

## **Senate Economics References Committee**

### **Questions on Notice Public Hearing 09 March 2017 Perth**

#### **Senate Inquiry into non-conforming building products (asbestos)**

##### **Question 1.**

##### **Right of entry issues (p.32 of Hansard)**

**Senator XENOPHON:** Can jurisdictional issues be raised, for instance, in terms of right of entry laws for a union or any other body concerned about occupational health and safety? Is that something that becomes a live issue sometimes?

**Mr Napier:** Is that a jurisdiction question?

**Senator XENOPHON:** We heard earlier from the CFMEU that there sometimes can be an argument, a blue, between John Holland and the union as to who has right of entry and I presume there might be a jurisdictional question as to whether it is under state or federal law.

**Mr Napier:** I am not aware of any of those circumstances. I might take that one on notice, but I am not familiar with any circumstance where that has applied.

**Senator XENOPHON:** You might want to take it on notice and you may want to reflect on the *Hansard* because the CFMEU—and I do not want to misquote them, even though they misquote me sometimes—expressed some concerns and said that they had to fight to get access to worksites for imminent safety issues, and that would concern me if that were the case. You said that you take a risk-based approach to regulation; correct?

##### **COMCARE Response:**

It is possible that jurisdictional issues could be raised in relation to right of entry issues, if for example, entry was sought under state industrial relations legislation (or other legislation that contained right of entry provisions). Comcare is not aware of any instances of this nature.

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##### **Question 2.**

##### **Sanctions for deliberately providing false information (p.36 of Hansard)**

**ACTING CHAIR:** So to whom did he report that there was no asbestos—this qualified supervisor?

**Mr Sutcliffe:** To the supervisor and team of workers that had raised—

**ACTING CHAIR:** The John Holland employees or contractors, or whoever raised this issue?

**Mr Sutcliffe:** Yes.

**ACTING CHAIR:** Help me out here, Senator Xenophon, with your legal mind. So he said, 'There's nothing to see here; move along'—or whatever. I am paraphrasing.

**Senator XENOPHON:** Was this a John Holland inspector?

**ACTING CHAIR:** No. This is John Holland's supervisor, who is a qualified expert in asbestos removal.

**Senator XENOPHON:** So if they are wrong—if somebody gives you information that is wrong, negligently wrong or recklessly wrong, what sanctions are there under the act?

**Mr Napier:** I would have to take that on notice.

**Senator XENOPHON:** You rely in good faith on that information, don't you?

**Mr Napier:** We do. What we do is we seek to establish a sequence of events—in this circumstance—and we speak to a range of parties in order to establish that. What we are looking at is, fundamentally: were the Work Health and Safety Act, and the duties and obligations that relate to the PCBU—John Holland, in this case—applied adequately and were the requirements of the act met?

##### **COMCARE Response:**

Under section 268 of the *Work Health and Safety Act 2011*, it is an offence to give false and misleading information.

The section notes that Part 7.4 of the *Criminal Code Act 1995 (Criminal Code)* contains offences dealing with false and misleading information and documents.

It is an offence under section 137.1 of the *Criminal Code* to provide false or misleading information or that which omits any matter or thing that renders the information false or misleading to a Commonwealth entity; and person exercising powers or performing functions under or in connection with a law of the Commonwealth; or the information is given in compliance or purported compliance with a law of the Commonwealth. The penalty for this offence is 12 months imprisonment.

It is also an offence under section 137.2 of the *Criminal Code* to produce a document to another person knowing that the document is false or misleading; and that the document is produced in compliance or purported compliance with a law of the Commonwealth. The penalty for this offence is also 12 months imprisonment.

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##### **Question 3.**

##### **Timeline/John Holland testing of asbestos (p.37 of Hansard)**

**Mr Sutcliffe:** I am describing here the situation that we were presented with and what we were advised occurred on the 12th. Obviously, we were not there on that day. Having been made aware of the situation in Brisbane, following some further meetings a decision was made by John Holland to send some samples for independent testing. Those tests came back and confirmed the presence of ACM. At that time, the decision was made to shut the worksite down.

**ACTING CHAIR:** And that was on the 13th.

**Mr Sutcliffe:** This is on the 12th still.

**Senator XENOPHON:** 12 July or August?

**ACTING CHAIR:** 12 July. Hang on—and just so we are not confused. Coffey were notified on 12 July. They were given the sample and they said, 'Yes, this is asbestos.' And then they passed that information back on to the CFMEU. And then Hollands found out on the 12th, as well. And you are saying to me now that Hollands have informed you that they wanted to do some independent testing. Is that separate of Coffey's? Is that what they have told you, Mr Sutcliffe? Can you tell us who did the testing for them—an independent?

**Mr Sutcliffe:** I am not aware of many of the things that you have just said. I would have to take those on notice.

**ACTING CHAIR:** This is why I am giving you the opportunity, because there is a bit of guilt around here and we are going to get to the bottom of it. If you guys are not guilty, do not protect their backside.

**Mr Napier:** I am not. Can I just try and clarify. All this happened on the 12th. When it first became aware, I understand the media notification in relation to the matter in Brisbane happened on the 12th—I think I have got that right. This unfolded on the 12th, but Comcare first became aware on the morning of the 13th. What Mr Sutcliffe is referring to is what we have found through our inspections and our piecing together, if you like, of the events as they unfolded.

**ACTING CHAIR:** Good. Keep going.

**Mr Sutcliffe:** So, having received that positive sample, a decision was made at that point to evacuate the site, stop work and put measures in place to control the risks.

**ACTING CHAIR:** Right, thanks Mr Sutcliffe. I will come back now. John Holland said to you—to your inspectors or whatever—that they did an independent test. Am I to believe that that was separate from the Coffey test—to the best of your knowledge? If you do not know—

**Mr Sutcliffe:** I could not give you an answer to that question. I would have to take it on notice.

**COMCARE Response:**

The testing undertaken (by John Holland on the 12<sup>th</sup> July 2017) in relation to samples taken from the roof panels at Perth Children's Hospital was not undertaken by Coffey. This testing was done by Analytical Reference Laboratory Pty Ltd, Welshpool, WA, who are an independent National Association of Testing Authority (NATA) accredited laboratory.