

## 2024 Review of Dust Diseases Scheme

Hearing 29 November 2024

Supplementary Questions

Ms Natasha Flores, Unions NSW

1. Witnesses and submissions have described the regulations regarding dust monitoring and control as vague and unclear. Can you provide specific examples of these ambiguities and how they hinder worker safety?

Clause 50 of the Regulations requires air monitoring to be conducted if the PCBU is not sure of the level of airborne contaminants and if air monitoring is necessary. The wording of the Regulations is vague and it could be argued that the PCBU did not believe it was necessary to measure air quality. There is no requirement for ongoing air quality measuring in tunnelling or quarrying, where workers could be exposed to unsafe levels of dust every day. Levels of airborne contaminants can change from day to day, even from shift to shift.

The Regulations should require mandatory testing every time workers are working in all industries that produce dust, in particular quarrying and tunnelling.

Unions NSW recommends the Committee ask the Australian Workers Union (AWU) for their view on this question. The AWU can provide specific examples.

2. Lack of worker consultation regarding safety measures was raised as a concern during the hearing. Do you have any specific examples available where workers have failed to be properly consulted when it comes to developing workplace safety measures?

Lack of worker consultation is a problem in almost all industries. In the 13 years since NSW adopted the harmonized Act, which places emphasis on consultation for all decisions that may affect the health and safety of workers. Despite there being a Code of Practice available which explicitly explains how consultation should be undertaken in all workplaces, PCBU's still seem to struggle to understand their duty. The AWU would be able to provide examples where consultation should have occurred but did not.

3. What barriers might workers experience in feeling able to participate in the development of workplace safety measures?

Workers specifically in the tunnelling industry are paid well. This pay takes into account the level of skill required in the job they do, as well as to some degree the risks and the difficult environment in which they work. Having said this, no amount of money can ever compensate for the loss of a worker's life or the deterioration of their health or the acquiring of a dust disease.

Unfortunately the AWU has informed Unions NSW that workers who complain about poor working conditions often find themselves rostered on to above ground work, which pays considerably less.

Unions NSW knows that workers who complain about poor safety are often targeted by their PCBU. PCBU's know they should not put a worker in a situation that is to their detriment because they have asked that their safety be considered by the PCBU, however Unions NSW has been given examples of how workers who try to enforce their safety rights are targeted in other ways. PCBU's will often find some other slight misdemeanor in which to punish the worker. They will be monitored closely and micromanaged in an attempt to find something that will allow the PCBU to dismiss them or performance manage them.

Just today I personally spoke to a HSR who was stood down after he directed a worker who was undertaking unsafe work to cease work. Initially he was told he was 'harassing' this worker. Then he was told he was stood down for allegedly allowing someone else to use his employee discount. The paper trail prior to this suggests that he was targeted for using his powers as a HSR.

Workers must be protected from dismissal and retribution when they raise WHS concerns. Workers who raise concerns should not feel as though they have to walk on eggshells to maintain their jobs. SafeWork NSW could be more proactive in running prosecutions where PCBU's target workers who refuse to compromise their safety or who lawfully use their powers under the Act.

Unions should be re-instated with powers to prosecute category 3 breaches. Unions used to be able to do this under the previous OHS Act. They would receive a moiety if the PCBU was fined. This would assist in resourcing the union to continue to undertake this work, and would assist the regulator which is not resourced sufficiently to be actively regulating and prosecuting the number of workplaces who commit category 3 breaches.

4. Are you aware of Safework ever taking enforcement activity to ensure worker involvement in safety measures? Can you provide examples of when Safework has failed to enforce consultation requirements?

I am not aware of SafeWork ever taking enforcement activity to ensure worker involvement in safety measures. I am aware of the Regulator behaving in an obstructive manner preventing unions from undertaking investigations using their Entry Permits. The AWU can provide examples of this obstructive behaviour.

5. We heard evidence of the difficulty for workers to access and also to interpret air monitoring data. Can you provide details about these

challenges and how they impact workers' ability to protect themselves from silica dust exposure?

As stated in question 3, workers who actively become involved in WHS, are elected HSRs, or simply ask for safe working conditions, are often targeted by PCBU's. Workers do not generally have access to air monitoring equipment, to measure air quality themselves, and if they were seen to be doing this, would likely be targeted for dismissal or performance management, by the PCBU. Unions like the AWU have been obstructed in their attempts to access workplaces and measure levels of dust. PCBU's are not providing this information to workers, or unions, as was shown by the AWU in their submission.

If workers do not know what they are being exposed to, protection from this is clearly difficult. And if the exposure levels are high, basic PPE will not provide adequate protection. PPE is a low level control measure. The PCBU is required to enact high level control measures. At the first instance this requires eliminating the hazard.

6. Can you elaborate on Unions NSW's position on the adequacy of SafeWork NSW's enforcement actions in relation to dust control regulations?

Unions NSW is not aware of SafeWork NSW enforcing compliance in any instance. As stated in our witness appearance in November 2024, we approached the then Minister responsible for WHS, Minister Kean, in 2018, presenting him with photos secretly taken by workers in the NorthConnex tunnelling project. These photos showed extremely dusty conditions where visibility was poor. These photos were shown to representatives from SafeWork NSW at the time and the Minister said words to the effect, 'do something about this'. I believe one of the SafeWork NSW representatives was Tony Williams. I am not aware of any significant safety concerns being addressed and or fixed, by the regulator since then. The AWU can confirm whether any hazard controls were implemented after this meeting. The AWU attended this meeting with Mark Morey and myself.

7. Submissions have emphasized the challenges faced by Culturally And Linguistically Diverse (CALD) workers in navigating the Scheme and accessing support. What specific measures can be implemented to address barriers and ensure equitable access to services for CALD workers?

The AWU is better placed to answer this question as they are dealing directly with workers every day and are able to assess the needs of workers in the tunnelling and quarrying industries. Unions NSW does know that many CALD workers work in the manufactured stone industry and the GIG industry and are afforded little help to navigate their rights at work both in industrial matters and health and safety matters. Obviously we would encourage SafeWork NSW hire people within their own organization where they can, who bring diversity to the Regulator including different languages.

Unions NSW would also suggest that Fact Sheets and Legislation, Codes of practice be printed in various languages and be easily accessed online.

Currently the SafeWork NSW website is difficult to navigate. A search often leads to one opening up numerous tabs and this is complex for anyone searching for information. A rebuild and simplification of the website should be done. Information which advertises simply SafeWork's role as a safety regulator aimed at workers, with simple contact details should be available in different languages and distributed by all inspectors whenever a workplace visit occurs.

8. Concerns were raised about the quality and frequency of fit testing for PRE (sic), PPE (personal protective equipment). How often is fit testing conducted, and what are the specific challenges in ensuring proper fit testing for all workers?

Personal Protective Equipment (PPE) is a low order control. It should not be the primary control measure. Other higher order control measures such as elimination should occur first. PPE however is an ineffective control measure when it is not properly fitted to the person. The PCBU should ensure that PPE is new, clean and fit tested. This was an ongoing problem throughout the COVID pandemic. The NSW Nurses and Midwives Association were in constant contact with SafeWork NSW throughout the pandemic seeking assistance from the regulator to ensure nurses were fit tested with appropriate masks. As far as Unions NSW is aware, SafeWork offered no assistance. The Committee would have to ask the AWU if fit testing has ever occurred.

Workers need to be fit tested individually, which would cause some challenges as this does take time, and the correct fit must then be sourced and provided to the worker, however without correctly fitted PPE, this control measure is not effective.

9. Witnesses spoke about the difficulty for the scheme in terms of a lack of centrally organized health records. Can you elaborate on this issue, and identify any recommendations?

Occupational hygienist Kate Cole spoke about frustrations from the healthcare/medical community about this and would be best placed to answer this question, however it is imperative that Australia has a central database which can be accessed by all treating healthcare providers to ensure treatment is appropriate, all treating providers have all the information they need to treat the worker and so that we as a nation have an idea of the extent of dust diseases in this country.

10. Concerns were raised about the quality and frequency of fit testing for PPE. How often is fit testing conducted, and what are the specific challenges in ensuring proper fit testing for all workers?

This is addressed in question 8.