

QUESTION TAKEN ON NOTICE

SUPPLEMENTARY BUDGET ESTIMATES HEARING : 17 October 2016

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(SE16/145) - Penalty Infringement Regulations - Programme 1.1: Border Enforcement

Senator Carr, Kim (L&CA) written:

The current Penalty Infringement Regulations include penalties for a breach of up to \$180,000 – is that right?

How much has been collected in fines, penalties and costs each year for the last five years?

DIBP provided evidence to the Non-Conforming Building Products Inquiry that “The ABF’s response to any breach of the Act must be proportional to the severity of the breach,”

Given exposure to asbestos can cause death, does DIBP consider all breaches severe?

What is the penalty DIBP considers to be severe?

DIBP stated in evidence that other options (other than fines) are available and include “education, warning letters and administrative action such as the suspension or revocation of a license,”

Please provide a breakdown of the actions you’ve taken

How many warning letters has DIBP issued?

Have there been any revocations or suspensions of licenses?

A review conducted by Swedish firm ‘KGH Border Services’ completed in March 2016, recommended the ABF move to “prioritise” prosecution?

Does DIBP agree with the recommendation to “prioritise” prosecution and if so, how are they implementing that recommendation?

The Department’s Annual Report talks about 307,000 crayons containing traces of asbestos, how many consignments was this?

Please provide a breakdown of the country of origin

What was the breakdown in sea and air cargo of these goods by consignments and volume?

Given the enormity of the consignment detected has ABF notified the ACCC about the manufacturer to ensure further asbestos Crayons are not being sold to Australian children?

Is ABF aware of matching red and yellow crayons that are of equal quantum that may also contain Asbestos?

Are ABF concerned with other asbestos Crayons being sold in Australian stores given the frequency of detection?

Has ABF conducted analysis regarding detection of contaminated imports in use in the Australian economy compared with contaminated goods detected by ABF at point of importation?

Why have asbestos products have been found in the following building works?

Royal Children’s Hospital Perth [Attachment 5.16]

1 William St Brisbane QLD [Attachment 5.17]

Smelter redevelopment at Port Pirie [Attachment 5.18]

Have the companies that are building with or importing asbestos been investigated?

Answer:

The current Penalty Infringement Regulations include penalties for a breach of up to \$180,000 – is that right? How much has been collected in fines, penalties and costs each year for the last five years?

The maximum penalty that can be imposed, upon conviction, for *Customs Act 1901* offences in relation to asbestos are:

- For individuals \$180,000 or three times the value of the goods (if the Court can determine the value of the goods), whichever is the greater; and
- For corporations \$900,000 or 15 times the value of the goods (if the Court can determine the value of the goods), whichever is the greater.

The importation of asbestos is a strict liability offence under section 233(1)(b) of the *Customs Act 1901* and was included under the *Customs Act 1901* Infringement Notice Scheme amendments on 1 February 2014. As such penalties can also be applied under this Scheme.

	2011	2012	2013	2014	2015	2016
Court imposed fines and costs	-	\$64,000	-	\$14,500	-	-
Penalties issued through the Infringement Notice Scheme	-	-	-	\$7650	\$15,300	\$16,200

DIBP provided evidence to the Non-Conforming Building Products Inquiry that “The ABF’s response to any breach of the Act must be proportional to the severity of the breach,” Given exposure to asbestos can cause death, does DIBP consider all breaches severe? What is the penalty DIBP considers to be severe?

Management of the risk of asbestos at the border is a priority for the Australian Border Force (ABF). All detections of asbestos are referred for investigation. Offences relating to asbestos can attract fines of up to:

- For individuals \$180,000 or three times the value of the goods (if the Court can determine the value of the goods), whichever is the greater; and
- For corporations \$900,000 or 15 times the value of the goods (if the Court can determine the value of the goods), whichever is the greater.

The importation of asbestos is also a strict liability offence under section 233(1)(b) of the *Customs Act 1901*. Penalties can therefore be applied under the *Customs Act 1901* Infringement Notice Scheme for asbestos detections that do not proceed to prosecution. These penalties range from \$2700 for an individual to \$8100 for a body corporate.

DIBP stated in evidence that other options (other than fines) are available and include “education, warning letters and administrative action such as the suspension or revocation of a license,” Please provide a breakdown of the actions you’ve taken. How many warning letters has DIBP issued? Have there been any revocations or suspensions of licenses?

Since the ABF was stood up, three penalties and four warning letters have been issued or are in the process of being issued. One detection is still subject to an active investigation. A further ten detections are currently being considered for penalty action. When asbestos is detected at the border, the ABF also writes to the relevant suppliers advising them of actions being taken against their goods at the border (though these are not recorded as formal warning letters).

There have been no revocations or suspensions of licenses to date relating to the importation or exportation of asbestos.

A review conducted by Swedish firm ‘KGH Border Services’ completed in March 2016, recommended the ABF move to “prioritise” prosecution?

Does DIBP agree with the recommendation to “prioritise” prosecution and if so, how are they implementing that recommendation?

The Department agrees with this recommendation and it is prioritising resources to enhance operational and investigative outcomes.

It is important to note that the Department and its operational arm, the Australian Border Force, are bound by and adhere to the Prosecution Policy of the Commonwealth. The Policy requires that Department consider whether a prosecution is in the public interest. The Policy provides a two-stage test that must be satisfied before commencement of a prosecution:

- a. there must be sufficient evidence to prosecute the case, and
- b. it must be evident from the facts of the case, and all the surrounding circumstances, that the prosecution would be in the public interest.

In determining whether there is sufficient evidence to prosecute a case, there must be prima facie evidence of the elements of the offence and a reasonable prospect of obtaining a conviction. The existence of a prima facie case is not sufficient. The policy requires consideration of any lines of defence open (the ‘mistake of fact’ defence is often used in these cases) to the alleged offender and any other factors that could affect the likelihood or otherwise of a conviction.

The Department's Annual Report talks about 307,000 crayons containing traces of asbestos, how many consignments was this? Please provide a breakdown of the country of origin. What was the breakdown in sea and air cargo of these goods by consignments and volume?

The crayons detected were from seven consignments. Six consignments were from China, one consignment was from Taiwan.

The seven consignments consisted of:

- two air cargo consignments
 - Consignment One: 1 packet
 - Consignment Two : 92 piece sample
- five sea cargo consignments:
 - Consignment One: 2504 packets
 - Consignment Two: 500 packets
 - Consignment Three: 20,160 crayons
 - Consignment Four: 3447 crayons
 - Consignment Five: 1440 crayons

Given the enormity of the consignment detected has ABF notified the ACCC about the manufacturer to ensure further asbestos Crayons are not being sold to Australian children?

The Department informed the ACCC of the major supplier and importer of contaminated crayons as well as providing information on previous importations of crayons by these entities. This information included details of the products, supplier/manufacturer, and Australian wholesaler.

Is ABF aware of matching red and yellow crayons that are of equal quantum that may also contain Asbestos?

Evidence from the ABF's interventions to date on crayons is that the colour of a crayon has no bearing on the likelihood it will contain asbestos beyond the batch being tested.

Are ABF concerned with other asbestos Crayons being sold in Australian stores given the frequency of detection?

A significant industry outreach program was undertaken in 2015 focusing on importers of children's crayons into the Australian market. Through this outreach program, a number of key importers provided assurance to the ABF that they had implemented comprehensive quality assurance programs to satisfy ABF requirements at the border. Some importers now source alternative crayon product lines not at risk for asbestos contamination, such as talc free crayons and calcium carbonate crayons. Some importers have ceased importing crayons altogether.

Has ABF conducted analysis regarding detection of contaminated imports in use in the Australian economy compared with contaminated goods detected by ABF at point of importation?

As part of its intelligence gathering and risk assessment processes, DIBP regularly scans domestic and international intelligence and open source material to inform its analysis and targeting for asbestos.

This includes reconciling domestic detections of contaminated products with our own data holdings in relation to imports and detections.

Why have asbestos products have been found in the following building works?

Royal Children's Hospital Perth [Attachment 5.16]

1 William St Brisbane QLD [Attachment 5.17]

Smelter redevelopment at Port Pirie [Attachment 5.18]

Refer to SE16/021

The ABF, as a member of the Heads of Workplace Safety Authorities (HWSA) Imported Materials with Asbestos Working Group, works closely with state-based authorities to identify and act upon all new information relating to asbestos contaminated products.

The ABF is constantly refining its targeting efforts to detect goods containing asbestos. Our pre-border and at-border approach is reviewed on receipt of new information or intelligence from a range of sources that indicates there may be a higher risk of asbestos posed by certain goods or suppliers.

Have the companies that are building with or importing asbestos been investigated?

For operational reasons, the ABF is not able to comment further on any ongoing investigations.