



LEGISLATIVE COUNCIL

PORTFOLIO COMMITTEES

BUDGET ESTIMATES 2022-2023

Supplementary Questions

Portfolio Committee No. 4 – Customer Service and Natural Resources

Fair Trading

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Answers due by: Thursday 24 November 2022

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FAIR TRADING

Questions from Mark Buttigieg MLC *(on behalf of the Opposition)*

The passing of Christopher Cassaniti

1. Regarding the workplace incident in which young worker Christopher Cassaniti lost his life, how many Requests for Service for the site did SafeWork NSW receive in the year before the fatality?
 - (a) What were these requests for service for? Please provide details.
 - (b) How did SafeWork respond to these requests for service?
2. Regarding the workplace incident in which young worker Christopher Cassaniti lost his life, how many Notifiable Incidents for the site did SafeWork NSW receive in the year before the fatality?
 - (a) What were these Notifiable Incidents for? Please provide details.
 - (b) How did SafeWork respond?
3. In 2017, Landcom wrote to SafeWork stating their 'grave concerns' about the site and the safety risk to workers. Did the Minister responsible at the time sight Landcom's letter?
 - (a) Did the Minister at the time reply to the letter?
 - i. If so, when?
 - ii. If not, why not?
 - (b) Was SafeWork aware of the letter in 2017?
 - i. If not, when did SafeWork become aware of the letter?
 - (c) Did SafeWork reply to the letter?
 - i. If so, when?
 - ii. If not, why not?
4. How does SafeWork classify whether a death at a site is a workplace death or not?
 - (a) What criteria is followed for this?
 - (b) When a notifiable incident is received, how does SafeWork classify if the incident is a workplace incident or not?
 - i. How is this done if SafeWork does not perform physical site inspections to all notifiable incidents received?

Workplace culture within SafeWork NSW – The PMES

5. How is SafeWork NSW taking into consideration the results of the PMES (People Matter Employee Survey) for 2021?
 - (a) What has SafeWork done previously to take the results into consideration?
6. Grievance handling has been unfavourable for SafeWork as shown in the PMES. What is currently being done about addressing grievance handling processes within the agency?
7. Recruitment processes have been unfavourable for SafeWork as shown in the PMES. What is currently being done about addressing Recruitment processes within the agency?
8. Witnessing and experiencing bullying has been an issue for SafeWork as shown in the PMES. How will SafeWork address the bullying within the workplace?
 - (a) How will instances of sexual harassment be addressed?
 - (b) How will discrimination and racism be addressed?
 - (c) How many instances of bullying, sexual harassment, and racism have been reported in SafeWork?
9. How can bullying, sexual harassment, and discrimination be addressed if grievance processes in SafeWork are unfavourable for workers?
10. According to the 2021 PMES for the WHS Metro division, 53% did not agree that the organisation meets the needs of communities, people, or businesses of NSW. Did SafeWork NSW know about these concerns prior to the PMES results being released?
 - (a) How will SafeWork address these concerns?
 - (b) Has there been any consultation with workers by SafeWork executives as to how they think the organisation meets the needs of the people of NSW?
 - (c) Have workers raised these concerns with SafeWork executives?
 - i. What have executives done about this?

Questions not answered from Further Answers to Budget Estimates Supplementary Questions

11. From Q2 of Answers to Supplementary Budget Estimates questions, it was stated “SafeWork NSW does not have data on how many risk assessments for minimising noise were provided to SafeWork NSW. Inspectors most often sight documentation during a workplace visit”. Why is this data not kept?
 - (a) How are risk assessments recorded and kept on file?
 - (b) Are there follow ups to risk assessments that are concluded?

- (c) How are risk assessments monitored for quality assurance if they are not recorded?
12. From Q3 of Answers to Supplementary Budget Estimates questions, it was stated “SafeWork does not keep a register of businesses that use audiometric testing as part of their risk management procedures for managing the risk of hearing loss from noise.” Why does SafeWork not keep a record of this information?
- (a) How does SafeWork ensure that businesses using the exemption are not imposing any breach of WHS on their workers?
- (b) Are onsite inspections for audiometric WHS risks at workplaces that use the exemption conducted by SafeWork NSW?
13. From the Budget Estimates Hearing, it was stated that a “cost benefit analysis as well, as required by clause 58” regarding testing exemptions. In the Answers to Supplementary Budget Estimates questions, it was stated that “there has been no formal cost-benefit analysis. However, SafeWork NSW will undertake public consultation as to the costs and benefits to determine whether the provision should be repealed or remain.” When will the cost benefit analysis occur?
- (a) Why has a cost benefit analysis of testing exemptions not taken place since the introduction of testing exemptions by SafeWork?
- i. Why has it not taken place despite being required as stated at the Budget Estimates hearing?
- (b) How does SafeWork know the benefits of testing exemptions for businesses when a formal cost benefit has not been done?
- (c) To what extent will the public be consulted regarding the cost benefits?
- i. Who will be consulted?
- ii. When will consultation take place?
14. From Q37 of Answers to Supplementary Budget Estimates, as of 23 September 2022, 60 onsite manufactured stone site inspections were completed. How many desktop inspections of manufactured stone sites have been completed this year?
- (a) How many notifiable incidents were received in 2022 for a manufactured stone site but did not result in an onsite inspection?
- (b) How many Requests for Service were received in 2022 for a manufactured stone site but did not result in an onsite inspection?
- (c) How many Notifiable Incidents received in 2022 for a manufactured stone site but did not result in neither an onsite inspection nor a desktop inspection?

- (d) How many Requests for Service received in 2022 for a manufactured stone site but did not result in neither an onsite inspection nor a desktop inspection?
15. From Q43 of Answers to Supplementary Budget Estimates, it was stated “Between Jan 2020 and 19 Sep 2022, there were 53 Requests for Service for dry cutting of engineered stone. 42 of these resulted in workplace visits by an inspector.” Did the remaining 11 requests receive a desktop inspection?
- (a) Why were these requests not physically visited/inspected?
- (b) Were there any Requests for Service that did not result in any type of inspection?
16. From Q45 of Answers to Supplementary Budget Estimates, it was stated “208 requests for service regarding silica received by SafeWork in the last two years and 153 were followed up by an inspector visit.” How many resulted in a desktop inspection?
- (a) How many of these did not end up in an inspection desktop or otherwise?
- (b) Why did 55 requests for service not result in an onsite visit?
- i. What was the recommendation by those who reported/ made the RFS for these instances?
17. From Q49b of Answers to Supplementary Budget Estimates, it was found that regarding foundry sites, no inspections were conducted in 2022 and 2021, and only 10 were conducted in 2020. How many requests for service at foundry sites were made in 2020, 2021, and 2022?
- (a) How many notifiable incidents were made for foundry sites in 2020, 2021, and 2022?
- (b) How many RFS² resulted in a desktop inspection from 2020-22?
- (c) How many RFS² resulted in no inspection from 2020-22?
18. From Q49c of Answers to Supplementary Budget Estimates, it was found that regarding onsite inspections of tunnelling sites, none were conducted in 2022. How many requests for service at tunnelling sites has SafeWork received thus far in 2022?
- (a) How many desktop inspections have there been of tunnelling sites in 2022?

Case Studies

19. Regarding the 2020 incident when a water tank (The Snowy 1) exploded and flooded homes with mud and asbestos, this incident was categorised as a Category 2 response, however SafeWork management stated 2 weeks after that no further investigation was required. What was the basis for this decision?
- (a) Was there an investigation as to why this decision was made by SafeWork?
- (b) What reports have been conducted on this case?
- (c) When did the IDMP investigate the event?

- (d) What was the timeframe?
 - i. Why did it take this long to investigate the event?
- (e) Were there any RFS to the site prior to the event?
 - i. What was the result to the RFS' by SafeWork?
- (f) Did members of the general public voice their concerns to SafeWork about the possibility of danger at the site?
 - i. How many complaints did SafeWork receive?
 - ii. When were these received?
 - iii. How were these acted upon?

20. Regarding the 2022 barge services fatality when a man passed after a crane lost its load and he was crushed. Over a month prior there had been no inspections conducted by SafeWork. How many RFS' did SafeWork receive regarding the site from 2020-22?

- (a) How many Notifiable Incidents did SafeWork receive regarding the site from 2020-22?
 - i. How many of these RFS' and Notifiable incidents resulted in a desktop inspection by SafeWork?
 - ii. How many resulted in an onsite inspection by SafeWork?

21. Given there was an inspector on the Aussie Skips site when the tragic fatality occurred, did the inspector close down the facility before the death occurred?

Risk based framework

22. According to page 2 of the transcript where Ms McCool states 'if you look at any of our employment schedules, the majority of it will be proactive where it's unannounced', is this referring to inspection schedules of PCBU's?

- (a) Does this mean that most inspections are unannounced?

23. When Ms McCool states on page 2 of the transcript that 'the majority of our work is in the proactive space' does this refer to educational functions of SafeWork?

Cassaniti case

24. Why were no details about notices given as a result of Safework's inspection of the Lachlan's Line site on 6 December 2017 given to the committee, when SafeWork NSW was asked in Budget Estimates about its response to the Landcom request for service that occurred on 1 December where Landcom stated 'Landcom is greatly concerned that a major incident, or worse a fatality may occur from Greenland's poor management practices'' and then again on 8 December 2017?

- (a) Please give details of what notices were given as a result of this inspection of the site by SafeWork.
25. What did SafeWork do with the information that included photos from 2 safety inspections undertaken by Landcom personnel sent to them on 8 December 2017?
- (a) Were any notices given with regard to the matters highlighted in these emails, including concerns around falls from heights?
- i. If so, what were they for?
- (b) Did SafeWork consider the email from 8 December 2017 as a second request for service, following the request for service on 1 December?
- (c) Did the Minister responsible for SafeWork NSW at the time respond to the Landcom letter of 22 November which noted the ‘severe nature of these issues and poor response from Greenland’ as well as requests for the company to ‘install appropriate fall protection’?
- i. If so, when did the Minister respond to the Landcom letter?
- ii. What undertakings did the Minister make in this letter?
26. On the 2nd of February 2018 the Development Director at Landcom emailed SafeWork NSW stating they ‘understood SafeWork had been on the site recently’, was this the case?
27. In the answer found in question 10 of further supplementary questions regarding what notifications or requests for service were there in the year before the tragic death of Christopher Cassaniti, the answer starts in July 2018. Does this mean there were no requests for service or notifiable incidents between April 2018 and July 2019?
28. Given the fact that the reference number starting with a number 2 referred to on page 4 of the transcript from the WSMS reporting system refers to a notifiable incident, why were no incidents with the number 1 - a request for service - included in the table around events prior to the tragic death of Christopher Cassaniti on 2 April 2019?
29. Why does Ms McCool refer to the reference number starting with a number 2 referred to on page 6 of further supplementary questions, as a Category 2 incident?
- (a) If Ms McCool believes that number refers to categorisation not type of notification, why was Christophers death on 1 April not then categorised as a Category 1 in the table?
30. Why is notifiable incident 2-1422433, which occurred on 20 December 2022, not included in the table on page 6 of answers to further supplementary questions?

31. Given that in November 2018 two falls from heights – (a loading platform falls 5 levels and on 22 January 2019 a bricklayer falls from an unsecured scaffold) - how is it that Ms McCool can contend that these indications of seriously unsafe workplace practices at the Lachlan’s line site are irrelevant to the tragic death of Christopher Cassaniti when his scaffold collapses?
32. Given the serious nature of the notifications in the year before Christopher Cassaniti tragic death, is the regulator satisfied that they were dealt with in an appropriate manner, for example issuing section 171 notices following a loading platform falling five levels on 20 November 2018?
33. Were there any HSR’s on the site in the 2 years before the tragic death of Christopher Cassaniti?
 - (a) If so, were they involved in ‘a walkaround’ as noted by Ms McCool on page 5 of the transcript?
34. Please provide all requests for the service, and SafeWork responses to those requests at the Lachlan’s’ Line site from 2017 to 2020.

Cooma watertank explosion

35. In relation to the Cooma incident, why was the WSMS RFS Report 1-409990 filed in by a manager at SafeWork rather than an inspector?
 - (a) For WSMS RFS Report 1-409990 ‘Other Agencies’ section, what are the two agencies listed in the report?
 - (b) Why is it that for WSMS Incident Notification Report 2-153021 which was deemed a Category 2 incident ‘due to media interest and impacted public’, it is closed off with ‘no further investigation needed by 14/1/20’?
36. Given most submissions for an IDMP (Investigation Decision Making Panel) are completed 30 days after a serious incident, when was the report to the IDMP completed for the Cooma incident?
 - (a) Did the inspector who completed the IDMP on the Cooma incident recommend further investigation?
 - (b) Did the inspector who completed the IDMP on the Cooma incident recommend prosecution?
37. Given SafeWork was sent the most recent Public Works report on the tank by concerned residents. which noted that filling the tank would result in catastrophic danger to person and property, was this document discussed at the IDMP meeting on 11 August 2021?
 - (a) Please confirm when SafeWork first received the report from concerned residents.
38. How is it that Ms McCool indicated that SafeWork had “no information to indicate it was false information” on page 7 of the transcript when SafeWork was sent the latest Public Work report showing that the initial information given to SafeWork was deliberately misleading?

39. Why is it that Ms Mann states to Mr Banasiak that if he does 'have further information about council somehow misleading SafeWork NSW I'd be keen to obtain the information', when SafeWork has already been alerted to the fact that misleading information was given to the regulator?
40. Did the Minister for Regional New South Wales, who was at the time responsible for Emergency Committees responses during bushfires, contact SafeWork about the Cooma incident in any capacity?
- (a) If so, on what date did this occur?
41. When Mr Press referred to the issue being 'statute barred' on page 8 of the Supplementary hearing transcript, is he referring to the ability to prosecute or further investigate the case?
42. Given the statute of limitations refers to prosecutions – not to investigations. Why then given the serious nature of these allegations, is the Minister not investigating this issue further?

Qualifications of Investigation Decision-Making Panel Members

43. Please provide information about the qualifications of the 7 directors or any other personnel sitting on the IDMP in the last two years.
44. When were IDMP matters changed from being reviewed by Team Managers to Directors?
45. Ms Mann stated on page 14 of the transcript that the two directors 'sitting with us today' are eminently qualified, what are their qualifications?
- (a) Have they undertaken the Advanced Diploma of Government Inspection course that SafeWork inspectors are required to undertake before embarking on inspections under WHS legislation?
- (b) How many Assistant State Inspectors have this diploma?

IDMP matters

46. Please provide information about how many referrals have been considered by the IDMP for the last 5 years?
- (a) For each year, please provide a breakdown of how many matters that the inspector briefs or reports had recommended for further investigation or further prosecution?
- i. How many of these were further investigated or prosecuted?
- ii. How many of these matters were closed?

McDougall Review

47. Given that on page 15 of the supplementary hearing transcript Ms Mann states that ‘ultimately it will be something that Mr McDougall and I will look at’, is this appropriate for the regulator under review to be closely involved in writing the terms of reference?
48. Why are the terms of reference not the ones Mr McDougall recommended in Recommendation 49?

NUMBER OF INSPECTORS

49. Of the current 370 inspector roles in SafeWork, how many of these are Manager roles?
- (a) Given question 23 in supplementary questions showed that 79 of the 89 inspector roles in Building and Construction were unfilled, how many are currently unfilled as of 1 November 2022?
50. How many of the current inspectors need to be accompanied by another inspector when visiting PCBU’s?
51. How many active inspectors are there who are not Managers, or not on probation, or have to be accompanied by other inspectors?
52. How many current inspectors have ‘partial authority’ referred to on page 17 of the supplementary hearing transcript?
53. How many new inspectors were recruited in 2022, 2021 and 2020?
- (a) How many inspectors recruited since 2021 have had their authorities fast tracked prior to completion of their training?
54. In terms of people with inspector authority under the WHS Act, how many Directors have resigned since March 2021?
- (a) In terms of people with inspector authority under the WHS Act, how many Managers have resigned since March 2021?
- (b) In terms of people with inspector authority under the WHS Act, how many Inspectors have resigned since March 2021?

Mining Regulator Investigations

55. How many matters have been referred to the Resource regulator from SafeWork NSW in the last 10 years? Please provide a breakdown by year and by type of matter.
- (a) How many of the matters that were submitted to SafeWork to be investigated were actually followed through with an investigation by the Resource Regulator? Please provide a breakdown by year.

- (b) How many of matters which have been submitted to SafeWork to be referred to the Resources Regulator have been in relation to bullying in SafeWork NSW?

External investigations into bullying

- 56. How much money has been spent on external reports into bullying or workplace culture from 2019-22?
- 57. Have any investigations been conducted into bullying allegations against SafeWork executives from 2019-22?
- 58. Have any investigations been conducted into bullying allegations against SafeWork directors from 2019-22?

SafeWork lost in Department of Customer Services

- 59. Given Jim Kelly stated at the recent *2022 Review of Workers Compensation Scheme* that ‘SafeWork as an agency doesn’t exist anymore’ should there be concerns that SafeWork has lost its status as a separate entity, and this is impacting on its effectiveness?
 - (a) Why has SafeWork ceased to be its own agency?
 - (b) How has this affected workplace matters for workers at SafeWork including issues of workplace culture?

Friable asbestos matter

- 60. With respect to the friable asbestos matter referred to in the Sydney Morning Herald article by Adele Ferguson on 14 October 2022, please provide information about how SafeWork responded with the Ombudsman’s request that SafeWork follow up on a ‘directed engagement’ with the PCBU?
- 61. Did SafeWork follow up on the Ombudsman’s letter to SafeWork in 2020 requesting SafeWork change their IDMP Terms of Reference to state that there was an expectation that operational areas should consult with the Panel if any of their recommendations were not fully implemented?
 - (a) If so, when were the terms of reference for the panel updated?
 - (b) Was this change sent to the Ombudsman and communicated to staff?
 - i. If so when did this occur?