay.</p> <p>The Hon. JOHN GRAHAM: Was any action taken in this area following the Minister's announcement and does the agency regard it as being a success or not as an example of regulation. I will say I admire the Minister's announcement. It was received quite spectacularly. I have been less able to find any example of regulatory action afterwards but I would be happy to be contradicted. But as we are looking at this CHOICE example, it would be good if you could provide something on notice.</p> <p>Ms WEBB: Sure.</p> | 49 | | | | | | | | | | | | |

| | <p>ANSWER</p> <p>There was no regulatory change to address the infant formula shortage. The Minister worked with industry to develop an industry-led response. For example, major supermarkets introduced quantity caps for infant formula to address the shortage. Manufacturers also increased the supply of formula to meet the growing demand.</p> <p>NSW Fair Trading did not take any enforcement action against infant formula sales as there was no breach of legislation administered by Fair Trading.</p> | | | | | | | | | | | | | | | | | |
|--|---|------------------|---------|------------------|-------|---------------------------|----|----|----|--|----|----|----|------------|----|----|----|--|
| Q.24 | <p>The Hon. JOHN GRAHAM: You gave us three sets of numbers last time.</p> <p>Mr GAVRIELATOS: But it is 100 that we actually intervened in. There are 54 that are still in progress. Of those 65 resulted in an agreed outcome between the landlord and the tenant. Seventeen cases, as I previously said, concluded with parties being unable to agree and 18 concluded with one of the parties being unwilling to participate in negotiation.</p> <p>The Hon. JOHN GRAHAM: Great. Okay. Presumably they are all from tenants?</p> <p>Mr GAVRIELATOS: Not necessarily, no.</p> <p>The Hon. JOHN GRAHAM: Right. So how many were?</p> <p>Mr GAVRIELATOS: I have not got that figure in front of me.</p> <p>The Hon. JOHN GRAHAM: So you are saying that some of them might have been from landlords?</p> <p>Mr GAVRIELATOS: Some may have been from landlords as well.</p> <p>The Hon. JOHN GRAHAM: Okay. So if you could give us a tenant-landlord breakdown for those figures, that would be good.</p> <p>Mr GAVRIELATOS: Certainly.</p> | 50 | | | | | | | | | | | | | | | | |
| | <p>ANSWER</p> <p>As at 24 June 2020, NSW Fair Trading has been asked to assist in 229 negotiations between parties. Of the 177 applications finalised, 87 resulted in an agreed resolution. In the remaining matters, NSW Fair Trading either was not able to achieve an outcome; the parties were unwilling to participate or did not meet the eligibility criteria as a COVID impacted tenant. 52 applications for negotiation are yet to conclude. A breakdown of applications from tenants and landlords/agents is noted below.</p> <table><tr><th></th><th>Tenants</th><th>Landlords/Agents</th><th>Total</th></tr><tr><td>Agreed Resolution Reached</td><td>62</td><td>25</td><td>87</td></tr><tr><td>Unable to achieve outcome or not COVID-19 impacted</td><td>54</td><td>36</td><td>90</td></tr><tr><td>Still open</td><td>38</td><td>14</td><td>52</td></tr></table> | | Tenants | Landlords/Agents | Total | Agreed Resolution Reached | 62 | 25 | 87 | Unable to achieve outcome or not COVID-19 impacted | 54 | 36 | 90 | Still open | 38 | 14 | 52 | |
| | Tenants | Landlords/Agents | Total | | | | | | | | | | | | | | | |
| Agreed Resolution Reached | 62 | 25 | 87 | | | | | | | | | | | | | | | |
| Unable to achieve outcome or not COVID-19 impacted | 54 | 36 | 90 | | | | | | | | | | | | | | | |
| Still open | 38 | 14 | 52 | | | | | | | | | | | | | | | |

27 March 2020

Mr Alan Joyce
Chief Executive Officer
Qantas Airways
Qantas Campus
10 Bourke Street
MASCOT NSW 2020

Sensitive

Dear Alan

As you may be aware, SafeWork NSW has made inquiries in relation to allegations of discriminatory conduct towards [redacted]. The matter has been referred to Investigations & Emergency Response, within SafeWork NSW, for further investigation and this will be managed by [redacted]. An inspector from Investigations and Emergency Response has responsibility for conducting the investigation and will make contact in the near future.

Investigations are complex and can often take several months to complete. Once the investigation is complete the evidence gathered during the investigation will be reviewed. If the review discloses an alleged breach of the Work Health and Safety Act 2011 (the Act) or other work health and safety law, SafeWork NSW will determine what enforcement action, if any, should be taken.

The publication, SafeWork NSW Prosecution Guidelines (January 2018) outlines the Regulator's approach to compliance and prosecution and sets out factors that will be considered in determining the appropriate outcome. The Guidelines are available on SafeWork NSW's website at www.safework.nsw.gov.au

Please find enclosed a Brochure explaining the investigation process. If you have any questions or require further information during the course of the investigation you can contact

Yours sincerely,

Director
Investigations and Emergency Response
SafeWork NSW
Encl Investigation Brochure

The OBC is now established with 12 staff and getting on with delivering **Construct NSW**

