



Transport for NSW

Responses to post-hearing questions

Standing Committee on Law and Justice

2024 review of the dust diseases scheme

Hearing date – 11 December 2024

QUESTIONS ON NOTICE

QUESTION 1. P29

The Hon. ROD ROBERTS: Thank you very much for attending today, in particular for your evidence, Ms Drover, in terms of roadheader machines versus tunnel boring machines. I had absolutely no idea. I don't think I have much more of an idea, but I have a little bit more now, thanks to you. We heard evidence that the tunnel boring machine is probably safer from a worker's viewpoint in terms of dust extraction and distance from the actual cutting place et cetera. You've cleared a lot of that up. You've said along the lines of the data you received from the principal contractor, you can't – let's say the word "air", because you don't own the data, or something along those lines. It's hard to adjust a contract once it has already been written. But, going forward, is there the potential to have in the contracts that although the principal contractor records the data and it's their data, that it can be, and should be, shared by you, if you desire?

CAMILLA DROVER: Happy to take that away and have a look at it. I would hope that the contractors are sharing data with their workforces. I think we've got some evidence that they are. Entry to site is a good location. But if there's more we can do in that space, very happy to take that away and have a look at it.

The Hon. ROD ROBERTS: We raise that because we've received evidence, sworn testimony, from people saying that they can't get access to that data. Data is powerful, as we know. Information is powerful, so we're looking to be able to provide the worker with access to that information. We know it's the role of the PCBUs to provide information on overexposures to SafeWork. It's their role. They also notify you. Perhaps you could take this away, look at it and come back on notice, with you being a mandatory reporter of that information to SafeWork, so we ensure that it's there. I think it might have been Mr Mullins who said there's no feedback loop. We're entrusting the principal contractor to provide that to SafeWork. If they're already providing it to you, can't we just ensure that it's forwarded by your organisation and therefore we're safe in the knowledge that SafeWork has been informed?

CAMILLA DROVER: I wouldn't want to cut across the obligations and responsibilities of SafeWork. They're obviously an independent party. That is their role, to regulate what happens in terms of safety on sites. But I think there are more informal processes. As I said earlier, if there's an incident onsite, many of us are checking that SafeWork has been notified. Of course, we're all doing our own assessments and investigations about what occurred, particularly if there's something that we can do immediately that will address the issue. That's the nature of the behaviour and culture onsite.

The Hon. ROD ROBERTS: Most certainly, and I understand that. I'm not asking you to cross over into SafeWork's patch. What I'm suggesting is that I have grave fears that I have spoken about personally and publicly and aired here before about the ability of SafeWork to regulate. What I'm suggesting is that if you are mandatorily notified by the principal contractor, perhaps you should just provide it to SafeWork and then we know that they've got it. It's just one more email further down the line. I don't expect you to comment on it now, but take that away and come back to us about whether you think that is a simple and reasonable proposition.

CAMILLA DROVER: Yes.

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ANSWER:

Contracts include provisions requiring data sharing where necessary to address specific risks arising from a project's scope of work and technical requirements.

Whilst not mandatory in Procurement NSW's standard form contracts such as the GC21 contract framework, Transport has several internal specifications which compel principal contractors to share Work Health and Safety (WHS) data.

These specifications are dependent on a project's requirements, which address WHS risks generally, including air quality. These specifications are typically implemented through specific Project Management Plans and sub-plans, throughout a project's construction.

Under the *Work Health and Safety Regulation 2017* (NSW), the Person Conducting Business or Undertaking (PCBU) that is "carrying out, or directing, or allowing a worker to carry out" must provide the results to SafeWork NSW where the airborne concentration of respirable crystalline silica has exceeded Workplace Exposure Standards.

All PCBUs involved in a Transport project, including Transport staff, have general WHS duties as detailed under the *Work, Health and Safety Act 2011* (NSW) and associated regulations.

Under the legislative framework, the extent of any further specific duties will depend upon a number of factors, including the nature of the work being undertaken, which Safety Management System they are working under, and whether a principal contractor has been appointed for a project.

SUPPLEMENTARY QUESTIONS

QUESTION 1.

What steps is Transport for NSW taking to ensure that principal contractors are effectively managing dust exposure risks and complying with dust control regulations?

ANSWER:

Transport incorporates steps throughout the lifecycle of a project to ensure that principal contractors are effectively managing dust exposure risks and complying with dust control regulations

1) Incorporating dust management into project planning

Transport mandates that principal contractors develop and submit comprehensive plans, including Environmental Management Plans, Work Health and Safety Management Plans, and Occupational Health, Hygiene, and Wellbeing Management Plans. These must include detailed dust management strategies as part of the overall project documentation. The plans should outline control measures, monitoring techniques, and ensure compliance with relevant air quality regulations.

2) Establishing clear standards and guidelines

Transport requires that principal contractors comply with a series of technical specifications, including those related to environmental protection and work health and safety during construction. In addition, compliance with both State and Federal regulations, such as those from SafeWork NSW and the Environmental Protection Authority is mandatory. This ensures a consistent approach to managing dust exposure risks across projects.

3) Requiring comprehensive risk assessments

Principal contractors are required to undertake comprehensive health risks assessments to systematically identify, assess and control occupational health risks, through both qualitative methodologies, such as desktop and observational, and quantitative approaches, including exposure monitoring. The risk assessment informs site specific control strategies including the ongoing evaluation and improvement of controls informed by data.

4) Enforcing monitoring and reporting

Principal contractors are required to regularly monitor dust levels and submit reports demonstrating adherence to dust control standards. Any exceedances must be immediately reported with details on corrective actions taken.

5) Training and awareness initiatives

Transport consistently emphasises the importance of educating project site workforces on dust-related hazards. Principal contractors are expected to provide training on the risks associated with dust exposure, the health implications of exposure, and the proper use of personal protective equipment.

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6) Conducting audits and compliance checks

Transport conducts periodic audits and site inspections to verify that principal contractors are implementing effective dust management strategies and complying with established regulatory standards

QUESTION 2.

Has Transport for NSW ever made a referral or report to Safework NSW regarding exceedances of the Workplace Exposure Standard on a Transport for NSW worksite?

ANSWER:

Yes, but only in circumstances where Transport directly undertakes the works.

QUESTION 3.

Does Transport for NSW consider itself to have a WHS duty in relation to Transport for NSW projects?

ANSWER:

Yes, all PCBUs (Person Conducting Business or Undertaking) involved in a Transport project, including Transport employees, have WHS obligations. The extent of these and any further specific duties is dependent on a number of factors, including which safety management system is used, the nature of the work being undertaken and whether a principal contractor has been appointed for the project.

QUESTION 4.

What steps is Transport for NSW taking to evaluate the effectiveness of its contractual requirements on principal contractors in relation to dust control measures?

ANSWER:

Transport implements policy and legislative requirements as required and continues to evaluate best practice across its infrastructure procurement policies.

In response to legislative and policy settings, Transport develops guidelines for the use of Transport staff and contractors. For example, in relation to improving silica dust management, Transport has developed detailed requirements for temporary ventilation during tunnel excavation, for both roadheader and tunnel boring machine solutions.

The enforcement of these contractual requirements is also supported by regular audits of principal contractors to monitor compliance with contractual requirements. WHS and environmental risk factors form major elements of these audits and each audit's scope is determined taking a risk-based approach to ensure the assessment is fit for purpose.

When dust is identified as a project risk, the scope of the principal contractor audit will include compliance with Transport specifications relevant to air quality and dust associated health risks to ascertain effectiveness of dust control measures.

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Further, Transport held two workshops with tunnelling contractors in 2024 to collaborate and drive best practice on roadheader safety. Industry engagement regarding this is ongoing.

QUESTION 5.

Does Transport for NSW consider handheld air monitoring to be a useful, if imperfect, tool for assessing real time air quality concerns?

ANSWER:

Handheld real-time monitoring can be a useful, supplementary, method to assess the effectiveness of workplace controls and provide an indication of airborne particulate concentrations.

However, it is important to note that handheld particulate monitoring is not appropriate to be used in assessing worker exposure and compliance against Workplace Exposure Standards. A monitoring strategy is typically centred around ongoing personal exposure monitoring, in accordance with cl49 and 50 *Work Health and Safety Regulation 2017* (NSW).

QUESTION 6.

Does Transport for NSW support union representatives being able to secure access to worksites, and to use monitoring and recording tools in the course of their duties?

ANSWER:

Transport is supportive of worker participation and consultation regarding safety issues, which may involve union official attendance at worksites where undertaken in accordance with the relevant WHS regulations and right of entry framework. To ensure reliability of the data captured, any persons using monitoring and recording tools should be appropriately trained and experienced.

QUESTION 7.

When assessing tenders from principal contractors bidding for Transport for NSW projects, what consideration is placed on their history of compliance with WHS standards? What consideration is placed on their proposed dust mitigation plan?

ANSWER:

Tender submissions made by principal contractors during tendering for tunnelling projects typically include a Work Health and Safety Management Plan and an Environmental Management Plan. These submissions allow principal contractors to clearly outline their strategy to address relevant project risks including silica dust management.

These submissions are then evaluated by subject matter experts on the tender evaluation committee, and solutions by various contractors are scored according to their appropriateness and effectiveness for the proposed delivery method. This ultimately

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impacts a principal contractor's overall score in the assessment phase of the procurement process.

QUESTION 8.

Does Transport for NSW require principal contractors to notify them of all exceedances of air quality standards on Transport for NSW sites?

ANSWER:

The Workplace Exposure Standards for airborne contaminants are published by Safe Work Australia. Compliance with the Workplace Exposure Standards is required under Commonwealth and State work health and safety laws, including s 17 and 19 *Work Health Safety Act 2011* (NSW). Together these sections of the Act require that exposure to substances in the workplace is kept as low as is reasonably practicable.

The Workplace Exposure Standards establishes a statutory maximum upper limit of exposure to workers for hazardous chemicals such as respiratory crystalline silica. While controlled and uncontrolled exceedances are project specific, principal contractors communicate these incidents through various channels to Transport including via meetings, debriefs, toolboxes, safety notice boards and health and safety committees.

For further information please refer to question on notice 1 and supplementary question 1.

QUESTION 9.

What is the response from Transport for NSW when notified of a WHS issue?

ANSWER:

The response is influenced by a number of factors including the nature of the issue, such as whether there is injury, property damage or immediate disruption.

These factors will also determine which reporting entity should be engaged and the extent to which investigations and lessons learnt processes are required.

QUESTION 10.

For projects that have persistent and repeated exceedances of the WES, what are the active management steps undertaken by Transport for NSW to ensure safety onsite?

ANSWER:

Transport is not currently overseeing any sites which require active management for persistent and repeated exceedances.

Where this is required, Transport may take a number of steps to improve compliance, including:

- Real-time air quality monitoring being intensified and reporting frequencies increased.
- Rolling out additional training focusing on the risk associated with the exceedances and proper use of controls.
- Monitoring closely the reporting of breaches to regulatory authorities.

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- Increasing the frequency of audits and inspections.

In circumstances of severe or recurring non-compliance, certain activities may be suspended until safety standards are met.

Should a principal contractor still fail to assure Transport that risks have been eliminated, or where not practicable, managed, Transport may issue a breach notice or consider actions specified under the project deed, which may include consideration as to whether the situation is serious enough to warrant termination of contract.

QUESTION 11.

In Transport for NSW's 'review, supervision and oversight role', what actions have been taken in relation to poor processes or outcomes on tunnelling sites?

- a. How many times has Transport for NSW intervened in a tunnelling site?
 - i. How many times in relation to air quality?
- b. How is this reported?
- c. Which sites have been identified as higher risk, or requiring greater supervision?
- d. How is this reported?

ANSWER:

- a. None.
- b. As noted during the hearing, principal contractors have a contractual obligation to report any relevant breaches to SafeWork NSW, regardless of an intervention by Transport.
- c-d. All tunnelling is identified as a high-risk activity, and should be managed accordingly by all involved, including principal contractors, Transport and all relevant regulatory bodies.