

21 January 2025

The Secretary
Legislative Council Standing Committee on Law and Justice
Parliament of New South Wales

By email: law@parliament.nsw.gov.au

Dear Sir/Madam,

Re: Committee Enquiry - 2024 Review of the Dust Diseases Scheme – Questions on Notice.

The Australian Workers' Union ('AWU') thank the Standing Committee for the opportunity to answer the following questions on notice.

Question

Can you provide any examples of AWU members or representatives being denied access by a PCBU to critical information about dust levels and potential health risks on tunnelling projects?

a. What specific measures do you recommend to ensure that workers and their representatives have access to this information?

Answer

AWU members and representatives have faced consistent barriers when seeking access to critical information about silica dust levels in tunneling projects across New South Wales. This has occurred despite the significant health implications of prolonged exposure to hazardous dust. As discussed in the hearing, due to the barriers faced in collecting this information from PCBUs, the AWU has used the GIPA Act to obtain dust monitoring data. This process was time consuming and frustrating to say the least. Further, as detailed in our submission, PCBUs requested that information not be released. As a result of frustration with the GIPA process, the information was obtained from a Standing Order 52. There is information still being withheld.

The challenges arise from two primary issues:

1. Fear of Retaliation Among Health and Safety Representatives (HSRs):

Many HSRs are reluctant to raise concerns or demand information due to fear of retribution from their employers. This intimidation undermines the role of HSRs, who are meant to act as a voice for workers on health and safety matters. When HSRs are hesitant to act, workers lose an essential channel for raising health-related concerns.

2. Challenges Faced by Permit Holders:

Permit holders (union officials) are frequently questioned or obstructed by PCBUs when requesting dust monitoring data. Companies tend to challenge the necessity of these requests, often escalating matters to regulators. Regulators tend to side with companies rather than supporting the transparency and safety rights of workers. An example includes an AWU Organiser of being accused by SafeWork NSW of conducting a "witch hunt" when seeking access to dust monitoring data. This resistance discourages further inquiries and undermines worker safety.

The provisions of the Work Health and Safety Act that allow for health and safety representatives receive information concerning the work health and safety of workers a the work group, 68(2)(f), ought to apply to permit holders.

Question

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

Answer

In relation to general enforcement, the AWU believes that Safe Work has not fulfilled its duties as a regulator and is in fact misleading the public on its efforts. For example, Safe Work NSW advertise enforcement blitzes online¹ however when you look at the Findings Report, Safe Work NSW qualify, 'The key focus areas of Inspectors during this compliance project were non-tunnelling related construction sites...'²

There has been no prosecution of any company in relation to dust exposure. Documents obtained through GIPA and subsequently by a Standing Order 52 show that silica dust levels in tunnelling projects have been far above the legal limit.

Question

The Hon. ROD ROBERTS: I'll certainly ask them this afternoon, but I just wanted to know from you. I stand to be corrected, but somewhere in the evidence from either Ms Flores or Ms Hayward earlier this morning there was some mention of some photos that had been taken in the tunnelling process that were shown to a previous Minister. My interpretation was that perhaps you had those photos at some stage. Is that correct? ... Is it possible, on notice, to actually get those photos—if they could be tabled and presented to us as an inquiry?

¹ <https://www.safework.nsw.gov.au/news/safework-media-releases/six-month-silica-safety-blitz-to-protect-workers-health>

² <https://www.safework.nsw.gov.au/about-us/evaluation/findings-report-silica-safety-in-construction-2023>

Answer

The AWU has provided photos and videos to the Committee Office via a link.

Question

Ms ABIGAIL BOYD: We know that this is a more concerning issue in New South Wales because of the geological aspects et cetera. In terms of what other States and their regulators are doing in relation to air monitoring more generally, are there other States doing it better? Are there things we can learn from other jurisdictions that we should be importing here?

Answer

The safety regulations in South Australia allow for permit holders to take measurements or conduct tests directly relevant to the suspected contravention and take photos and videos directly relevant to the suspected contravention. Amending the NSW WHS Act to allow for permit holders to undertake these activities will go some way in improving safety.

Yours sincerely,

Chris Donovan

ASSISTANT NATIONAL SECRETARY