STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY : 2021 REVIEW OF THE DUST DISEASES SCHEME

Supplementary questions: 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.

SafeWork NSW responses:

1. Regarding where manufactured stone cutting occurs, Mr Andrew Klohk, a witness at the 2021 Review of the Dust Diseases Scheme hearing on 18th March stated that stone cutting can occur at individual worksites like units, apartments and homes. Another witness, Mr Kenneth Parker, has said "They are doing full cut outs inside the units. Basically you turn that into one seriously toxic box full of dust." (page 3 of Hansard)

   (a) How is dust exposure at these sites currently being regulated by SafeWork?

   (b) What safety measures should be implemented to protect workers from exposure to toxic dust?

   (c) What safety measures should be implemented to protect the general public from exposure to toxic dust?

   (d) How many inspections in 2021 did SafeWork undertake of units/apartments/homes where stone cutting occurred?

      i. What were the outcomes of these inspections?

      ii. How many infringement notices were issued?

   (e) How many inspections in 2022 to-date has SafeWork undertaken of units/apartments/homes where stone cutting has occurred?

      i. What were the outcomes of these inspections?

      ii. How many infringement notices were issued?

ANSWER

1 (a)-(c):

The *Work Health and Safety Act 2011* (WHS Act) defines duties holders with a role in managing the risks of silica dust, including persons conducting a business or undertaking (PCBU), officers, designers, manufacturers, importers, suppliers, workers and other persons in the workplace. In relation to the PCBU specifically, having the primary duty of care (Section 19) to eliminate risk arising from exposure to silica dust or, if that is not reasonably practicable, minimise the risks so far as is reasonably practicable to workers and other persons at their workplace. Other relevant duties include the duty to consult workers and the nature of consultation.

This is supported by the Work Health and Safety Regulation 2017 (WHS Regulation) that includes specific requirements for a PCBU to manage the risks associated with hazardous chemicals, including ensuring that no person at the workplace is exposed to silica dust in an

airborne concentration that exceeds the exposure standard (Clause 49), air-monitoring (Clause 50) and health monitoring (Division 6); and the gazetted Code of Practice *Managing the risks of respirable crystalline silica from engineered stone in the workplace* that further defines what compliance looks like (a compliance code that is enforceable).

On 1 July 2020, additional reforms to the WHS Regulation were introduced including on-the-spot fines for uncontrolled dry processing of manufactured stone and halving the workplace exposure standard to 0.05 mg/m3 (averaged over an 8-hr day).

Failure to use the following controls for fabricating or installing manufactured stone can result in an on the spot fine of $3,600:

- use saws, grinders and polishers with an integrated water supply to minimise the amount of dust generated
- ensure workers wear half face piece reusable or disposable respirators as a minimum, that comply with the Australian Standard 1716:2012 Respiratory Protective Devices
- use on-tool dust capture shrouds or water to control dust generated during any work required during on site installation.

If the method of installation of engineered stone products will generate silica dust at a workplace where construction work is carried out, a Safe Work Method Statement (SWMS) is required.

Persons with management or control of a site where construction work is being carried out must ensure, so far as reasonably practicable, that the workplace is secured from unauthorised access.

1 (d)- (e):

Visits to units/apartments/homes where stone cutting occurred by calendar year:

- 2021: One visit. No notices were issued. Follow up with the business contracting the installer was undertaken.
- 2022 to-date: One visit. No notices were issued. Follow up with the business was undertaken.

In late 2020, a program of visits to six randomly selected high-rise residential apartment sites was completed specifically to inspect benchtop installation practices.

These visits indicated that SWMS were enforced by the Principal Contractor (PC) prior to stone benchtop installers arriving at the site.

Inspectors reviewed the SWMS, observed installer work practices and spoke with several workers and their supervisors. There was no dry work evident. No enforcement action was required.

With the completion of priority work to undertake rounds 1 and 2 compliance visits to engineered stone fabrication businesses, further compliance visits specifically to installers are planned for 2022. This is in addition to the general construction silica visits (1,114 total since program commenced, 484 in 2022 (up to 31 March).

2. Regarding safety information and resources provided in workplaces, a witness at the 2021 Review of the Dust Diseases Scheme hearing on 18th March, Mr Andrew Klohk, stated that at his workplace he was not asked to take any safety precautions and that there were only paper masks provided for him and other workers.

(a) How does SafeWork enforce the provision of appropriate personal protective equipment by employers in manufactured stone workplaces?

(b) What information does SafeWork provide to ensure that workers know about the need for personal protective equipment in manufactured stone workplaces?

ANSWER:

2 (a)-(b)

During visits, SafeWork Inspectors issue improvement notices for the provision, maintenance, storage, fit-testing and training in personal protective equipment (PPE), provide advice and promote educational resources. PPE is also a focus of the new Code of Practice (Section 4 and 5).

Education on Respiratory Protective Equipment (RPE) has also been a key focus of all education and awareness communications, including the *'Which mask will you wear?'* campaign in 2018/19, *'Dr Karl'* campaign in 2019-20, *'Clean Air. Clear Lungs'* campaign in 2021-22 and feature presentations by 3M at the Silica Symposium and Regional Roadshow events in 2019-20.

SafeWork presented a safety podcast on RPE and promotes information on its website. A video safety alert is due to be released which focuses on the importance of training, maintenance and fit-testing for RPE. Where possible all materials are translated into key languages relevant to industries.

SafeWork also provided expert advice to Boral to promote RPE messages through the silica safety advertising it delivered as an Enforceable Undertaking in 2020 with its *'Always On'* campaign which featured images of a worker wearing appropriate RPE and their trucks wrapped (screenwrited) with this advertising for a 12-month period.

3. Regarding SafeWork inspections of manufactured stone worksites, a witness at the 2021 Review of the Dust Diseases Scheme hearing on 18th March, Mr Andrew Klohk, stated that in working in the industry for 32 years he saw only one instance of a workplace inspection undertaken by SafeWork. Another witness at the same hearing, Mr Kenneth Parker, reported seeing only two instances of inspections by SafeWork in his 24 years in the industry.

   (a) What is SafeWork doing to ensure that manufactured stone factories are visited for inspections on a regular basis?

   (b) Does SafeWork guarantee a minimum number of inspections annually to manufactured stone factories in NSW?

      i. If so, what is the minimum number of annual inspections to manufactured stone factories in NSW?

   (c) How many SafeWork inspections of manufactured stone factories were made in:

      i. 2020?;

      ii. 2021?; and

      iii. 2022 to-date.

ANSWER:

3 (a)- (c)

SafeWork NSW has completed 966 visits to all known manufactured stone sites in NSW (255 sites total) over 2 rounds of compliance verification visits since 2018 (up to 31 March 2022).

SafeWork will continue to monitor industry compliance with a program of annual visits (expected to be around 30 each year).

Every Request for Service (complaint) relating to silica receives an Inspector response (visit) and each silicosis notification is reviewed for consideration to pursue to full investigation and where appropriate, prosecution. Two such matters are currently before the courts.

Visits to manufactured stone fabrication businesses by calendar year:

- 2020: 135
- 2021: 188
- 2022 year to date (31 March 2022): 23

4. With respect to manufactured stone factories in NSW does SafeWork:

   (a) Have a complete, up-to-date list of where these factories are located?

   (b) Have a complete, up-to-date list of the owners/proprietors/partnerships/companies etc that conduct manufactured stone cutting on these sites?

   (c) Have specific procedures in place to enable the up-to-date list to be maintained on a continuous basis i.e. add or remove manufactured stone factory sites as the case may be?

ANSWER:

4 (a)-(c) Yes.

Further information on the WHS Act Section 155 notices issued to obtain this information is provided in SafeWork responses to Questions Taken on Notice from the 18 March 2022 hearing.

5. Does SafeWork have registration procedures for particular types of businesses and industries in NSW?

   (a) If so, which types of businesses have registration procedures?

   (b) If so, which types of industries have registration procedures?

ANSWER:

5 (a)-(b)

The national model WHS legislation calls out the current areas that require licensing across Australia, with the NSW legislation for explosives calling out the licensing for this specialist

work. Full details of the licensing and registrations that SafeWork NSW regulates are available at: https://www.safework.nsw.gov.au/licences-and-registrations/licences.

6. Regarding manufactured stone factories, are such sites required to regularly monitor air quality?

   (a) If so, detail what is the minimum air monitoring requirement?

   (b) If so, is there a requirement to report air quality monitoring results to SafeWork?

ANSWER:

6 (a)

Air monitoring is covered under Clauses 49-50 of the NSW WHS Regulation 2017.

Further specific guidance for the engineered stone industry is also detailed in the new Code of Practice under Section 3.2. Air monitoring reports must be provided to a SafeWork Inspector upon request.

Excerpt from Code of Practice:

When commencing work with engineered stone, a PCBU should undertake baseline air monitoring to ensure that silica dust levels do not exceed the workplace exposure standard and that any risks to workers' health are minimised. Air monitoring should be repeated to ensure the air monitoring results are accurate and representative of the work being undertaken.

After a baseline is established, air monitoring should be undertaken:

- at least every 12 months, or
- in response to the triggers outlined below.

Examples of triggers for undertaking additional air monitoring include:

- changes to work practices (for example, new equipment being commissioned), production, processes (for example, redesign of a work process), procedures or control measures which may reasonably be expected to result in new or additional exposure risks
- a health monitoring report indicating an adverse result in circumstances where the baseline or previous monitoring reports for that worker did not indicate any abnormality
- a Health and Safety Representative (HSR) requests a review of control measures
- the results of worker consultation indicate monitoring is required
- for example, when a worker or their representative's concern is confirmed, or
- lowering of the workplace exposure standard where previous air monitoring results indicate levels above the new workplace exposure standard.

Air monitoring report

An air monitoring report is prepared by a competent person, such as a certified occupational hygienist and should include:

- the background and purpose of the air monitoring including the current workplace exposure standard for silica dust
- the task to be measured including work patterns and hazards involved with this task

- the control measures in place and their performance
- what sampling and measurements were taken (long and short-term) including information on the calibration of the sampling equipment
- specifics of how sampling was taken
- how and where the samples were analysed including information on the calibration of the analysis equipment
- details of the persons, or similarly exposed groups sampled
- any similar exposure groups that may potentially be exposed but were not sampled
- an interpretation of the results including:
    - sources of exposure
    - adequacy of current control measures
    - an assessment of risk including identification of tasks not measured that are likely to be an exposure source and any workers that could be exposed but were not measured, and
    - compliance with WHS laws
- recommendations, for example:
    - a dust control action plan
    - changing control measures and work practices
    - increased worker training
    - health monitoring, and
    - further air monitoring.

6 (b)
The air monitoring report should be made available to a WHS inspector on request and to a registered medical practitioner carrying out or supervising health monitoring. Additionally, a PCBU must ensure that the results of air monitoring carried out are:

- recorded in writing or electronically
- kept for 30 years after the date the record is made, and
- readily accessible to workers who may be exposed to silica dust and their representatives.

7. In addition to manufactured stone factories, what inspections of worksites involving the cutting of manufactured stone have been undertaken by SafeWork in:

    (a) 2020?;

    (b) 2021?; and

    (c) 2022 to-date?

ANSWER:

7

a) 7 in 2020
b) 1 in 2021
c) 1 in 2022 to date (31 March 2022)

This is in addition to the general construction silica visits (1,114 total since program commenced, 484 in 2022 (up to 31 March 2022).

8. Regarding manufactured stone workers cleaning themselves of dust before returning home at the completion of their shift, a witness at the 2021 Review of the Dust Diseases Scheme hearing on 18th March, Mr Andrew Klohk stated that his employer had been directed to provide showers and washers for workers, but this was not done.

(a) What regulation if any, has been implemented by SafeWork so that manufactured stone factories and worksites have showers and washing machines to ensure that any dust on workers clothing cannot be transferred to their homes and the general public?

(b) What other measures if any, have been introduced by SafeWork to ensure that workers in manufactured stone factories and worksites do not transfer toxic dust to their homes and the general public?

(c) What other measures if any, have been introduced by SafeWork to ensure that workers in manufactured stone factories and worksites have their personal belongings protected from toxic dust?

(d) What information and resources are provided to the families of workers employed in manufactured stone factories and worksites, explaining to them the dangers of the toxic dust?

ANSWER:

8 (a)-(d)

In addition to the prohibition of dry cutting (see response to question 1 for further detail), Chapter 6 of the Code of Practice covers decontamination of workers' clothing and PPE.

Regulation of manufactured stone businesses follows the principles of the hierarchy of controls to manage dust generation at the source, this is achieved primarily with engineering controls (usually wet methods). SafeWork Inspectors issue notices for compliance issues relating to housekeeping.

Information and resources have been targeted to workers and PCBUs in key industries at risk of silica exposure. There has been no indication of silicosis developing from exposure outside a work setting (see response to question 10 for further information).

Excerpt from the Code of Practice:

- Dusty clothing and PPE can expose workers and others to silica dust. PPE should be cleaned after use to ensure that silica dust does not accumulate. Information about maintaining and cleaning PPE should be sourced from the manufacturer or supplier.
- Examples of how exposure to silica dust carried on PPE and work clothes can be minimised include:

- using an industrial M- or H- class rated vacuum cleaner to remove dust from clothes and PPE
- by positioning these units at the exits of engineered stone processing areas, workers are encouraged to vacuum their clothes and PPE before leaving
- providing workers with access to an area to wash their arms, hands, faces and hair
- a low-pressure hose or tray of water may also be useful for cleaning the bottom of footwear to prevent tracking dust into other areas
- providing a laundry service for dusty work clothes and PPE so they are not taken home for washing
    - if a commercial laundry is used, dampen the clothes and place them in a sealed, labelled plastic bag, and inform the laundry that the clothes are contaminated with crystalline silica
- requiring workers to change dusty clothing after each shift, or if they have just finished a very dusty task to change at their next break, and
- providing workers with rubber boots and aprons.

9. A witness at the 2021 Review of the Dust Diseases Scheme hearing on 18th March, Mr Peter Tighe, Chief Executive Officer of the Australian Government Asbestos Safety and Eradication Agency, stated that there are extraction vacuum tools that provide dust mitigation, but there is an inconsistent level of education for workers in the industry regarding the correct use of these tools.

    (a) Does SafeWork have as a priority for the manufactured stone industry, the ongoing education of workers regarding the correct use of extraction vacuum tools and other equipment that provides dust mitigation?

ANSWER:

9(a)Yes.

SafeWork NSW has developed resources including video safety alerts, a silica fact sheet as and a dedicated silica webpage and Engineered Stone Code of Practice checklist which explains engineering controls. Resources are translated into key languages.

Suppression of dust using hand power tools with an integrated water supply is the more effective control measure and is almost universally adopted in the industry. Rollout of the Code of Practice includes focus on dust capture tools (Sections 4 and 5).

10. Regarding the use of manufactured stone removed from a factory, a witness at the 2021 Review of the Dust Diseases Scheme hearing on 18th March, Mr Barry Robson, President of Asbestos Diseases Research Foundation of Australia, stated that "the home renovation people, the DIY, the weekend warrior. There is no control over them. That could be already in place, as Peter has just described in a unit or something. That unit is sold and a new tenant takes over. The better half says 'I don't like that, remove it', so they get stuck into it, cut it up and smash it up. There is that part of the industry also where people can be exposed to this manufactured stone." (page 13 of Hansard)

(a) What regulation if any, has been introduced by SafeWork to ensure that home and DIY renovators do not contract dust-induced diseases such as silicosis?

(b) What regulation if any, has been introduced by SafeWork to ensure that home and DIY renovators do not harm their neighbours/families/general public with manufactured stone dust?

ANSWER:

10 (a)-(b)

Renovations being undertaken by a PCBU, that is, not do-it-yourself (DIY), are regulated under the WHS Act 2011 and WHS Regulation 2017. Regulatory reforms including on-the-spot fines for uncontrolled dry processes and halving the workplace exposure standard to 0.05 mg/m^3 (averaged over an 8-hr day), apply to these PCBUs, as well as the existing regulations that control airborne contaminants.

There has been no indication of silicosis developing from exposure outside a work setting.

The *National Guidance for Doctors Assessing Workers Exposed to Respirable Crystalline Silica* exposure matrix shows workers who have worked in the industry for up to four years and spending up to 10% of their work time undertaking dry work are in the low-risk category.

11. How many infringement notices by SafeWork were issued for noncompliance with silicosis work health and safety regulations at manufactured stone factories and worksites:

(a) For the period 1st January 2021 through to 18th March 2022?

(b) For the period 1st January 2021 through to 18th March 2022, how many infringement notices were issued on the basis of failing to meet air monitoring standards?

(c) For the period 1st January 2021 through to 18th March 2022, how many infringement notices were issued on the basis of failing to provide appropriate personal protective equipment to workers?

(d) For the period 1st January 2021 through to 18th March 2022, how many infringement notices were issued on the basis of workers not wearing personal protective equipment?

(e) For the period 1st January 2021 through to 18th March 2022, how many infringement notices were issued on the basis of failing to properly dispose of slurry from worksites in accordance with relevant regulations and laws?

ANSWER:

11 (a)-(e):

- 130 improvement; 0 prohibition and 0 penalty notices.
- Air monitoring: 0

- Failure to provide appropriate PPE: 34
- Workers not wearing PPE: 0
- Failure to properly dispose of slurry (drains blocked with residue/sludge on floor- General WHS/Plant): 4
- Additional notices were for:
    - PPE – training: 18
    - PPE maintenance: 2
    - Health monitoring : 34
    - Airborne contaminants: 6
    - Safety Data Sheets: 14
    - General WHS (excluding slurry reported above): 18