



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON LAW AND JUSTICE

Work Health and Safety Amendment (Information Exchange) Bill 2020



Report 74

September 2020

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Standing Committee on Law and Justice

Work Health and Safety Amendment (Information Exchange) Bill 2020

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Terms of reference

That:

- (a) the provisions of the Work Health and Safety Amendment (Information Exchange) Bill 2020 be referred to Standing Committee on Law and Justice for inquiry and report,
- (b) the bill be referred to the committee upon receipt of the message from the Legislative Assembly,
- (c) the committee report by Friday 11 September 2020.

The terms of reference were referred to the committee by the Legislative Council on Tuesday 4 August 2020.¹

¹ *Minutes*, NSW Legislative Council, 4 August 2020, p 1098.

Committee details

Committee members

The Hon Wes Fang MLC	The Nationals	<i>Chair</i>
The Hon Greg Donnelly MLC	Australian Labor Party	<i>Deputy Chair</i>
The Hon Catherine Cusack MLC	Liberal Party	
The Hon Anthony D'Adam MLC	Australian Labor Party	
The Hon Scott Farlow MLC	Liberal Party	
The Hon Trevor Khan MLC	The Nationals	
The Hon Daniel Mookhey MLC*	Australian Labor Party	
The Hon Rod Roberts MLC	Pauline Hanson's One Nation Party	
Mr David Shoebridge MLC	The Greens	

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*The Hon Daniel Mookhey MLC was a participating member for the duration of the inquiry

Chair's foreword

This inquiry was established to examine the Work Health and Safety Amendment (Information Exchange) Bill 2020. The bill seeks to amend the *Work Health and Safety Act 2011* to authorise NSW Health to provide information to work health and safety regulators, SafeWork NSW and the NSW Resources Regulator, in relation to occupational diseases such as silicosis.

During this short inquiry, two key issues emerged for the committee's consideration – privacy concerns in relation to the information-sharing power in the bill, and concerns that the bill does not offer further policy action on dust diseases, such as the establishment of a broader dust diseases register.

The committee acknowledges these stakeholder concerns and notes that some of these concerns were not confined to the provisions of the bill.

The committee recommends that the Legislative Council proceed with debate on the Work Health and Safety Amendment (Information Exchange) Bill 2020. The committee also recommends that the NSW Government address the committee comments and concerns identified by stakeholders raised in this inquiry, during debate in the House.

I would like to thank all participants for their contribution to this inquiry, particularly within such a short timeframe. I also extend my thanks to my fellow committee members for their participation and the committee secretariat in providing support to the committee.



Hon Wes Fang MLC
Committee Chair

Recommendations

Recommendation 1

11

That the Legislative Council proceed to debate the Work Health and Safety Amendment (Information Exchange) Bill 2020, and that the NSW Government address the committee comments and concerns identified by stakeholders as set out in the report, during debate in the House.

Conduct of inquiry

The terms of reference were referred to the committee by the Legislative Council on Tuesday 4 August 2020.

The committee received eight submissions.

The committee held one public hearing at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

Chapter 1 Overview

This chapter outlines the background and purpose of the Work Health and Safety Amendment (Information Exchange) Bill 2020, and provides an overview of the bill's provisions.

Reference

- 1.1 The Work Health and Safety Amendment (Information Exchange) Bill 2020 was introduced into the Legislative Assembly on 18 June 2020 by the Hon Kevin Anderson MP, Minister for Better Regulation and Innovation.²
- 1.2 On 4 August 2020, the Legislative Council resolved, on the recommendation of the Selection of Bills Committee, that the bill be referred to the Law and Justice Committee for inquiry and report by 11 September 2020.³

Background and purpose of the bill

- 1.3 In March 2020, this committee published a report on the *2019 Review of Dust Diseases Scheme – Silicosis in the manufactured stone industry*. This reflected increasing concerns raised by stakeholders over the last few years about 'silicosis re-emerging as a significant health issue in the manufactured stone industry'.⁴
- 1.4 The report noted the following developments, since 2017, in relation to silicosis and work health and safety measures:
- the NSW Government's launch of a five year hazardous chemical strategy, *2017-2022 Hazardous Chemicals and Materials Exposure Baseline and Reduction Strategy*, 'with a top priority to protect workers against exposure to crystalline silica'⁵
 - findings of the July 2019 NSW Manufactured Stone Industry Taskforce, including the recommendation that 'silicosis be a notifiable disease and the introduction of an occupational lung disease register'⁶
 - the Australian Government's announcement in January 2020 that it will be implementing all five recommendations contained in the interim report of the National Dust Disease Taskforce, including the establishment of a National Dust Disease Registry. This Registry is envisaged to 'include disease notifications from all jurisdictions together with available

² *Votes and Proceedings*, NSW Legislative Assembly, 18 June 2020, pp 1-5.

³ *Minutes*, NSW Legislative Council, 4 August 2020, p 7.

⁴ Law and Justice Committee, NSW Legislative Council, *2019 Review of Dust Diseases Scheme – Silicosis in the manufactured stone industry*, (2020), p 1.

⁵ Law and Justice Committee, NSW Legislative Council, *2019 Review of Dust Diseases Scheme – Silicosis in the manufactured stone industry*, (2020), p 6 citing Correspondence from Mr Dominic Perrottet MP, Treasurer, Minister for Industrial Relations, to Clerk of the Parliaments, Mr David Blunt, providing the government response to the First Review of the Dust Diseases Scheme, 27 February 2018.

⁶ Law and Justice Committee, NSW Legislative Council, *2019 Review of Dust Diseases Scheme – Silicosis in the manufactured stone industry*, (2020), p 8 citing SafeWork NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, July 2019, p 8.

case finding data, exposure history and air sampling data, and; be designed with the capability for potential future expansion to cover other occupational lung diseases⁷

- the NSW Government's announcement in February 2020, that a Silicosis Health Register will be created, stating it would make silicosis a notifiable disease and allow SafeWork NSW to track and investigate the workplaces of those diagnosed with the disease.⁸

- 1.5 The report on the *2019 Review of Dust Diseases Scheme – Silicosis in the manufactured stone industry* made a total of 14 recommendations with the following three recommendations of particular relevance:

Recommendation 8

That the NSW Government introduce a legislative amendment to ensure all manufactured stone fabrication sites and employers are registered with SafeWork NSW and will maintain such registration every 12 months, and are conducting regular air monitoring and regularly providing the results to SafeWork NSW.

Recommendation 9

That the NSW Government immediately introduce an explicit ban on dry cutting.

Recommendation 12

That the NSW Government immediately establish the Silicosis Health Register and ensure that it captures not only diagnosed cases of silica-related disease but also screening results and investigative reports undertaken for workers exposed to crystalline silica.⁹

- 1.6 In this context, the Work Health and Safety Amendment (Information Exchange) Bill 2020 seeks to amend the *Work Health and Safety Act 2011* to enable information sharing between NSW Health and Work Health and Safety regulators in relation to silicosis diagnoses to ensure worker safety. This bill is one element of a wider government response to the increasing number of silicosis diagnoses.

- 1.7 SafeWork NSW informed the committee that in June 2020, silicosis was made a scheduled medical condition under the *Public Health Act 2010*, and a notification form was established. This means that any practitioner in New South Wales who diagnoses a patient with silicosis is now required to complete the Silicosis Notification Form and send it to the Secretary of the Ministry of Health. According to SafeWork NSW, this reform, together with the information sharing arrangement contained in the bill, 'effectively create a register of silicosis cases in NSW,

⁷ Law and Justice Committee, NSW Legislative Council, *2019 Review of Dust Diseases Scheme – Silicosis in the manufactured stone industry*, (2020), p 10 citing National Dust Disease Taskforce, Interim Advice to Minister for Health, December 2019, p 8.

⁸ Law and Justice Committee, NSW Legislative Council, *2019 Review of Dust Diseases Scheme – Silicosis in the manufactured stone industry*, (2020), p 106.

⁹ Law and Justice Committee, NSW Legislative Council, *2019 Review of Dust Diseases Scheme – Silicosis in the manufactured stone industry*, (2020), p x.

in that information will be centrally collected by NSW Health and shared with SafeWork NSW'.¹⁰

1.8 SafeWork NSW explained how this arrangement will work in practice:

Both agencies will have access to the repository of information collected from silicosis notifications and be able to draw on that information to fulfil their respective functions – the regulation of work health and safety and the protection of public health. The database of information can be used both to monitor and analyse the incidence of silicosis, and to investigate individual cases.

The information NSW Health receives through the notifications will be shared with SafeWork NSW, in accordance with a Memorandum of Understanding which NSW Health and SafeWork NSW will enter into when this Bill is law. Once this is in place, any notifications received since the requirement to notify commenced on 1 July 2020 will be shared with SafeWork NSW. SafeWork NSW will then lawfully be able to use the information to investigate a worker's past or present workplaces.¹¹

1.9 SafeWork NSW also referred to gaps in the previous notification system, for example where a worker was diagnosed with silicosis privately through their own doctor. They emphasised that once this bill comes into effect, NSW Health will be in a position to provide SafeWork NSW with information about all diagnoses of silicosis in the state, giving the regulator 'the complete picture [they] need to be able to target their educational, compliance and enforcement efforts at workplaces which are not working safely with silica'.¹²

Overview of the bill's provisions

1.10 The object of the bill, as set out in the explanatory note, is to authorise the Secretary of the Ministry of Health to provide information to the regulator established by the *Work Health and Safety Act 2011*.¹³

1.11 Clause 3 amends the *Work Health and Safety Act 2011* to authorise the Secretary of the Ministry of Health to provide information to the regulator established by that Act if the Secretary considers it is necessary to do so to enable the regulator to exercise the regulator's functions under that Act. This authorisation overrides restrictions on the provision of the information that would otherwise be imposed by privacy and other legislation.¹⁴

¹⁰ Submission 8, SafeWork NSW, p 7.

¹¹ Submission 8, SafeWork NSW, p 7.

¹² Submission 8, SafeWork NSW, p 12.

¹³ Work Health and Safety Amendment (Information Exchange) Bill 2020, First Print, Explanatory Note, p 1.

¹⁴ Work Health and Safety Amendment (Information Exchange) Bill 2020, First Print, Explanatory Note, p 1.

Chapter 2 Key issues

This chapter explores the key issues to emerge from the written and oral evidence: privacy concerns in relation to the information to be shared between NSW Health and SafeWork NSW and the manner in which this occurs, and whether the bill should include further dust disease policy action.

Privacy concerns

2.1 Several inquiry participants expressed concern that the bill's proposed information sharing power was overly broad and did not limit the Secretary of the Ministry of Health in the type of information to be shared.¹⁵

2.2 Ms Rita Mallia, President, CFMMEU questioned the information to be shared if the bill was passed:

Is it global medical information or are we talking about specific medical information pertaining to individuals? If that is the case, is it treating information or is it medico-legal? It seems to be that there is lack of clarity about the nature of the medical information.¹⁶

2.3 Following on, concerns were raised that the bill does not include privacy safeguards for individuals and that under clause 3 of the bill, information could be shared despite any prohibitions or requirements in the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.¹⁷

2.4 As the CFMMEU observed:

[T]he Bill does not clarify what privacy protections will be available for workers ... Given the extremely broad powers associated with the proposed amendment, the framework of these privacy protections should be ... incorporated within this legislation.¹⁸

2.5 The NSW Council for Civil Liberties argued that the exemptions proposed by the bill were 'bypassing NSW health privacy laws' and that such 'exemption[s] from those laws has the effect of slowly and surreptitiously whittling away privacy protections for citizens.'¹⁹

2.6 In its submission, the Australian Privacy Foundation expressed the view that 'the broad drafting of the Bill indicates that the privacy issues have been not considered at all or inadequately

¹⁵ Submission 1, Dr Bruce Baer Arnold, pp 1-2; Submission 3, CFMMEU, p 2; Submission 5, Australian Privacy Foundation, pp 1-2; Submission 6, NSW Council for Civil Liberties, pp 3-4; Evidence, Ms Rita Mallia, President, CFMMEU, 20 August 2020, p 9.

¹⁶ Evidence, Ms Rita Mallia, President, CFMMEU, 20 August 2020, p 9.

¹⁷ Submission 1, Dr Bruce Baer Arnold, p 2; Submission 3, CFMMEU, p 2; Submission 6, NSW Council for Civil Liberties, p 4.

¹⁸ Submission 3, CFMMEU, p 2.

¹⁹ Submission 6, NSW Council for Civil Liberties, p 4.

considered'.²⁰ According to the Australian Privacy Foundation, a Privacy Impact Assessment was required for the bill based on the following:

- There has been no consideration of whether this change is needed for Silicosis cases or in other circumstances. If other data needs to be shared there must be an evidence-based need for sharing that information.
- The sharing must be covered by protocols that are included in the regulations
- Information sharing needs to be founded on informed consent wherever possible
- There must not be blanket exemptions from human rights legislation (in this case Privacy laws). If an exemption is needed it must be narrow in scope.
- Transparency is needed on any shared information protocols.
- A security assessment is needed to ensure that sensitive personal health information remains secure.²¹

2.7 In this context, inquiry participants questioned whether a Memorandum of Understanding between NSW Health and SafeWork NSW was an appropriate mechanism for information sharing, with some arguing that this should be legislated instead.²² Reasons given for this included that a Memorandum of Understanding was not transparent, would not be subject to public or parliamentary scrutiny, and could easily be changed without the public's knowledge.²³

2.8 On the other hand, Maurice Blackburn Pty Limited considered that a Memorandum of Understanding containing commitments as to how NSW Health and SafeWork NSW 'will share, use and store the information that they receive from health practitioners about diagnoses of silicosis' is 'an appropriate process'. However, Maurice Blackburn Pty Limited remarked that 'it would be useful for SafeWork NSW and NSW Health to consider how the voices of workers can be heard in the development of the memorandum of understanding'.²⁴

2.9 Other participants reported that the bill was the subject of insufficient consultation,²⁵ for example:

²⁰ Submission 5, Australian Privacy Foundation, p 2.

²¹ Submission 5, Australian Privacy Foundation, p 3.

²² Submission 1, Dr Bruce Baer Arnold, pp 2-3; Submission 3, CFMMEU, p 2; Submission 6, NSW Council for Civil Liberties, p 3; Evidence, Ms Rita Mallia, President, CFMMEU, 20 August 2020, p 9.

²³ Submission 1, Dr Bruce Baer Arnold, p 4; Submission 6, NSW Council for Civil Liberties, p 3; Evidence, Ms Rita Mallia, President, CFMMEU, 20 August 2020, p 11.

²⁴ Submission 7, Maurice Blackburn Lawyers, p 3.

²⁵ Submission 1, Dr Bruce Baer Arnold, pp 1 and 3; Submission 3, Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU), p 2; Submission 5, Australian Privacy Foundation, p 2; Evidence, Ms Rita Mallia, President, CFMMEU, 20 August 2020, p 11; Evidence, Associate Professor Deborah Yates, Respiratory Medicine Physician, Royal Australasian College of Physicians, 20 August 2020, p 17; Evidence, Dr Graeme Edwards, Occupational and Environmental Medicine Physician, Royal Australasian College of Physicians, 20 August 2020, p 17.

- '... stakeholders might reasonably expect that such a broad exemption from privacy protection would have been the subject of an effective public consultation program ...'²⁶
- 'There is no indication that there has been a consultation with the NSW Privacy Commissioner or the Federal Privacy Commissioner. Those consultations are necessary and need to occur before the Bill proceeds'²⁷
- 'As the union representing manufactured stone workers, joiners and on-site building and construction workers, ... [CFMMEU] are concerned that the first real engagement we have had from the government on this important legislative initiative was the invitation received on Monday, 10 August 2020 to make a submission to this enquiry'.²⁸

Government response to stakeholder concerns

2.10 In regards to privacy concerns relating to the information proposed to be shared under the bill, Minister Anderson, in his second reading speech, acknowledged that NSW Health may provide limited personal and medical information about workers in order to protect them from serious risks to their health and safety, explaining: 'Our WHS regulators must know which workers are getting occupational diseases so that they know which workplaces are the problem, and can intervene where necessary'.²⁹

2.11 In its submission, SafeWork NSW also explained that because of the broad nature of the information sharing power in the bill, it was important that the Secretary retain discretion as to the disclosure of such sensitive information:

Because the information-sharing power is broad and flexible, it is important that the Health Secretary has discretion to provide or withhold information based on an assessment of whether the information is necessary for WHS Regulators to monitor and enforce compliance with WHS laws.

NSW Health is the custodian of a large volume of information, including personal health information. In most circumstances, there is an overriding public interest against disclosure of personal information collected for another purpose. Therefore, it is important that the Health Secretary retains discretion to determine if the benefit of release of information held by NSW Health outweighs the harm of breaching individuals' privacy.³⁰

2.12 SafeWork NSW also stated that the information received about silicosis diagnoses will be 'held in a secure database, with restricted accessibility and access auditing ...'.³¹

²⁶ Submission 1, Dr Bruce Baer Arnold, p 3.

²⁷ Submission 5, Australian Privacy Foundation, p 2.

²⁸ Submission 3, Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU), p 2.

²⁹ Kevin Anderson, Second reading speech: Work Health and Safety Amendment (Information Exchange) Bill 2020, 18 June 2020.

³⁰ Submission 8, SafeWork NSW, p 10.

³¹ Submission 8, SafeWork NSW, p 12.

- 2.13** In terms of the type of information proposed to be shared, during the hearing Dr Richard Broome, Acting Executive Director, Health Protection NSW clarified that NSW Health was 'proposing to provide information about the person and the workplace, or any other workplaces, and the nature of the diagnosis' to SafeWork NSW as per the checkboxes on the notification form.³²
- 2.14** In relation to the Memorandum of Understanding, Ms Rose Webb, Deputy Secretary, Better Regulation Division, Department of Customer Service, explained that it was currently being finalised by SafeWork NSW and NSW Health, in consultation with the Information and Privacy Commission, to 'ensure that workers' personal information is treated appropriately'.³³ It was the intention of SafeWork NSW to publish the Memorandum of Understanding, once finalised and if the bill passes.³⁴
- 2.15** As to why the information sharing arrangements were proposed to be governed by a Memorandum of Understanding rather than by legislation, Ms Webb told the committee that Memorandums of Understandings were a 'typical way in which information is shared to a regulator and it allows the flexibility to change over time how those arrangements work'.³⁵
- 2.16** Finally, when questioned as to whether the provisions of the bill also included the NSW Resources Regulator, SafeWork NSW clarified that the definition of 'regulator' in the Bill includes both SafeWork NSW and the NSW Resources Regulator, and that under the *Work Health and Safety Act 2011*, SafeWork NSW and the NSW Resources Regulator are permitted to share information.³⁶

Further dust disease policy action

- 2.17** While several inquiry participants agreed that the bill was a 'step in the right direction',³⁷ some expressed dissatisfaction that the bill did not offer further dust disease policy action, such as the establishment of a dust diseases register or other recommended policy action in this area.³⁸
- 2.18** As both the CFMMEU and Unions NSW stated in their submissions, the bill does not create or assist in creating a full dust diseases register. According to the CFMMEU:

³² Evidence, Dr Richard Broome, Acting Executive Director, Health Protection NSW, 20 August 2020, p 22.

³³ Evidence, Ms Rose Webb, Deputy Secretary, Better Regulation Division, Department of Customer Service, 20 August 2020, p 20.

³⁴ Evidence, Ms Rose Webb, Deputy Secretary, Better Regulation Division, Department of Customer Service, 20 August 2020, p 22.

³⁵ Evidence, Ms Rose Webb, Deputy Secretary, Better Regulation Division, Department of Customer Service, 20 August 2020, p 33.

³⁶ Answers to questions on notice, SafeWork NSW, 21 August 2020, p 1.

³⁷ Evidence, Mr Andrew Orfanos, President, Australian Institute of Occupational Hygienists, 20 August 2020, p 5; Evidence, Ms Rita Mallia, President, CFMMEU, 20 August 2020, p 11; Evidence, Dr Graeme Edwards, Occupational and Environmental Medicine Physician, Royal Australasian College of Physicians, 20 August 2020, p 19.

³⁸ Submission 3, CFMMEU, pp 2-3; Submission 4, Unions NSW, pp 3-4; Submission 6, NSW Council for Civil Liberties, p 4.

[I]t remains unclear how the proposed reform will assist in implementing a national dust diseases register. Nor is it clear that the reform is intended to apply to a broader range of dust diseases other than those associated with silicosis.³⁹

2.19 In this regard, Unions NSW called for a register of notifiable dust lung diseases similar to the Queensland model so as to allow for monitoring and analysis of data.⁴⁰

2.20 In order to better understand the purpose and limitations of the silicosis case register that would effectively result from the information sharing provision in the bill, Dr Graeme Edwards, Occupational and Environmental Medicine Physician, Royal Australasian College of Physicians, drew a distinction between a so-called 'register' and a 'registry':

[A] registry is the serial surveillance of that at-risk cohort of workers, independent of their employment status, so that we can develop our understanding of the disease, its clinical course and the criteria that we need to apply in order to make the early diagnosis ...

A register only has the functionality to undertake a very high level of pooled data analysis to give an indication of the burden of disease and maybe some very crude trend analyses. It is relatively insensitive in identifying timely cluster identification and it is insensitive to identify an understanding of the pathophysiology and the aetiology of the disease.⁴¹

2.21 Dr Edwards added that if a registry was established, it would allow 'at the individual level ... early warning information ... [to be obtained] that enables us to intervene when it is most likely going to be beneficial'.⁴²

2.22 In addition, Associate Professor Deborah Yates, Respiratory Medicine Physician, Royal Australasian College of Physicians highlighted that there are 'a large number of diseases that are not included under the category of silicosis', and therefore by only having silicosis as a notifiable medical condition 'then one would probably miss a large proportion of the others'.⁴³ This was supported by Dr Edwards, who noted that the Queensland 'legislative framework ... goes beyond just the silica dust diseases in its reporting requirements'.⁴⁴

2.23 Further, there was some discussion among stakeholders about the need to implement recommendations previously made by this committee in its recent reviews of the dust diseases scheme. For example, Ms Rita Mallia, President, CFMMEU, called for the government to 'undertake a comprehensive Case Finding Study in relation to exposure to silica and the extent

³⁹ Submission 3, Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU), p 3.

⁴⁰ Submission 4, Unions NSW, p 3.

⁴¹ Evidence, Dr Graeme Edwards, Occupational and Environmental Medicine Physician, Royal Australasian College of Physicians, 20 August 2020, pp 17-18.

⁴² Evidence, Dr Graeme Edwards, Occupational and Environmental Medicine Physician, Royal Australasian College of Physicians, 20 August 2020, p 17.

⁴³ Evidence, Associate Professor Deborah Yates, Respiratory Medicine Physician, Royal Australasian College of Physicians, 20 August 2020, p 15.

⁴⁴ Evidence, Dr Graeme Edwards, Occupational and Environmental Medicine Physician, Royal Australasian College of Physicians, 20 August 2020, p 16.

to which workers suffer silica related disease, and the need to reduce further the safe exposure limit' as recommended in the 2018 Dust Diseases review.⁴⁵

Government response to stakeholder concerns

- 2.24** In regards to concerns that the bill does not establish a dust diseases register, SafeWork NSW stated that the repository of information established as a result of the information sharing provision in the bill 'performs the same functions as the Notifiable Dust Lung Disease Register established in Queensland',⁴⁶ as previously referenced in Chapter 1. SafeWork NSW added that the information provided by NSW Health may be able to be incorporated into the National Registry, if and when established.⁴⁷
- 2.25** SafeWork NSW also noted that the government had 'supported in principle a recommendation that if a National Dust Diseases Register is not established by the end of 2019, the NSW Government establish a New South Wales Dust Diseases Register'. However, SafeWork NSW remarked that this recommendation had 'to some extent been overtaken' by the National Dust Diseases Taskforce recommendation for a National Dust Diseases Registry which initially focuses on accelerated silicosis.⁴⁸
- 2.26** In response to concerns that silicosis should not be the only notifiable disease, Ms Webb clarified that the bill is not confined to silicosis, rather it was the decision of the Minister for Health and Medical Research as to what diseases or conditions are to be made notifiable.⁴⁹ However, she acknowledged that the focus of the government at present was the silica strategy, commenting:

Silicosis is the immediate, pressing, large problem in New South Wales and this strategy is focusing on that while we can but we have made sure that the legislation has a framework to enable an expansion should be required in the future. [...]

[Silicosis] has been the focus for the inquiries in both New South Wales and nationally and it is the focus of the Minister's current strategy to improve workplace health.⁵⁰

Committee comment

- 2.27** While a significant number of inquiry participants accepted that this bill is a step in the right direction, the committee acknowledges concerns raised in relation to privacy, the type and extent of information to be shared under the proposed bill, and whether a Memorandum of

⁴⁵ Evidence, Ms Rita Mallia, President, CFMMEU, 20 August 2020, p 9.

⁴⁶ Submission 8, SafeWork NSW, p 13.

⁴⁷ Submission 8, SafeWork NSW, p 13.

⁴⁸ Submission 7, SafeWork NSW, p 13.

⁴⁹ Evidence, Ms Rose Webb, Deputy Secretary, Better Regulation Division, Department of Customer Service, 20 August 2020, p 25.

⁵⁰ Evidence, Ms Rose Webb, Deputy Secretary, Better Regulation Division, Department of Customer Service, 20 August 2020, pp 26-27.

Understanding is an appropriate mechanism for information sharing. If the bill passes, the committee encourages the timely finalisation of the Memorandum of Understanding incorporating feedback from the Information and Privacy Commission, and supports the government making this publicly available.

- 2.28** The committee notes that making silicosis a scheduled medical condition, together with the information sharing provision in the bill, may allow for this information to be incorporated into a National Registry if and when one is created.
- 2.29** Based on the evidence received, the committee understands inquiry participants' calls for greater action on dust diseases more generally, such as the establishment of a state dust diseases register, extending the scheduled medical condition classification to other dust diseases, and creating a registry of cases to survey at-risk workers, and in turn, better understand silicosis and other dust diseases.
- 2.30** The committee accepts that the purpose of this bill is to address only the exchange of information from NSW Health to the regulators, which, if the bill is passed, will be limited to the notification of silicosis diagnoses at present.
- 2.31** In conclusion, the committee recommends that debate on the Work Health and Safety Amendment (Information Exchange) Bill 2020 proceed taking into account the committee comments documented in this report and the concerns raised by stakeholders during this inquiry.

Recommendation 1

That the Legislative Council proceed to debate the Work Health and Safety Amendment (Information Exchange) Bill 2020, and that the NSW Government address the committee comments and concerns identified by stakeholders as set out in the report, during debate in the House.

Appendix 1 Submissions

No.	Author
1	Dr Bruce Baer Arnold
2	icare
3	Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU)
4	Unions NSW
5	Australian Privacy Foundation
6	NSW Council for Civil Liberties
7	Maurice Blackburn Pty Limited
8	SafeWork NSW

Appendix 2 Witnesses at hearing

Date	Name	Position and Organisation
Thursday 20 August 2020 Jubilee Room Parliament House, Sydney	Mr Andrew Orfanos <i>(via videoconference)</i>	President, Australian Institute of Occupational Hygienists Inc
	Ms Rita Mallia <i>(via videoconference)</i>	President, CFMMEU
	Associate Professor Deborah Yates <i>(via videoconference)</i>	Respiratory Medicine Physician, Royal Australasian College of Physicians
	Dr Graeme Edwards <i>(via videoconference)</i>	Occupational and Environmental Medicine Physician, Royal Australasian College of Physicians
	Ms Carmel Donnelly	Chief Executive, SIRA
	Dr Petrina Casey	Director, Health Policy, Prevention and Supervision, SIRA
	Ms Rose Webb	Deputy Secretary, Better Regulation Division, Department of Customer Service
	Ms Meagan McCool	Director, Chemicals, Explosives and Safety Auditing, SafeWork NSW, Better Regulation Division, Department of Customer Service
Dr Richard Broome	Acting Executive Director, Health Protection NSW	

Appendix 3 Minutes

Minutes no. 20

Monday 10 August 2020

Law and Justice Committee

Room 1043/Webex, Parliament House, 9.37 am

1. Members present

Mr Fang, *Chair*

Mr Donnelly, *Deputy Chair*

Ms Cusack (from 9.51 am)

Mr D'Adam

Mr Khan

Mr Roberts

Mr Shoebridge

2. Inquiry into the Work Health and Safety Amendment (Information Exchange) Bill 2020

2.1 Terms of reference

The committee noted the referral on 4 August 2020 of the following terms of reference:

That:

- (a) the Work Health and Safety Amendment (Information Exchange) Bill 2020 be referred to Standing Committee on Law and Justice for inquiry and report;
- (b) the bill be referred to the committee upon receipt of the message from the Legislative Assembly; and
- (c) the committee report by Friday 11 September 2020.

2.2 Proposed timeline

Resolved, on the motion of Mr Donnelly: That the committee adopt the following timeline for the administration of the inquiry:

- 4.00 pm, Monday 17 August 2020 – closing date for submissions
- Thursday 20 August – 1 hearing
- Thursday 3 September – circulation of chair's draft report (Note: this will allow less than seven days to consider the chair's draft report, in variance to the sessional order)
- Friday 11 September – report tabled.

The committee noted that the secretariat to canvass members' availability via email for potential dates for the report deliberative.

2.3 Physically distanced hearing

Resolved, on the motion of Mr Shoebridge: That the committee hold a physically distanced hearing.

2.4 Submissions, online questionnaire and proformas

Resolved, on the motion of Mr Shoebridge:

- That the committee accept submissions from nominated stakeholders and organisations/experts in the field who apply to make a submission.
- That the committee not issue an open call for submissions through the website.
- That the committee not accept any proformas.
- That the committee not conduct an online questionnaire.
- That the wording for the website be as follows:

Submissions

- The committee has invited nominated stakeholders to make submissions by 4.00pm, Monday 17 August 2020. Stakeholders and other interested parties who wish to make a submission can contact the secretariat via law@parliament.nsw.gov.au before this date.

2.5 Submission and witness invitations

Resolved, on the motion of Mr Shoebridge: That the following stakeholders be invited to make a submission, and that these stakeholders also be invited to appear as a witness at the hearing:

- CFMEU
- Lung Foundation Australia
- Thoracic Society of Australia and New Zealand
- The Royal Australasian College of Physicians (RACP)
- Maurice Blackburn Lawyers
- SafeWork NSW
- NSW Health
- icare
- Australian Engineered Stone Advisory Group (AESAG)
- NSW Council for Civil Liberties
- Unions NSW.

The committee noted that members to forward any additional stakeholders to the secretariat by 1.00 pm, Monday 10 August 2020.

2.6 Questions on notice and supplementary questions

Resolved, on the motion of Mr Shoebridge: That witnesses be requested to return answers to questions on notice within 24 hours of the hearing date.

2.7 Advertising

The committee noted that the inquiry will be advertised via social media, stakeholder emails and a media release distributed to all media outlets in New South Wales.

3. Adjournment

The committee adjourned at 10.01 am, until Thursday 20 August 2020 (public hearing Information Exchange Bill 2020).

Emma Rogerson
Committee Clerk

Minutes no. 21

Thursday 20 August 2020
 Standing Committee on Law and Justice
 Jubilee Room, Parliament House, 11.20 am

1. Members present

Mr Fang, *Chair*
 Mr Donnelly, *Deputy Chair*
 Ms Cusack (via Webex) (until 1.00 pm, from 3.30 pm)
 Mr D'Adam
 Mr Farlow (until 11.52 am, from 12.45 pm)
 Mr Khan (until 12.40 pm, from 2.30 pm until 2.56 pm, from 3.45pm)
 Mr Roberts
 Mr Shoebridge (via Webex) (from 2.30 pm)

Mr Mookhey (participating)

2. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 20 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 12 August 2020 – Email from Ms Carmel Donnelly, Chief Executive, SIRA to secretariat, advising that SIRA will not make a submission to the inquiry but will attend hearing
- 13 August 2020 – Letter from Dr Chris Colquhoun, Chief Medical Officer, icare to Chair providing submission but declining invitation to give evidence
- 13 August 2020 – Email from Mr David Cullen, Managing Director, Caesarstone Asia Pacific on behalf of the Australian Engineered Stone Advisory Group (AESAG) to secretariat, advising that the bill is outside AESAG's field of expertise and therefore the group will not be participating in the inquiry
- 14 August 2020 – Email from Ms Michelle Falstein, Secretary, NSW Council for Civil Liberties to secretariat, advising that the organisation will make a submission but are unable to attend hearing
- 17 August 2020 – Email from Hon Mark Buttigieg MLC, Opposition Whip to secretariat, advising that Hon Daniel Mookhey MLC will be a participating member on the inquiry into the Work Health and Safety Amendment (Information Exchange) Bill 2020 for the duration of the inquiry
- 17 August 2020 – Email from Ms Elizabeth Early, Program Manager – Priority Populations, Lung Foundation Australia to secretariat, declining the invitation to make a submission or give evidence to the inquiry
- 17 August 2020 – Email from Mr Jonathan Walsh, Principal Lawyer, Maurice Blackburn Lawyers to secretariat, providing submission but declining invitation to attend hearing
- 18 August 2020 – Email from Mr Andrew Orfanos, President, Australian Institute of Occupational Hygienists Inc to secretariat, advising that the Institute will be attending the hearing
- 18 August 2020 – Email from Ms Michelle Vo, Business Partner, Parliament and Cabinet, Executive and Ministerial Services, NSW Health to secretariat, advising that NSW Health will not be making a submission but will attend the hearing.

4. Inquiry into the Work Health and Safety Amendment (Information Exchange) Bill 2020

4.1 Public submissions

The committee noted that following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-8.

4.2 Report deliberative

The committee noted that the report deliberative is confirmed for Monday 7 September 2020 from 12.30 pm until 1.30 pm. The secretariat has coordinated with the PC3 secretariat to ensure that the PC3 hearing lunch break commences at 12.30 pm.

4.3 Answers to question on notice

The committee noted that they had previously resolved that answers to questions on notice be returned by witnesses within 24 hours of the hearing.

4.4 Provision of documents to participating member

Resolved, on the motion of Mr Donnelly: That Mr Mookhey, who has advised the committee that he intends to participate for the duration of the inquiry into the Work Health and Safety Amendment (Information Exchange) Bill 2020, be provided with copies of inquiry related documents.

4.5 Witnesses

The committee discussed the process for the selection of witnesses for the inquiry. The committee noted that Ms Natasha Flores, WHS/WC Officer, Unions NSW was no longer able to attend the public hearing due to illness.

Resolved, on the motion of Mr Farlow: That the appearance time of Ms Rita Mallia, President, CFMMEU be reduced from 1 hour to 45 minutes.

4.6 Allocation of questioning

Resolved, on the motion of Mr D'Adam: That the sequence of questions to be asked during the hearing be left in the hands of the Chair.

4.7 Public hearing

Witnesses were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined via Webex:

- Mr Andrew Orfanos, President, Australian Institute of Occupational Hygienists.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined via Webex:

- Ms Rita Mallia, President, CFMMEU.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined via Webex:

- Associate Professor Deborah Yates, Respiratory Medicine Physician, Royal Australasian College of Physicians
- Dr Graeme Edwards, Occupational and Environmental Medicine Physician, Royal Australasian College of Physicians.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Carmel Donnelly, Chief Executive Officer, SIRA
- Dr Petrina Casey, Director, Health Policy, Prevention and Supervision SIRA
- Ms Rose Webb, Deputy Secretary, Better Regulation Division, Department of Customer Service
- Ms Meagan McCool, Director, Chemicals, Explosives and Safety Auditing, SafeWork NSW, Better Regulation Division, Department of Customer Service
- Dr Richard Broome, Acting Executive Director, Health Protection NSW

Mr Mookhey tabled the following document:

- Silicosis notification form

Ms Donnelly tendered the following document:

- Dust disease: Update on SIRA programs of work August 2020

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.45 pm.

4.8 Tendered documents

Resolved, on the motion of Mr Farlow: That the committee accept and publish the following documents tendered during the public hearing:

- Silicosis notification form, tabled by Mr Mookhey
- Dust disease: Update on SIRA programs of work August 2020, tendered by Ms Carmel Donnelly, Chief Executive Officer, SIRA.

5. ***

6. **Adjournment**

The committee adjourned at 6.00 pm, until Monday 24 August 2020, 9am, Macquarie Room, Parliament House (Workers Compensation hearing).

Emma Rogerson
Committee Clerk

Draft minutes no. 24

Monday 7 September 2020

Standing Committee on Law and Justice Committee

Room 814/815, Parliament House, 12.33 pm

1. **Members present**

Mr Fang, *Chair*

Mr Donnelly, *Deputy Chair*

Ms Cusack (via Webex)

Mr D'Adam

Mr Farlow

Mr Khan

Mr Roberts (via Webex)

Mr Shoebridge

Mr Mookhey (participating)

2. **Previous minutes**

Resolved, on the motion of Mr Khan: That draft minutes no. 21 be confirmed.

3. **Correspondence**

The committee noted the following items of correspondence:

Received

- 4 September 2020 - Letter from Ms Rose Webb, Deputy Secretary, Better Regulation Division, Department of Customer Service to committee, providing draft MOU in response to a question taken on notice during the hearing on 20 August 2020.

Resolved, on the motion of Mr Shoebridge: That the committee write to Ms Webb seeking the rationale for the draft MOU to be kept confidential, with a response to be provided by Wednesday 9 September 2020, and that the draft MOU be kept confidential until then.

4. **Inquiry into the Work Health and Safety Amendment (Information Exchange) Bill 2020**

4.1 **Answers to questions on notice**

The following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Mr Andrew Orfanos, Australian Institute of Occupational Hygienists received on 20 August 2020
- answers to questions on notice from SafeWork NSW received on 21 August 2020
- answers to questions on notice from NSW Health received on 21 August 2020
- answers to questions on notice from SIRA received on 21 August 2020

- answers to questions on notice from A/Prof Deborah Yates, Royal Australasian College of Physicians received on 24 August 2020.

Resolved, on the motion of Mr Donnelly: That the committee keep confidential the answers to question on notice received from SIRA on 21 August 2020, as per the request of the author.

4.2 Consideration of Chair's draft report

The Chair submitted his draft report entitled *'Work Health and Safety Amendment (Information Exchange) Bill 2020'*, which, having been previously circulated was taken as being read.

Resolved, on the motion of Mr Donnelly: That paragraph 1.4 be amended by omitting 'government's' after 'the' and inserting instead 'NSW Government's'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.14 be amended by inserting 'NSW' after 'finalised by SafeWork'.

Resolved, on the motion of Mr Khan: That the following paragraph 1.7 be omitted: 'As the Hon Kevin Anderson MP, Minister for Minister for Better Regulation and Innovation, said in his second reading speech, the 'government has developed a comprehensive, multi-agency silicosis prevention strategy to ensure that everyone in this State is working safely with silica'. According to SafeWork NSW's submission, this strategy comprises four key elements:

- continued implementation of the 2017–2022 Hazardous Chemicals Exposures Baseline and Reduction Strategy, under which silicosis is a top two priority chemical (being implemented)
- banning dry cutting of manufactured stone (achieved)
- reduction of the workplace exposure standard for respirable crystalline silica (achieved)
- the information-sharing arrangement contained in the bill, which will ensure that Work Health and Safety regulators are informed of all diagnoses of silicosis notified to NSW Health and can target their educational, compliance and enforcement efforts (in progress).'

Mr Khan moved: That paragraph 2.27 be omitted.

Question put and negatived.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.28 be amended by omitting 'effectively creates a New South Wales silicosis register which may then be incorporated' and inserting instead 'may allow for this information to be incorporated'.

Mr Khan moved: That paragraph 2.29 be omitted.

Question put and negatived.

Resolved, on the motion of Mr Khan: That paragraph 2.30 be amended by:

- omitting 'However' before 'the committee accepts'
- omitting 'We recognise that the bill is one element of a wider government response to the increasing number of silicosis diagnoses.'

Mr Donnelly moved: That paragraph 2.31 be amended by omitting 'debate on the Work Health and Safety Amendment (Information Exchange) Bill 2020 proceed taking into account the committee comments documented in this report and the concerns raised by stakeholders during this inquiry', and inserting instead:

'the Legislative Council proceed to debate the Work Health and Safety Amendment (Information Exchange) Bill 2020 and where appropriate consider amendments in the committee stage that address stakeholder concerns raised in this inquiry.'

Question put and negatived.

Mr Donnelly moved: That Recommendation 1 be omitted: 'That the Legislative Council proceed to debate the Work Health and Safety Amendment (Information Exchange) Bill 2020, and that the NSW Government

address the committee comments and concerns identified by stakeholders as set out in the report, during debate in the House', and the following new recommendation be inserted instead:

'That the Legislative Council proceed to debate the Work Health and Safety Amendment (Information Exchange) Bill 2020 and where appropriate consider amendments in the committee stage that address stakeholder concerns raised in this inquiry'.

Question put and negatived.

Resolved, on the motion of Mr Donnelly: That:

- a) The draft report as amended be the report of the committee and that the committee present the report to the House;
- b) The transcripts of evidence, submissions, tabled documents, answers to questions on notice, and correspondence relating to the inquiry be tabled in the House with the report;
- c) Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- d) Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- e) The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- f) The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- g) Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- h) The secretariat is tabling the report at 10.00 am Friday 11 September 2020;
- i) The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

5. Adjournment

The committee adjourned at 12.55 pm, until Wednesday 9 September 2020, 2.45 pm, Parliament House (public hearing).

Emma Rogerson
Committee Clerk

Draft minutes no. 25

Wednesday 9 September 2020

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney at 2.48 pm

1. Members present

Mr Fang, *Chair*

Mr Donnelly, *Deputy Chair*

Ms Cusack

Mr D'Adam

Mr Farlow

Mr Khan

Mr Roberts
Mr Shoebridge (from 3:01 pm)
Mr Mookhey (participating member)

2. ***

3. **Correspondence**

Resolved, on the motion of Ms Cusack: That the committee note the following items of correspondence:

Received

- ***
- ***
- 8 September 2020 – Email from Ms Gabbie Gallagher, Director Public and Product Safety, Department of Customer Service to secretariat, providing rationale for why draft MOU should not be published.

Sent

- ***

4. ***

5. ***

6. **Inquiry into the Work Health and Safety Amendment (Information Exchange) Bill 2020**

6.1 Publication of draft MOU provided by SafeWork NSW

Resolved, on the motion of Mr Donnelly: That the draft MoU and the correspondence from the Department of Customer Service be published, with a watermark to signal that the MoU is a draft.

Joseph Cho
Committee Clerk

