



The Hon. Dominic Perrottet MP
Treasurer

Our Reference: 00128/20

Mr David Blunt
Clerk of the Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Blunt

Please find enclosed the New South Wales Government response to the Law and Justice Committee's 2019 review of the Dust Diseases Scheme.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Dom - 121'.

The Hon. Dominic Perrottet MP
Treasurer

cc: Standing Committee on Law and Justice

Encl.

GOVERNMENT RESPONSE
to
REPORT OF THE LEGISLATIVE COUNCIL STANDING COMMITTEE ON
LAW AND JUSTICE

2019 REVIEW OF THE DUST DISEASES SCHEME
SILICOSIS IN THE MANUFACTURED STONE INDUSTRY

Recommendation	NSW Government Response
<p><u>Recommendation 1:</u></p> <p><i>That icare, in light of SafeWork Australia's revised guidelines in the Crystalline silica health monitoring guide:</i></p> <ul style="list-style-type: none"> • <i>inform all manufactured stone workers previously screened that CT scanning is now part of the initial diagnostic process</i> • <i>conduct an urgent review of all cases of manufactured stone previously screened for silica-related health condition, in order to identify and prioritise those who should be sent for CT scanning as soon as possible.</i> 	<p>Supported</p> <p>In early February 2020, icare instituted a policy of routinely recommending a CT scan for workers with a significant level of exposure to respirable crystalline silica.</p> <ul style="list-style-type: none"> • As part of this annual requirement of the health monitoring process, icare prompts employers to return their workers for screening. Employers who do not comply can receive a compliance breach through Safework NSW and as a result will have their workers screened. <p>The majority of previously screened workers will be informed via this process, which allows them to ask questions and discuss their personal situation with a medical professional. During this consultation, medical professionals can also identify workers who meet the criteria for a CT scan and arrange an immediate referral.</p> <ul style="list-style-type: none"> • icare will conduct an audit to determine which workers are not captured through this process and then look to use alternate means to contact them and discuss the recommendations and options for CT scans.
<p><u>Recommendation 2:</u></p> <p><i>That icare provide a free screening service for all workers within the manufactured stone industry, with this service to be offered and actively promoted over the next 12 months, and exiting and new workers in the manufactured stone industry to be tested regularly.</i></p>	<p>Supported</p> <p>icare will provide free screening for all NSW workers within the manufactured stone industry for 12 months.</p> <p>Health screening is currently free for workers of small NSW businesses with less than 30 employees and is subsidised for medium and large employers whose workers are identified by SafeWork NSW as being most at risk to crystalline silica exposure.</p> <p>The NSW Government continues to promote the screening program through icare's website, brochures and collateral material, and via SafeWork NSW events, forums and workplace visits. Screening for workers exposed to any respirable crystalline silica dust remains an annual requirement of the health monitoring process.</p>
<p><u>Recommendation 3:</u></p>	<p>Supported in principle</p>

<p><i>That low dose high resolution CT scanning, and not a chest x-ray, should be the preferred diagnostic measure for any person who has had significant exposure to silica dust from manufactured stone.</i></p>	<p>The NSW Government supports the use of high resolution CT (HRCT) scans as a replacement for, or as an adjunct to, chest x-rays for workers with a significant level of exposure to respirable crystalline silica.</p> <p>These CT scans are now a routine part of the health monitoring process facilitated by icare for workers with significant exposure to respirable crystalline silica, or for workers who show potential abnormalities on other respiratory function testing.</p> <p>HRCT is preferred over the low dose high resolution CT as the sensitivity and clarity is considered superior for baseline screening. HRCT scanning is also recommended in the <i>Safe Work Australia Crystalline Silica Health Monitoring Guide</i>.</p>
<p><u>Recommendation 4:</u></p> <p><i>That icare review and expand the financial assistance it provides for retraining and vocational support when an individual has been diagnosed with a silica-related health condition, to ensure workers feel appropriately supported to leave the industry if they wish.</i></p>	<p>Supported in principle</p> <p>icare provides financial compensation and support in accordance with the <i>Workers Compensation (Dust Diseases) Act 1942</i> to Scheme participants diagnosed with a dust disease who wish to leave the industry and require vocational rehabilitation or retraining. icare has established procedures in place to ensure these workers are well supported throughout the process and will continue to review opportunities to do so.</p> <p>The Dust Diseases Scheme is funded on a pay-as-you-go basis through annual contributions made by NSW workers compensation insurers, which is passed on to employers through premiums. As such, an increase in financial assistance may result in an increase in employer premiums.</p>
<p><u>Recommendation 5:</u></p> <p><i>That the NSW Government investigate opportunities to raise and manage funds for future silica related compensation claims by manufactured stone workers. Consideration should be given to imposing a specific levy on the manufactured stone industry.</i></p>	<p>Supported in principle</p> <p>The State Insurance Regulatory Authority (SIRA) is responsible for determining the contributions payable to the Dust Diseases Authority by NSW workers compensation insurers to enable the Authority to pay compensation in accordance with the <i>Workers' Compensation (Dust Diseases) Act 1942</i>. This includes compensation for silica-related claims by manufactured stone workers.</p> <p>The Act enables SIRA to apportion contributions in a way that reflects the relative risk of developing silicosis and other dust diseases for workers in different classes of employment. The exposure risk for each industry is a key part of the process by which SIRA determines the contributions payable by insurers. This ensures that the industries in which workers are most likely to contract silicosis or other dust diseases, such as the manufactured stone industry, bear a higher proportion of the cost of related claims.</p>

<p><u>Recommendation 6:</u></p> <p><i>That the NSW Government introduce a mandatory requirement for manufacturers and suppliers to:</i></p> <ul style="list-style-type: none"> • <i>affix standardised warning labels on all manufactured stone products</i> • <i>provide safety data sheets with all manufactured stone products, in a comprehensive range of languages.</i> 	<p>Supported in principle</p> <p>Hazard information relating to silica-containing products can currently be provided in the form of a label, product information sheet or safety data sheet. The regulations governing labelling and product safety information of this type are part of the nationally harmonised model Work Health and Safety laws. A model Code of Practice for the manufactured stone industry is currently being developed by Safe Work Australia.</p> <p>Accordingly, the NSW Government will refer to Safe Work Australia for consideration whether the Model Code of Practice currently under development should include a requirement that designers, manufacturers, importers and suppliers of manufactured stone provide warning labels, product information sheets, or safety data sheets in a range of languages with all manufactured stone products or whether such a requirement would be better placed in the model WHS Regulation.</p>
<p><u>Recommendation 7:</u></p> <p><i>That the Minister for Better Regulation ensure that steps are taken to further reduce the workplace exposure standard to a time weighted average of 0.02 mg/m3 for non-mining industries as soon as possible, to ensure workers are protected from the harmful effect of silica dust.</i></p>	<p>Supported in principle</p> <p>The NSW Government supports reducing the workplace exposure standard for respirable crystalline silica for all workplaces. Submissions to the report noted there are limitations on a health-based evaluation (cumulative assessment preferred), measurements and analysis reliability at 0.02mg/m3. This is particularly so for extended work shifts (more than eight hours requires it to almost halve to silica 0.01mg/m3 creating further unreliability); and compliance and enforcement.</p> <p>In December 2019, a majority of Work Health and Safety Ministers (including the Minister for Better Regulation and Innovation) therefore agreed to lower silica standard to silica 0.05mg/m3. Safe Work Australia is to facilitate an investigation into measurement and practical considerations that may enable a future reduction to silica 0.02mg/m3. The revised standard of 0.05mg/m3 commenced on 1 July 2020 in NSW. An appropriate period of time should be allowed to consider the effectiveness of the new standard before any decision is made to further reduce the exposure standard.</p> <p>The NSW Government now awaits the outcome of the Safe Work Australia investigation. If the measurement difficulties and other practical considerations can be overcome the Government will move to lower the time weighted average exposure standard even further.</p>

<p><u>Recommendation 8:</u></p> <p><i>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.</i></p>	<p>Not supported</p> <p>The Government does not support this recommendation as SafeWork NSW is aware of the location of all manufactured stone fabrication sites in NSW and has visited them. SafeWork NSW is able to obtain information about the location of manufactured stone fabrication sites by issuing notices to the importers of manufactured stone.</p> <p>SafeWork NSW will continue to support Safe Work Australia’s development of a model Code of Practice for the manufactured stone industry, which will provide guidance on the content of health and safety duties at manufactured stone sites, including existing obligations to conduct air monitoring under the Work Health and Safety Regulation 2017 (cl 50).</p> <p>In accordance with the 2017-2022 Hazardous Chemicals and Materials Exposures Baseline and Reduction Strategy SafeWork NSW will also continue to conduct educational, compliance and enforcement activities to ensure that persons conducting a business or undertaking (PCBUs) on manufactured stone fabrication sites are fulfilling their work health and safety duties, including air monitoring where appropriate.</p>
<p><u>Recommendation 9:</u></p> <p><i>That the NSW Government immediately introduce an explicit ban on dry cutting.</i></p>	<p>Supported</p> <p>The NSW Government has amended the <i>Work Health and Safety Regulation 2017</i> to ban the practice of dry cutting. This came into effect on 1 July 2020.</p> <p>It is now an offence for a person conducting a business or undertaking at a workplace to direct or allow a worker to cut, grind, drill or polish manufactured stone containing crystalline silica with a power tool, unless the worker is using respiratory protective equipment and additional controls are in place and properly designed, installed, used and maintained. The Regulation also provides SafeWork NSW inspectors with the power to issue on-the-spot fines for non-compliance.</p>
<p><u>Recommendation 10:</u></p> <p><i>That the NSW Government provide an appropriate level of additional annual funding to SafeWork NSW to strengthen its regulatory enforcement and monitoring of health and safety standards within the manufactured stone industry.</i></p>	<p>Supported in principle</p> <p>SafeWork NSW continues to use its existing resources to regulate the manufactured stone industry and enforce NSW work health and safety laws. The NSW Government has already made legislative amendments which strengthen SafeWork NSW’s regulatory enforcement powers and the monitoring of health and safety standards within the manufactured stone industry. SafeWork’s capacity to undertake its role as a work health and safety regulator is regularly reviewed and enhanced as appropriate.</p>

<p><u>Recommendation 11:</u></p> <p><i>That Health NSW, in conjunction with SafeWork NSW, co-ordinate a case finding study for respirable crystalline silica exposure in the manufactured stone industry, to improve the identification and assessment of workers at risk of exposure.</i></p>	<p>Supported</p> <p>The NSW Government fully supports the principle of active finding of cases of silicosis among people working in industries where they are exposed to silica dust. This work has been in progress in response to Recommendation 1 of the Law and Justice Committee’s 2018 review of the Dust Diseases Scheme.</p> <p>The <i>Work Health and Safety Regulation 2017</i> imposes a duty on persons conducting a business or undertaking (PCBUs) to provide health monitoring to workers. This, along with the strategies mentioned below, contribute to the whole of government approach to improve the identification and assessment of workers at risk of exposure.</p> <p>NSW Health, SafeWork NSW and icare have a working partnership to actively identify new cases of silicosis resulting from respirable crystalline silica exposure in the manufactured stone industry.</p> <p>New cases have been identified through the:</p> <ul style="list-style-type: none"> • icare lung screening health monitoring service; • SafeWork NSW WHS Roadmap 2022; and, • An analysis of hospital admissions and deaths. <p>These whole of government measures are considered more effective than an adhoc case finding study. In that regard it better implements the objective of the recommendation which is, <i>to improve the identification and assessment of workers at risk of exposure.</i></p>
<p><u>Recommendation 12:</u></p> <p><i>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.</i></p>	<p>Supported</p> <p>From 1 July 2020, silicosis is notifiable by all NSW medical practitioners to NSW Health as a scheduled medical condition under Part 4 of the <i>NSW Public Health Act 2010</i>.</p> <p>Amendments to the <i>NSW Work Health and Safety Act 2011</i> have been introduced to Parliament to enable the NSW work health and safety regulators to lawfully use information provided by NSW Health to track and investigate relevant workplaces and take appropriate compliance and enforcement action if required.</p>

<p><u>Recommendation 13:</u></p> <p><i>That SafeWork NSW, when reviewing its education and awareness campaigns, specifically consider how best to promote safe practices to independent contractors and installers in the manufactured stone industry. In doing so, SafeWork NSW should consult with suppliers, fabricators, installers and unions involved in the manufactured stone industry.</i></p>	<p>Supported</p> <p>The NSW Government recognises and supports the promotion of safe practices for workers in the manufactured stone industry, including independent contractors and installers.</p> <p>In accordance with NSW Government advertising and project requirements, SafeWork NSW conducts pre and post-evaluations for all awareness campaigns, including behavioural insights and questionnaires, and undertakes mid-point and post-project evaluations that include a range of surveying and interviewing methodologies. While the majority of fabricators also perform installation work and are already caught by SafeWork NSW reviews, SafeWork NSW will specifically include independent contractors and installers in the manufactured stone industry in future evaluations.</p>
<p><u>Recommendation 14:</u></p> <p><i>That the NSW Government provide additional funding to the Dust Diseases Board and Centre for Work Health and Safety specifically for research projects related to the prevention, management and treatment of silicosis, and in terms of sourcing additional funding for research projects, commission icare to scope out possible funding models that would be based on a cost recovery basis from the industry.</i></p>	<p>Supported in principle</p> <p>The Dust Diseases Scheme is funded on a pay-as-you-go basis through an employer levy on NSW worker compensation insurance premiums. As such, an increase in research funding may result in an increase in employer levy contributions.</p> <p>The NSW Government will continue to fund research projects to prevent, manage and treat silicosis.</p>