

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 30 January 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(NCBP001) – Parliamentary Inquiry - Non Conforming Building Products -
Strengthening the protection notice -**

Senator Xenophon Asked:

Ms Geddes: Senator, what I am picking up is that what you are saying is about how what we have said in the opening statement on the responsibility of industry and what we have got written in the notice of last year do not really match. Probably it is something that we need to back and look at to strengthen the language around that shared responsibility of border management with industry.

CHAIR: I take it this notice is your best attempt at explaining what the state of the law is when it comes to importers.

Ms Geddes: I am not sure about best attempt, but it absolutely is in accordance with the current laws.

Senator XENOPHON: Are you saying that that protection notice 2016/30 is going to be strengthened?

Ms Geddes: No, I am saying that what I am hearing from the chairs' commentary is that the position we are in today versus the notice of late last year do not match and probably what we need to do is go back and look at strengthening words from 'encourage' to something else a little stronger.

Senator XENOPHON: So you are saying that this notice is deficient in its current form?

Ms Geddes: No, I am not saying that at all.

Senator XENOPHON: You are saying there will be a notice re-issued with stronger and clearer language.

Ms Geddes: I am saying we will go back and look at it in light of what I am hearing today.

Senator XENOPHON: So it will or will not be changed?

Ms Geddes: That is something that I think we can take on notice.

Senator XENOPHON: Sure.

Answer:

Yes. The Department of Immigration and Border Protection *Notice No.2016/30 – Assurances that imported goods do not contain asbestos* will be reviewed and updated.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 30 January 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(NCBP002) – Parliamentary Inquiry - Non Conforming Building Products -
Number of high risk samples**

Senator Ketter (Chair) Asked:

"CHAIR: So, of the 290 consignments that have been tested, what were the results?

Ms Dale: We had nine positive detections.

CHAIR: Of asbestos?

Ms Dale: Yes.

CHAIR: What was the outcome of that?

Ms Dale: We have issued a number of infringement notices, and a number of them are still under consideration as to whether they will need further investigations, infringements, warnings or education. They are still in progress.

CHAIR: Were they building products?

Ms Dale: There were a mixture: building products, crayons—

Mr Chandler: Whilst Commander Dale is looking for that information, I think it is worth emphasising that, of the 290 consignments that were tested, that testing was not conducted on a random basis. There are two separate elements to that. There is the random sampling program, but those 290 were based on targeting. They were specifically targeted as high risk—those products or consignments that are considered by the ABF to be of most risk.

Senator XENOPHON: That still leaves the chair's question: of those 290 samples or tests that were undertaken, how big is the pool of areas that you consider to be of high risk?

Mr Chandler: I do not have that information.

Ms Geddes: We will take that on notice and get that clarified."

Answer:

4675 consignments were identified by the ABF as being high risk for asbestos between 1 July 2016 and 23 January 2017.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 30 January 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(NCBP003) – Parliamentary Inquiry - Non Conforming Building Products - How many consignments identified as high risk -

Senator Xenophon Asked:

Senator XENOPHON: But how can you assert that we are doing a targeted group? We know that there are something like 35 million consignments coming in, which could be many millions more, but you cannot tell us how big that targeted group is. That is the question that the chair asked a few minutes ago. I am just trying to understand. It was 290 out of what? How many consignments did you identify as being in that high-risk cohort?

Ms Geddes: We do not have that on us right now, but we can take it on notice and provide you with a breakdown.

Senator XENOPHON: Why not? It is a pretty obvious question for this inquiry, isn't it?

Ms Dale: The 3.1 million is the number of containers. They are not consignments. The 290 samples is a consignment.

Answer:

4675 consignments were identified by the ABF as being high risk for asbestos between 1 July 2016 and 23 January 2017.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 30 January 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(NCBP004) – Parliamentary Inquiry - Non Conforming Building Products -
Level of testing by Australian importers -**

Senator Ketter (Chair) Asked:

CHAIR: But you have heard that Yuanda was not doing any testing. They have said, and this is their evidence, that they do not believe other of their competitors are doing testing. Does that surprise you?

Ms Geddes: I think we have statistics that Commander Dale mentioned before, that there is other testing being done in other sectors of industry.

Ms Dale: I would add that we have seen a number of reports which are not to these standards. We have offered to go back and say, 'That is not a NATA accredited standard,' and make sure that testing is really done by accredited laboratories as well. There are various things that we look for when we are provided with the assurance that the goods that are coming in are asbestos-free.

CHAIR: So you have evidence—this is what I am asking—that there are some of these importers that are doing tests for asbestos.

Ms Dale: I do not have evidence in front of me as I do not have the details of which importers the Yuanda representative was referring to. Without that—

CHAIR: He was referring to importers of building products—of around 30, I think he mentioned—that his company competes with. Can you come back to me as to what your understanding is of the level of testing that is being done by Australian importers of asbestos materials?

Ms Dale: We have a number of importers. If Yuanda can provide that information as to which of those 30 importers we might be able to look to see what that refers to in our records.

CHAIR: The concern I have, based on the evidence we have had, is that there is very limited testing going on. There are not any facilities there. Despite the fact you have said there are some sort of contracted arrangements that NATA has with a Chinese organisation, the Yuanda representative was not familiar with that. So I am interested. You can take that on notice, your understanding of the level of testing that Australian importers are doing, particularly in relation to building products.

Ms Geddes: We will take that on notice.

Answer:

Of high risk consignments of building products identified through profiling and targeted operations, 87% were acquitted without testing as importers were able to provide evidence of testing (i.e. testing certificates) or other forms of assurance that the goods did not contain asbestos.

Where an ABF officer has any concerns, the consignment is directed for testing. Four hundred and thirty four (434) importers of building products have been further targeted as a result of recent operational activity.

The ABF has also written to Yuanda Australia following the Inquiry to request details of the 30 importers they referred to in their evidence, in order to investigate further.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 30 January 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(NCBP005) – Parliamentary Inquiry - Non Conforming Building Products - What percentage of cargo is considered to be at some risk

Senator Xenophon Asked:

Senator XENOPHON: I want to go to your opening statement, Ms Geddes. You say that at the border you undertake risk assessments on 100 per cent of cargo imported into Australia. Can you give us some figures on what the risk assessments say, in terms of those consignments coming into the country that could contain asbestos in their products?

Ms Geddes: I am just turning to my ABF colleague.

Ms Dale: What type of figures?

Senator XENOPHON: You say that the statement made by the department is that you only take risk assessments on 100 per cent of cargo imported into Australia. What do those risk assessments say, in broad terms, of that 100 per cent of cargo coming into Australia? What percentage of that cargo is considered to be at some risk—or any level of risk—for asbestos products?

Ms Dale: I do not have that figure here with me. We might be able to take that on notice. What I can say, to clarify that 100 per cent screening, is that our profiles and alerts are not just for asbestos, drugs, guns and other prohibited items. All the profiles and alerts run across all the information that we have, all 100 per cent of the cargo, and any alerts provided through that mechanism we will scrutinise further.

Senator XENOPHON: Could you please provide it as soon as you can. It should have been no surprise that we were going to deal with these matters today. I thought the questions asked by the chair were quite reasonable in terms of how many consignments of the 290 to date—what miniscule percentage is that of the number of consignments that were deemed to be at risk? You have also said, Ms Geddes, in your opening statement, which was quite useful:

Post border, we investigate alleged breaches of the asbestos import prohibition and may prosecute or issue infringement notices or warnings.

Could you give us details of prosecutions, infringement notices, warnings and what the criteria are?

Answer:

One hundred percent of all consignments reported are risk assessed against all border risk profiles and alerts.

4675 consignments were identified by the ABF as being high risk for asbestos between 1 July 2016 and 23 January 2017.

Consignments unable to be acquitted through testing certificates or other assurances from the importer, are physically tested for the presence of asbestos.

Prosecutions, infringement notices, warnings

There have been three successful prosecutions for importing asbestos in recent years:

- In 2008, Alcan pleaded guilty to seven charges for importing equipment containing asbestos in breach of section 233(1) (b) of the Customs Act. The Court fined Alcan \$70,000 and costs of \$20,000.
- In 2012, the Court found an international engineering company, Clyde Bergemann Senior Thermal Pty Ltd (CBST), guilty of two counts of importing prohibited imports, namely chrysotile asbestos contrary to section 233(1) (b) of the Customs Act. The Court fined CBST \$64,000 including costs.
- In December 2014, the Court found a 50-year-old Australian man guilty of importing asbestos and fined him \$10,000 and costs of \$4,500.

Since the stand-up of the ABF, four infringement notices for a total value of \$31,950 have been issued relating to asbestos. Three formal warning letters have been issued, with penalty action currently being considered for the remainder of the detections.

The ABF makes decisions on whether or not to prosecute based on the Prosecution Policy of the Commonwealth, whether there is sufficient evidence to prove the offence, and whether there are reasonable prospects of a successful conviction.

It is difficult to prosecute asbestos matters because of the availability of the mistake of fact defence. This allows an importer to avoid liability that flows from the prohibited importation by providing evidence that it has exercised due diligence. To do so, the company typically tries to show that it took all reasonable steps to prevent the infringement from occurring.

An overseas laboratory testing certificate showing an “asbestos free” result may be enough evidence for the Court to find that the importer has exercised the required due diligence, even where the testing is not done in accordance with Australian standards.

Where a matter does not proceed to prosecution, penalty action is considered under the *Customs Act 1901* Infringement Notice Scheme.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 30 January 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(NCBP006) – Parliamentary Inquiry - Non Conforming Building Products - Did ABP check records as to whether any other Australian companies had imported from Feicheng Lutai?

Senator Xenophon Asked:

Senator XENOPHON: I just want to go to an issue in my home state of South Australia, relating to a couple of incidents involving asbestos in building products. I know that the ABC political journalist in Adelaide Angelique Donnellan has been pursuing this, so I just want to acknowledge that she has done a lot of work on this. Her stories refer to how on 5 November 2015 imported asbestos was discovered in switch rooms built by Robin Johnson Engineering on the Seaford rail line in Adelaide. It was a big story. It is a state government funded project. From 10 to 30 November 2015 there was correspondence between SafeWork SA and Border Force about the Seaford discovery. I understand there have been FOI requests and there is a lot of redacted material in that. On 6 May 2016—this is seven months later—SafeWork receives a complaint from the Environment Protection Authority, presumably via a tip-off, that asbestos was imported in board by Australian Portable Camps, an Adelaide based company. Investigations afterwards revealed that Robin Johnson Engineering and Australian Portable Camps both imported from the same Chinese manufacturer, Feicheng Lutai. I think that chronology is clear. What I am trying to understand is: did Border Force check their records after 15 November to see whether any other Australian companies had imported from Feicheng Lutai? On the face of it, it seems that you did not.
Ms Dale: I will have to take that on notice.

Answer:

The Department of Immigration and Border Protection extracted import data relating to the Robin Johnson Engineering matter on 13 November 2015.

The data indicated that Australian Portable Camps had also imported goods from Feicheng Lutai in 2010 and 2011.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 30 January 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(NCBP007) – Parliamentary Inquiry - Non Conforming Building Products -
Response to the ABC's (Ms Donnellan's) questions**

Senator Xenophon Asked:

Senator XENOPHON: When did this rapid response protocol come into force?

Ms Dale: As part of the standing up of the ABF, and we have actually increased our efforts and also streamlined our processes, which also includes the rapid response protocol. We have actually ramped up our efforts as part of that. If something like that is to happen now, we will have profiles and alerts updated.

Senator XENOPHON: No, but back then. The ABC—I think Ms Donnellan asked you this question. That is right: she has actually asked you this question. Have you respond to that question?

Ms Dale: Even the current—

Senator XENOPHON: When did Ms Donnellan ask you this question? How long ago did she ask you this question?

Ms Dale: I cannot remember.

Senator XENOPHON: Months ago?

Ms Dale: Yes. We have—

Senator XENOPHON: And you did not respond then?

Ms Dale: No, I did not, but we might have the answer.

Senator XENOPHON: Why not?

Ms Dale: We will take that on notice.

Senator XENOPHON: Will you respond to me now as part of this Senate inquiry?

Ms Geddes: Senator, we will take that on notice.

Senator XENOPHON: Really—asbestos is discovered on a major infrastructure project in South Australia back in November; SafeWork tells you about it from 10 to 13 November in correspondence; you have been asked questions about it by the media; you did not give them an answer. Was there any historical checking of records? What do you do? Where is the so-called rapid response here if there has been no follow-through to find out what has actually happened here? It seems to me that it would not have been too difficult to find out where this stuff came from.

Ms Geddes: Senator, the commander has already said that she does not have that information on hand. We will provide that to you on notice as soon as possible.

Senator XENOPHON: And will you take on notice when you were asked questions by Ms Donnellan about that, which have not answered?

Ms Dale: Sure. I will take that on notice.

Answer:

Yes. Historical import data was extracted and analysed as a result of the SafeWork SA referral in November 2015.

The Department recommended the initiation of the Rapid Response Protocol in relation to this incident. The Heads of Workplace Safety Authorities Imported Materials with Asbestos Working Group (HWSA IMAWG) subsequently initiated the RRP on 16 November 2015.

The RRP was developed by the HWSA IMAWG to enable government agencies to work across jurisdiction and portfolio lines when products have been identified as containing asbestos and there is concern such products may cross/have crossed state lines. It allows for the sharing of information related to a particular incident and supports a uniform national compliance and enforcement approach.

Commander Dale was interviewed by the ABC on 13 July 2016.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 30 January 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(NCBP008) – Parliamentary Inquiry - Non Conforming Building Products -
Responses to Ms Donnellan's questions**

Senator Xenophon Asked:

Senator XENOPHON: Ms Donnellan asked you those questions, presumably when the story broke in the middle of last year—correct?

Ms Dale: Yes.

Senator XENOPHON: Is there a reason why you did not think it was necessary to respond to those reasonable questions?

Ms Dale: I will take that on notice and come back to you with the answer.

Answer:

Commander Erin Dale participated in an interview with Ms Angelique Donnellan on 13 July 2016.

Ms Donnellan asked Commander Dale what actions the ABF took to identify other imports from the China based supplier Feicheng Lutai.

Commander Dale was unable to provide a response to that question at the time as she did not have the relevant information at hand.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 30 January 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(NCBP009) – Parliamentary Inquiry - Non Conforming Building Products - ABF employees trained in identifying asbestos

Senator Ketter (Chair) Asked:

CHAIR: I just have a couple more questions. In your submission you identify that perhaps part of an issue might be that you do not have enough people with industry experience in ABF to identify asbestos related products. Is that something that you are having a look at?

Mr Chandler: Sorry, can you repeat the question?

CHAIR: Well, in your submission you identified that not having people in ABF with perhaps building industry experience may well be an impediment to your identifying asbestos-related building products. Is that something that you are looking at at all?

Mr Chandler: With regard to asbestos or building product standards more broadly?

CHAIR: I am talking about identifying asbestos.

Mr Chandler: I will have to have a look at that and take it on notice. I am sorry—I do not have an answer for you on that one.

Answer:

The Department's submission did not state that not having people with building industry experience in the Australian Border Force (ABF) was an impediment to identifying asbestos related products.

The Department's submission did state (page 4) that a determination that a building product complies with particular building standards would likely require relevant technical expertise and a range of equipment (not ordinarily present in the border environment). This statement does not apply to building products that contain prohibited imports such as asbestos.

Pages six to eight of the Department's submission outlines the activities the ABF undertakes to identify and intercept goods that contain asbestos at the border.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 30 January 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(NCBP010) – Parliamentary Inquiry - Non Conforming Building Products -
Import Declaration for Feicheng Lutai**

Senator Xenophon Asked:

Senator XENOPHON: I want to go back to something. Feicheng Lutai is the Chinese manufacturer, not the importer. But you know from your records who imports from whom. Is that right?

Ms Dale: Yes.

Senator XENOPHON: So we know something happened with the Seaford rail line in Adelaide in November 2015. Can you tell us on notice at what point you went back and asked who else had been importing from Feicheng Lutai?

Ms Dale: We can provide you from the import declaration who the supplier was in the overseas country and who the importer was. What we cannot tell you is who the products were on sold to. Once it is cleared for home consumption and has been sold to somebody else, we would not be able to track the supply chain domestically.

Answer:

The Australian Border Force extracted information on other importers of product from Feichang Lutai in November 2015.

Targeting commenced on Feichang Lutai and related companies on 23 November 2015.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 30 January 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(NCBP011) – Parliamentary Inquiry - Non Conforming Building Products -
Number of importers from Feicheng Lutai**

Senator Xenophon Asked:

Senator XENOPHON: On notice, at what point did you follow through on how many importers have imported from Feicheng Lutai, who have been involved in two incidents involving two Australian companies?

Ms Dale: We will take that question on notice and see what we can provide to you regarding the recourse that we have.

Answer:

The Australian Border Force extracted information on other importers of product from Feicheng Lutai in November 2015.

Targeting commenced on Feicheng Lutai and related companies in November 2015.