

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY : 2021 REVIEW OF THE DUST DISEASES SCHEME

Questions taken on Notice at 18 March 2022 hearing: Ms Meagan McCool, Director, Construction Services Group Metropolitan, Safework NSW, Department of Customer Service

Answers are to be returned to the Committee secretariat by 27 April 2022.

The Hon. ROD ROBERTS: I will direct my question to Ms McCool. Mr Williams, feel free to answer too. I want to direct your attention specifically to the manufactured stone industry. We are aware that silicosis happens in quarrying and tunnelling and I want to direct your attention specifically to that. We are aware that wet cutting and ventilation is in place in factory sites where fabrication takes place, and that is a good thing. Notwithstanding that, though, I want to know how many penalty notices or prohibition notices you may have issued for dry cutting on actual worksites. Remove yourself from the factory setting and take yourself to a job site. Over the years, how many notices have you issued for dry cutting?

MEAGAN McCOOL: The information I have is that since the dry cutting ban or the on-the-spot fines came through on 1 July 2020, we have issued two of those prohibitions or on-the-spot fines.

The Hon. ROD ROBERTS: How much were they for?

MEAGAN McCOOL: The fine is \$3,600.

The Hon. ROD ROBERTS: Is that the full fine?

MEAGAN McCOOL: Yes, as prescribed in the legislation. I would need to take on notice whether they were on stone sites or installation sites.

The Hon. ROD ROBERTS: I would like to know that. Can you take that on notice for us?

MEAGAN McCOOL: Yes. Certainly

ANSWER:

Both fines (penalty notices) were issued to fabrication sites.

MEAGAN McCOOL: I will just slightly change to a different angle to try and clarify, and if I have not answered it please ask me to explain again. We follow the stone. We know that there are only a certain number of importers and then that goes to a factory and then it has to be cut to size. We have got all of that information, with 85 per cent from that point still being connected to that site. Yes, there is a gap of 15 per cent but that 15 per cent is where we are talking to the sites, saying, "Where is the rest of the stone going?"

The Hon. MARK BUTTIGIEG: Thank you for that answer. Let us just focus on the 85 per cent that we know. You can actually go to the manufacturer and say, "Can you tell me where your blokes are working today because we want to go out and have a look?"

MEAGAN McCOOL: We can serve a section 155 notice, and we have done so, if we feel that it is within our powers and that we need to do that. We can issue a notice to anyone in that life cycle for information that we need, particularly if we believe there is a contravention of work health and safety or if it is for the purposes of protecting workers.

The Hon. MARK BUTTIGIEG: How many times that particular section has been utilised in the last couple of years?

MEAGAN McCOOL: I would need to take that on notice, but it has been utilised, particularly with all the suppliers

ANSWER:

167 Section 155 notices have been issued in relation to manufactured stone businesses from 2019 – 2022 (Year to date 31 March 2022). Of these:

- 12 were issued to manufactured stone businesses (information for WHS investigations/adverse health monitoring reports)
- 24 were issued to product suppliers (business databases, information for WHS investigations); and
- 131 were issued to medical facilities, practitioners and insurers (adverse health monitoring reports).

The Hon. MARK BUTTIGIEG: I think my colleague's point is that you might have one dry cutting process in one kitchen or site that occurs where you have issued a prohibition, which stops that particular activity but it does not stop the business from engaging in other work. A licensing system would do that because effectively if you lose your licence, you lose your ability to operate. Let us go back there in a little while. I want to explore some of the evidence in response to my colleague's questions. Ms McCool, I know you said you would take it on notice but I want to ask you to follow up on section 155. Are we aware that any have been issued whatsoever?

MEAGAN McCOOL: Yes. There have been some recent ones as well, but we can definitely pull them out for you and explain who they were issued to and the reasons for.

ANSWER:

167 Section 155 notices have been issued in relation to manufactured stone businesses from 2019 – 2022 (Year to date 31 March 2022). Of these:

- 12 were issued to manufactured stone businesses (information for WHS investigations/adverse health monitoring reports)
- 24 were issued to product suppliers (business databases, information for WHS investigations); and
- 131 were issued to medical facilities, practitioners and insurers (adverse health monitoring reports).

MEAGAN McCOOL: Essentially, as I said, if it is a contravention and it is a clear breach, obviously the inspector forms their opinion and then they can issue that straightaway. There is nothing in terms of any— particularly the on-the-spot fine, as I said, that is \$3,600. But the prohibition, as I said, is generally issued as well because then you have the two angles of compliance. With or without that on-the-spot fine being introduced, we were already prohibiting the behaviour and we can prohibit that in any industry as well.

The Hon. MARK BUTTIGIEG: But, in theory, you could issue the \$3,600 fine without the prohibition, could you?

MEAGAN McCOOL: You could, but it is still a contravention if it is a repeat breach. The Hon. MARK BUTTIGIEG: To be clear, that \$3,600 is directed to individuals and/or ABNs or whoever the person is or the entity doing it?

MEAGAN McCOOL: It is generally issued to the person conducting the business or undertaking, regardless of who did it. It is not necessarily issued to the person doing it specifically, unless of course they own the business. So it is issued to the business.

The Hon. MARK BUTTIGIEG: If I am Mark Buttigieg working for Caesarstone and I do this on four occasions, Caesarstone could get four fines of \$3,600?

MEAGAN McCOOL: Which could then result in further action, so that could end up in a prosecution. Essentially, as you know in our hierarchy of compliance, as I said, we escalate repeat offences.

The Hon. MARK BUTTIGIEG: Those two fines were two in the space of—where are we?—1 July 2020. So almost two years: two fines in two years. Were they as a result of people proactively reporting or was it as a result of SafeWork going out and checking?

MEAGAN McCOOL: I would need to take that on notice with the other question. We can pull apart what they were for, who they were to and whether it was proactive or reactive.

ANSWER:

Both fines (penalty notices) were issued through SafeWork compliance visits.

The Hon. MARK BUTTIGIEG: Ms McCool, on that section 155, I have had that spreadsheet that you attached. According to the analysis I have had done, they can only see three section 155s listed in round two. What was the operable time frame for round two? Was it 2020?

MEAGAN McCOOL: That would probably be close to the mark.

The Hon. MARK BUTTIGIEG: So three section 155s listed but all non-silica is the information I have. Does that surprise you?

MEAGAN McCOOL: I would have to look at the data. I do not have it in front of me to be able to comment. What those section 155s were actually for, they could have been quite far reaching in terms of what they collected. But I have taken it on notice to—

The Hon. MARK BUTTIGIEG: The concerning thing is that they are saying that the 155s were all non-silica related, so they have not even issued any for silica. That spreadsheet contained multiple substances; it was not just silica.

MEAGAN McCOOL: Yes. However, without having the information in front of me, there have been section 155s issued also on the suppliers. They are not a site; they are not a fabricator. There have also been them issued on the supplier, the ones that have brought the stone into the country, and that has been issued twice now.

The Hon. MARK BUTTIGIEG: The suppliers were not in that spreadsheet, were they?

MEAGAN McCOOL: No, because the request for us was the compliance of the 255 sites and that is all that that is representing. But we can broaden that response on notice, if you want us to, to all section 155s, but we have issued them also on suppliers.

ANSWER:

167 Section 155 notices have been issued in relation to manufactured stone businesses from 2019 – 2022 (Year to date 31 March 2022). Of these:

- 12 were issued to manufactured stone businesses (information for WHS investigations/adverse health monitoring reports)
- 24 were issued to product suppliers (business databases, information for WHS investigations); and
- 131 were issued to medical facilities, practitioners and insurers (adverse health monitoring reports).

The Hon. GREG DONNELLY: I have a piece of correspondence I would like to take you to and ask a question if you do not mind.

ANTHONY WILLIAMS: Is that this one here?

The Hon. GREG DONNELLY: ‘... As I see it, the notion of actually having a licensing scheme—and through that one would have an ability to track the workers that work for those entities that retain and hold a licence—would create a sense of what is the universe of what we are looking at, the universe of the problem or the issues potentially there. That is why I am sort of quite befuddled by the fact that New South Wales has not proceeded with this. I understand there is the connection to the national approach but, without exaggerating it, people are actually dying from silicosis. If that does not move us all to want to try and deal with this and move things along quicker than I think is the case, what does?

MEAGAN McCOOL: As I said, we are in agreeance with that. Just looking at this letter and just quickly digesting what it is talking about, this letter reads to me that it has acknowledged the work in the manufactured stone—or engineered stone, as some call it—industry, but it is asking for it to go broader into all industries and having regulation across basically wherever silica exists. I can tell you that that is a discussion that is ongoing. The only issue with the other industries is they are performing a lot different, a lot better. But silica is in pretty much anything that is sand based, if that is the direction to head in. But we cover all industries no matter where they are.

There are, as I said, various extra things that have been applied to the manufactured stone industry, which everyone has acknowledged needed the most attention, but certainly the eyes are on anywhere that silica belongs, because, as you know, it is in bricks, it is in concrete. Natural sandstone is also in the 90 per cent silica, and that is nothing we can move from the earth's crust. That is just how it is. So sandstone is actually sitting really high with manufactured stone, but also the manufactured stone suppliers are starting to make it with lower concentrations. But I think what this letter is saying, if I am reading it correctly, and quickly, is that anywhere that silica exists it needs to have a portfolio on how it is to be managed. That would be my understanding

The CHAIR: Could I suggest to the witnesses for procedural fairness, given that it is a detailed letter, if you are seeking to provide a detailed response, perhaps it is better to be done on notice, because I think procedural fairness dictates that we cannot just provide you a document of three pages and expect you to absorb it and then respond to that immediately. I know Mr Donnelly is extremely fair on this. If there are detailed questions, perhaps it is better they are taken on notice.

MEAGAN McCOOL: I appreciate that.

ANSWER:

On 9 November 2021 a letter from the then Minister for Better Regulation and Innovation was sent in response to the letter tabled.

The NSW Government has contributed to a national all-of-government response to the National Dust Disease Taskforce report and is supporting the Regulatory Impact Assessment (RIA) process being undertaken by Safe Work Australia for regulatory and non-regulatory options to minimise the risks of respirable crystalline silica (RCS) – including consideration of a licensing scheme.

NSW operates under the national model work health and safety (WHS) laws and will await the outcome of the RIA.

Since 2018, SafeWork NSW has held a database of manufactured stone businesses in NSW obtained from product suppliers to be used for WHS compliance verifications. SafeWork NSW has completed 966 visits to 255 sites over two rounds of inspections and will continue to conduct sample visits to confirm compliance.

The Hon. ANTHONY D'ADAM: Coming back to that question around the health screening, when you issued the notice, what provision were you actually relying on if there is no specific obligation on the employer to conduct health screening?

MEAGAN McCOOL: I am just going to go off the top of my head, I think it is clause 376. I could be wrong.

The Hon. ANTHONY D'ADAM: If you want to take it on notice, that is fine.

MEAGAN McCOOL: Yes, I can take that on notice. It prescribes that when there is harm or risk we can direct health monitoring, particularly if we believe the exposure standard is being exceeded.

ANSWER:

Division 6 of the Work Health and Safety Regulation 2017 (WHS Regulation) is dedicated to health monitoring. It includes the Person Conducting a Business or Undertaking's (PCBU) duties to provide health monitoring, pay the costs, obtain the report, report any adverse results to the regulator (SafeWork NSW) and maintain records.

Specifically, Clause 368 of WHS Regulation 2017 calls out the duty of the PCBU to provide health monitoring to workers, carrying out ongoing work, who are at a significant risk to health from exposure to RCS.

Clause 376 of the WHS Regulation relates to the duty of the PCBU to supply a copy of a health monitoring report to the regulator if it contains: a) any advice that test results indicate the worker may have contracted an illness, injury or disease; or b) any recommendation that the PCBU undertake any remedial measures including whether the worker can continue to work.