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STANDING COMMITTEE ON LAW AND JUSTICE

2019 Review of the Dust Diseases Scheme

Silicosis in the manufactured stone industry

Report 73

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Standing Committee on Law and Justice

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Silicosis in the manufactured stone industry

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Terms of reference

1. That, in accordance with section 27 of the State Insurance and Care Governance Act 2015, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers compensation and motor accidents legislation, which include the:
2.
 - (a) Workers' Compensation Scheme
 - (b) Workers' Compensation (Dust Diseases) Scheme
 - (c) Motor Accidents Scheme
 - (d) Motor Accidents (Lifetime Care and Support) Scheme.
3. In exercising the supervisory function outlined in paragraph 1, the committee:
 - (a) does not have the authority to investigate a particular compensation claim, and
 - (b) must report to the House at least once every two years in relation to each scheme.

Please note that on 24 June 2019, the committee resolved that the 2019 review of the Dust Diseases scheme focus on the response to silicosis in the manufactured stone industry in New South Wales.

The terms of reference were referred to the committee by the Legislative Council on 19 November 2015.¹

¹ *Minutes*, NSW Legislative Council, 19 November 2015, p 623.

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 Sam Farraway MLC	The Nationals	
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	
Mr David Shoebridge MLC	The Greens	

Contact details

Website	www.parliament.nsw.gov.au
Email	Law@parliament.nsw.gov.au
Telephone	(02) 9230 2739

* The Hon Wes Fang MLC replaced the Hon Niall Blair MLC as Chair on 17 October 2019.

** The Hon Catherine Cusack MLC replaced the Hon Natalie Ward MLC on 31 January 2020.

*** Mr Mookhey was a participating member for the duration of the inquiry.

Chair's foreword

In recent years, we have seen a concerning re-emergence of silicosis as an occupational dust disease, primarily affecting workers in the manufactured stone industry. In New South Wales, the growing number of accelerated silicosis cases, in particular, sits against a backdrop of similar trends across the country, where short term exposure to large amounts of crystalline silica dust has increasingly claimed the health and livelihoods – and in some cases, the lives – of young workers.

So troubling is this trend that the committee this year chose to focus its regular oversight review of the Dust Diseases Scheme specifically on silicosis in the manufactured stone industry. In this state alone, the number of new cases of silicosis or a silica-related health condition has jumped from 40 at the end of the last financial year to 110 by the end of January 2020, with most cases linked to silica exposure from working with manufactured stone.

This spike not only confirms the fears expressed by medical professionals over the last two reviews of the Scheme, but reflects evidence of a growing problem in the industry, and an indication of poor safety practices and an unsatisfactory compliance regime.

From the outset of this review, the challenges were clear. There was inadequate data to indicate the potential size of the problem, differing views on screening methods and evidence of what some would describe as a piecemeal approach to a significant problem. Action seemed slow, jurisdictions were responding differently, and at the heart of it, diagnosed workers were asking 'why didn't I know about this sooner?'

We acknowledge the NSW Government's efforts to date, however, given the current circumstances and the many lives of workers and their families that are at risk or have been affected by this disease, it is very clear that there is much more work to be done.

To this end, the committee has made a suite of recommendations that will not only ensure that workers are protected from exposure to crystalline silica but also supported after they are diagnosed. In particular, the committee seeks to ensure medical screening is readily available to all workers in the manufactured stone industry, and that appropriate control measures are in place to lower the risk. This includes an explicit ban on dry cutting, and measures to ensure industry standards are lifted and regulatory enforcement is strengthened.

So critical is this issue that the committee will continue to monitor and evaluate the implementation of the recommendations made in this report in the next review.

I would like to thank my fellow committee members for their participation and considered engagement throughout this review. I also thank all the inquiry participants that provided valuable evidence and assistance to the committee. Finally, I thank the secretariat for their hard work and professional support.



Hon Wes Fang MLC
Committee Chair

Recommendations

Recommendation 1

39

That icare, in light of SafeWork Australia's revised guidelines in the *Crystalline silica health monitoring guide*:

- inform all manufactured stone workers previously screened that CT scanning is now part of the initial diagnostic process
- conduct an urgent review of all cases of manufactured stone workers previously screened for silica-related health conditions, in order to identify and prioritise those who should be sent for CT scanning as soon as possible.

Recommendation 2

39

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.

Recommendation 3

40

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.

Recommendation 4

42

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.

Recommendation 5

44

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.

Recommendation 6

55

That the NSW Government introduce a mandatory requirement for manufacturers and suppliers to:

- affix standardised warning labels on all manufactured stone products
- provide safety data sheets with all manufactured stone products, in a comprehensive range of languages.

Recommendation 7

66

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.

- Recommendation 8** **66**
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** **75**
That the NSW Government immediately introduce an explicit ban on dry cutting.
- Recommendation 10** **88**
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.
- Recommendation 11** **102**
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.
- Recommendation 12** **109**
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.
- Recommendation 13** **113**
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.
- Recommendation 14** **115**
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.

Conduct of inquiry

The terms of reference were referred to the committee by the Legislative Council on 19 November 2015.

The committee received 17 submissions.

The committee held five public hearings at Parliament House in Sydney.

The committee also conducted one site visit to icare's Medical Centre at 115 Pitt Street, 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 Background

This chapter provides background information on the Dust Diseases Scheme, highlighting the particular focus of this review on the response to silicosis in the manufactured stone industry. Within this context, the regulatory framework and key agencies involved in addressing silicosis are outlined. The findings and recommendations of the previous reviews, as they relate to silicosis are also briefly discussed, as are recent developments in this area. Finally, the chapter concludes with an overview of the response to silicosis in the manufactured stone industry in other Australian jurisdictions.

Overview of the Dust Diseases Scheme

- 1.1 The Workers Compensation (Dust Diseases) Scheme (Dust Diseases Scheme) is a no-fault scheme for New South Wales workers who have developed a dust disease from occupational exposure to hazardous dust. The scheme provides participants and their dependents with compensation benefits as well as access to medical, healthcare and related support services. Operating costs for the scheme are funded by an employer levy on workers compensation insurance premiums.
- 1.2 As the designated committee tasked with supervising the operation of the Dust Diseases Scheme, the Standing Committee on Law and Justice conducts biennial reviews of the scheme.² The committee has conducted two reviews of the scheme to date.³ The reports and inquiry documents for these previous reviews can be found on the committee's website at www.parliament.nsw.gov.au/lawandjustice.

Focus of this inquiry

- 1.3 Over the last few years, the committee has become increasingly concerned about silicosis in the manufactured stone (also referred to as engineered stone) industry. The issue arose during the last two reviews of the Dust Diseases Scheme, with concerns from doctors, unions, lawyers and other stakeholders about silicosis re-emerging as a significant health issue in the manufactured stone industry.
- 1.4 This led the committee to focus this review specifically on the response to silicosis in the manufactured stone industry. The committee acknowledges that there are other industries, such as mining, which are also affected by silica dust. However, the focus of this inquiry has generally been on the exposure to high levels of crystalline silica dust experienced by stonemasons.

² In accordance with section 27 of the *State Insurance and Care Governance Act 2015*, the operations of the Workers Compensation (Dust Diseases) Scheme are required to be supervised by a committee of the Legislative Council and that this committee report to the Legislative Council in relation to the scheme at least once every two years.

³ Please note that in addition to the two previous reviews of the Dust Diseases Scheme, the committee first examined the scheme as part of its 2014 *Review of the exercise of the functions of the Workers' Compensation (Dust Diseases) Board*.

Silicosis and exposure to crystalline silica

- 1.5 Exposure to crystalline silica dust can lead to a number of serious illnesses including silicosis – a condition where the lungs are scarred, leading to severe and irreversible shortness of breath and in certain cases, lung transplants or death.⁴
- 1.6 Silica dust can be found in a number of products including sand and sandstone, brick, marble, limestone, concrete and mortar, granite and fibre cement sheets. It can also be found in manufactured stone – a product regularly used for kitchen and bathroom benchtops. The problem with manufactured stone is that it contains significantly higher levels of crystalline silica compared with other products.⁵
- 1.7 Crystalline silica as a hazardous chemical and its presence in manufactured stone products is discussed further in chapter 2, as is the nature of silicosis and the health impacts of breathing in crystalline silica dust.

Silicosis under the Dust Diseases Scheme

- 1.8 To be covered by the Dust Diseases Scheme, a worker must have:
- exposure to hazardous dust while working in New South Wales
 - a medical diagnosis of one of the 14 occupational lung diseases scheduled under the *Workers' Compensation (Dust Diseases) Act 1942*, and
 - a level of impairment associated with that disease.⁶
- 1.9 Certain workers are not covered under the scheme, including federal government employees, coal miners, workers exposed to dust outside of the state and independent contractors. Those who have a dust disease from exposure in New South Wales but have no impairment are also not covered by the scheme⁷ (however, these workers do have access to free medical examinations and funding for occupational rehabilitation and retraining).⁸
- 1.10 Silicosis is one of the 14 scheduled dust diseases under *Workers Compensation (Dust Diseases) Act* legislation and thus compensable under the Dust Diseases Scheme.⁹
- 1.11 Silicosis cases currently account for approximately 11 per cent of the assistance provided under the scheme. This follows mesothelioma, which accounts for 45 per cent, asbestos (induced pleural disease) which accounts for 20 per cent, and asbestosis, which accounts for 17 per cent.¹⁰

⁴ SafeWork NSW, Crystalline silica, <https://www.safework.nsw.gov.au/hazards-a-z/hazardous-chemical/priority-chemicals/crystalline-silica> (accessed 3 October 2019).

⁵ SafeWork NSW, Crystalline silica, <https://www.safework.nsw.gov.au/hazards-a-z/hazardous-chemical/priority-chemicals/crystalline-silica> (accessed 3 October 2019).

⁶ Correspondence from Mr Adam Raskall, Head of Engagement, icare, to secretariat, 16 September 2019, Attachment – 'Our journey so far' presentation, p 6.

⁷ Correspondence from Mr Raskall to secretariat, 16 September 2019, Attachment, p 6.

⁸ Answers to questions on notice, icare, 16 October 2019, p 8.

⁹ *Workers' Compensation (Dust Diseases) Act 1942*, Schedule 1.

¹⁰ Correspondence from Mr Raskall to secretariat, 16 September 2019, Attachment, p 5.

- 1.12 The number of certified cases of silicosis has risen significantly in the last few years. This increase will be examined in greater detail in chapter 2.

Regulatory framework and key agencies

- 1.13 The Dust Diseases Scheme operates within a state-based regulatory framework involving agencies that support and provide services across a range of statutory compensation and insurance schemes. This framework, including the role of key agencies, is briefly outlined below.

Workplace health and safety legislation

- 1.14 In New South Wales, workplace health and safety (WHS) laws are set out in the *Work Health and Safety Act 2011* and Work Health and Safety Regulation 2017. These laws are based on national model WHS laws which were developed by Safe Work Australia.
- 1.15 Under this legislation, employers and businesses have an obligation to manage health and safety risks, including those involved with storing, generating, handling or using hazardous chemicals in the workplace.¹¹
- 1.16 They are managed in accordance with the hierarchy of controls, which first looks at elimination of the risk, then substitution, then what engineering controls can be applied to eliminate or mitigate the risk, and then administrative controls. Personal protective equipment (PPE) is generally considered the last line of control.¹²
- 1.17 Crystalline silica is recognised as a hazardous chemical.¹³ As such, WHS laws seek to eliminate or minimise the workplace risks associated with working with crystalline silica to ensure the health and safety of workers.¹⁴ For example, as a Schedule 14 hazardous chemical under the Work Health and Safety Regulation 2017, employers and businesses working with crystalline silica are required to provide health monitoring to workers if there are significant health risks.¹⁵
- 1.18 Employers and businesses engaging with crystalline silica must also meet other regulatory requirements which apply more broadly to substances and materials under New South Wales WHS legislation, such as:

¹¹ SafeWork NSW, Managing hazardous chemicals, <https://www.safework.nsw.gov.au/resource-library/blogs/blogs-accordions/managing-hazardous-chemicals>.

¹² Evidence, Mr Michael Shearer, President, Mine Ventilation Society of Australia, 20 September 2019, p 2.

¹³ SafeWork NSW, Crystalline silica – technical fact sheet, <https://www.safework.nsw.gov.au/resource-library/hazardous-chemicals/crystalline-silica-technical-fact-sheet>; see also SafeWork NSW, *2017-2022 Hazardous chemicals and materials exposures baseline and reduction strategy*.

¹⁴ SafeWork NSW, Crystalline silica – technical fact sheet, <https://www.safework.nsw.gov.au/resource-library/hazardous-chemicals/crystalline-silica-technical-fact-sheet>.

¹⁵ Work Health and Safety Regulation 2017, Part 7, Division 6.

- ensuring the use of personal protective equipment by workers
- ensuring that workplace exposure standards are not exceeded
- conducting air monitoring, when required.¹⁶

SafeWork NSW

- 1.19** SafeWork NSW is the state's work health and safety regulator and is responsible for enforcing WHS laws in New South Wales, including those that regulate the use and handling of crystalline silica.¹⁷ In particular, SafeWork NSW monitors and enforces compliance, conducts workplace inspections, investigates incidents, and takes prosecution action against breaches of WHS laws.¹⁸
- 1.20** In addition, SafeWork NSW provides advice and information to workplaces and the community, and promotes and supports education and training.¹⁹ It also provides licences and registration for potentially dangerous work.²⁰
- 1.21** SafeWork NSW is separate to Safe Work Australia, which is the national policy body responsible for developing and evaluating national WHS and workers' compensation policy and strategies, as well as the model WHS legislative framework. Safe Work Australia does not regulate WHS laws.²¹

icare's Dust Diseases Care

- 1.22** icare is responsible for administering the Dust Diseases Scheme. It does so through its service line, Dust Diseases Care (DDC), which administers the no-fault compensation and support provided by the Workers Compensation (Dust Diseases) Authority (DDA).²²
- 1.23** icare provides a range of financial and healthcare support and services to workers covered by the Dust Diseases Scheme. These include medical examinations, compensation payments, payments of medical and healthcare expenses, payment of funeral services and compensation to dependents of deceased workers, as well as information and education about dust diseases.²³
- 1.24** icare also provides health monitoring through its screening services to assist employers in meeting their WHS obligations.²⁴ In particular, icare operates icare Lung Screen, a mobile

¹⁶ Work Health and Safety Regulation 2017, Chapter 3, Division 5 and Division 7.

¹⁷ Correspondence from Mr Raskall, to secretariat, 16 September 2019, Attachment, p 14.

¹⁸ Evidence, Mr Peter Dunphy, Acting Deputy Secretary, Better Regulation Division, SafeWork NSW, 2 October 2019, p 2; SafeWork NSW, SafeWork inspectors, <https://www.safework.nsw.gov.au/compliance-and-prosecutions/safework-inspectors>.

¹⁹ Evidence, Mr Dunphy, 2 October 2019, p 2.

²⁰ Correspondence from Mr Raskall to secretariat, 16 September 2019, Attachment, p 14.

²¹ Safe Work Australia, About us, <https://www.safeworkaustralia.gov.au/about-us>; Submission 9, Safe Work Australia, p 1.

²² Correspondence from Mr Raskall to secretariat, 16 September 2019, Attachment, p 4.

²³ Correspondence from Mr Raskall to secretariat, 16 September 2019, Attachment, p 4.

²⁴ Answers to questions on notice, icare, 16 October 2019, p 1.

respiratory testing service that visits certain worksites and premises across New South Wales. This service provides lung function testing by a respiratory scientist, respiratory medical examinations by doctors and x-ray reporting by radiologists. Results of this screening are provided to icare's DDC to be analysed by a respiratory physician.²⁵

- 1.25 Further information about the medical screening process, including icare's screening services, can be found in chapter 3.
- 1.26 As well as delivering services to workers under the Dust Diseases Scheme, icare also delivers services to four other schemes – Workers Insurance, Insurance for NSW (Self-insurance), Lifetime Care and the Home Building Compensation Fund (HBCF).²⁶

State Insurance Regulatory Authority

- 1.27 State Insurance Regulatory Authority (SIRA) is the state's independent insurance regulator. It regulates all statutory insurance schemes in New South Wales.²⁷
- 1.28 SIRA's role in relation to the Dust Diseases Scheme is to review and monitor policy settings and regulatory controls as well as determine the contributions to be paid by insurers to the Workers Compensation (Dust Diseases) Fund, which is administered by the DDA. SIRA also indexes the compensation payments for dust diseases, based on the *Workers Compensation Act 1987* provisions for exempt workers, and death benefits prescribed in section 8 of the *Workers Compensation (Dust Diseases) Act*.²⁸

Previous reviews of the Dust Diseases Scheme

- 1.29 As noted previously, the committee has conducted two prior reviews of the Dust Diseases Scheme to date. During those reviews, concerns were raised by stakeholders about silicosis in the manufactured stone industry. This section briefly outlines the discussions and recommendations around silicosis in those reviews.
- 1.30 In the 2017 review of the scheme, the committee noted reports of an 'emerging occurrence of silicosis', with doctors reporting an increase in the number of cases diagnosed across the manufactured stone industry. The report, tabled on 24 August 2017, included five recommendations, one of which was for a taskforce to be convened, comprising of industry, regulatory and workforce representatives. This was to review safety standards in the manufactured stone industry and consider any regulatory changes required.²⁹
- 1.31 The government response to this recommendation stated that in October 2017 the NSW Government had launched a five year hazardous chemical strategy – *2017-2022 Hazardous*

²⁵ icare, *Request a lung screening service*, <https://www.icare.nsw.gov.au/employers/employer-obligations/lung-screening-service/#gref>.

²⁶ Correspondence from Mr Raskall to secretariat, 16 September 2019, Attachment, p 14.

²⁷ Correspondence from Mr Raskall to secretariat, 16 September 2019, Attachment, p 14.

²⁸ Submission 11, State Insurance Regulatory Authority, p 4.

²⁹ Standing Committee on Law and Justice, NSW Legislative Council, *First Review of the Dust Diseases Scheme* (2017), p viii.

Chemicals and Materials Exposure Baseline and Reduction Strategy – 'with a top priority to protect workers against exposure to crystalline silica'.³⁰ The strategy was developed in consultation with industry associations, unions, peak bodies, medical professionals and other government agencies with the aim of introducing measures 'to protect workers in all industry sectors, including the manufactured stone industry'.³¹

- 1.32** While no commitment was made in the government response to establishing a taskforce, the Manufactured Stone Industry Taskforce was later established in July 2018. In its final report, the Taskforce noted that its establishment was to be incorporated within the hazardous chemical strategy as a response to the committee's recommendation.³² The Manufactured Stone Industry Taskforce is discussed in greater detail later in this chapter.
- 1.33** In the next review of the scheme in 2018, concerns were raised again about the prevalence of silicosis in the manufactured stone industry. With ongoing concerns about these reports, the committee made a number of recommendations, out of the total eight recommendations made, relevant to silicosis in the manufactured stone industry.
- 1.34** In particular, the committee recommended that icare and SafeWork NSW conduct a case finding study for silicosis in the manufactured stone industry. Other recommendations of the committee included more targeted awareness and education initiatives into the dangers associated with the manufactured stone industry, including a focus on non-English speaking background workers, and the establishment of a New South Wales Dust Diseases Register, in the absence of a national register being established. The committee also agreed to focus the next review, being this one, on the response to silicosis in the manufactured stone industry.³³
- 1.35** In response to these recommendations, the government response stated that, in relation to the recommendation for a case study, 'icare will work with Government agencies to determine the best way forward for identifying instances of silicosis in the manufactured stone industry in New South Wales'.³⁴ The government response also stated that it supported targeted awareness and education initiatives, and has and continues to undertake these activities. In particular, the government response noted the five-year hazardous chemicals strategy previously introduced and its four key project components – awareness, interactions, research and legislation. In response to the recommendation to establish a New South Wales Dust Diseases Register, the government response expressed support in principle, noting that the Commonwealth had announced funding for a National Dust Diseases Taskforce and the establishment of a National Dust Disease Registry (discussed further below).³⁵

³⁰ 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.

³¹ Correspondence from Mr Perrottet MP to Clerk of the Parliaments, 27 February 2018.

³² SafeWork NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, July 2019, p 2.

³³ Standing Committee on Law and Justice, NSW Legislative Council, *2018 Review of the Dust Diseases Scheme* (2019), p viii.

³⁴ Correspondence from Mr Dominic Perrottet MP, Treasurer, to Clerk of the Parliaments, Mr David Blunt, providing the government response to the 2018 Review of the Dust Diseases Scheme, 5 July 2019.

³⁵ Correspondence from Mr Perrottet MP to Clerk of the Parliaments, 5 July 2019.

Recent developments

- 1.36** Since the previous reviews of the Dust Diseases Scheme, a number of developments have taken place in relation to silicosis in the manufactured stone industry. These include the establishment of the Manufactured Stone Industry Taskforce and the National Dust Diseases Taskforce, the establishment of the National Dust Disease Registry and the implementation of the occupational lung disease work plan and review of the workplace exposure standard. Legal action has also commenced against manufacturers in the industry.

New South Wales Manufactured Stone Industry Taskforce

- 1.37** In July 2018 the NSW Government established the Manufactured Stone Industry Taskforce (Taskforce). Convened by SafeWork NSW, the Taskforce comprised representatives from industry, government, the medical profession and other key stakeholders. The Taskforce met on a monthly basis until it concluded on 30 June 2019.³⁶
- 1.38** The final report from the Taskforce was produced in July 2019 and provided to the Minister.³⁷ Copies of this report were also provided to the committee during the inquiry.
- 1.39** According to the report, the Taskforce undertook work in three key areas: a regulatory review, an awareness and education campaign, and a focus on compliance and enforcement, with SafeWork NSW visiting manufactured stone sites.³⁸
- 1.40** While aspects of the Taskforce's work will be discussed in relevant sections of this report, some its key findings and outcomes are outlined briefly.
- 1.41** In its final report, the Taskforce noted that by October 2018 it had completed a regulatory analysis based on workshops that had been held with people in the industry. The analysis identified two key problem statements.
- 1.42** The first problem statement was that there is uncertainty within the industry regarding the responsibilities of employers to protect workers from silica dust exposure, particularly in relation to air monitoring and health monitoring. The Taskforce's report said that SafeWork NSW was also not being notified of silica dust-related cases, employers are not identifying when workers are at significant risk, and there is 'no clear picture of the number of silicosis cases in the community'.³⁹
- 1.43** The second problem statement was that within the industry there are inconsistent levels of awareness of silica exposure risk and understanding of best practice controls to reduce exposure. The Taskforce's report noted that there is 'no single resource that describes what good practice looks like, no specific licensing, an increasingly diverse workforce with untrained workers or

³⁶ SafeWork NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, July 2019, p 3; Answers to pre-hearing questions, SafeWork NSW, 13 September 2019, p 1.

³⁷ SafeWork NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, July 2019, p 3; Evidence, Mr Dunphy, 2 October 2019, p 2.

³⁸ SafeWork NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, July 2019, p 3.

³⁹ SafeWork NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, July 2019, pp 7-8.

workers from other trades and a lack of focus on silica in trade training packages'.⁴⁰ The cost of air monitoring was also identified as being 'prohibitively expensive for workplaces, resulting in this monitoring not being carried out'.⁴¹

1.44 The recommendations from the Taskforce to address these problems fell into three broad categories:

- work, health and safety related – with most recommendations directed to Safe Work Australia, focusing on issues related to health monitoring, air monitoring (and the review of the Australian Workplace Exposure Standard), reporting requirements and the development of a National Code of Practice
- health related – including a recommendation that silicosis be a notifiable disease and the introduction of an occupational lung disease register
- trade skills related – relating to the introduction of mandatory silica syllabus in all relevant trade certificate training and other awareness courses.⁴²

1.45 Many of these recommendations are still being considered by the relevant ministers.

National Dust Diseases Taskforce

1.46 In response to emerging cases of accelerated silicosis, the Australian Government established a National Dust Diseases Taskforce (National Taskforce) in July 2019 to develop a national approach for the prevention, early identification, control and management of dust diseases in Australia. Led by the Commonwealth Chief Medical Officer, Professor Brendan Murphy, the National Taskforce comprises independent experts with expertise in medicine, health, policy and industry.⁴³

1.47 The National Taskforce has sought broad engagement with key stakeholders and the community, having conducted consultation forums around Australia at the end of 2019 and with plans to continue consultation in 2020. It has also provided an opportunity for written submissions to be made, relevant to the terms of reference for the Taskforce.⁴⁴

1.48 In December 2019, the National Taskforce provided its interim advice to the Commonwealth Minister for Health. The advice included five early recommendations for action that can be taken in the short-term to address accelerated silicosis.

⁴⁰ SafeWork NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, July 2019, p 8.

⁴¹ SafeWork NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, July 2019, p 8.

⁴² SafeWork NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, July 2019, p 8.

⁴³ Australian Government, Department of Health, National Dust Disease Taskforce, <https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-nat-dust-disease-taskforce.htm>; National Dust Diseases Taskforce, Terms of Reference, [https://www1.health.gov.au/internet/main/publishing.nsf/Content/562CF83B7AECFC8FCA2584420002B113/\\$File/TOR-Nat-Dust-Disease-Taskforce.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/562CF83B7AECFC8FCA2584420002B113/$File/TOR-Nat-Dust-Disease-Taskforce.pdf).

⁴⁴ Australian Government, Department of Health, National Dust Disease Taskforce, <https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-nat-dust-disease-taskforce.htm>.

- Developing and implementing a prevention strategy, including an immediate targeted education and communication campaign.
- Developing a national approach to understanding occupational dust diseases in Australia through data and information collection, including the staged establishment of a National Dust Disease Registry.
- Applying a strategic approach to research to better understand accelerated silicosis, including establishing a research collaboration platform across the country.
- Developing national guidance on an approach to actively search for people at risk of exposure to silica in the workplace.
- Developing a strategic national approach to improve Australia's ability to detect and rapidly respond to any future emerging occupational diseases of significance.⁴⁵

1.49 The National Taskforce made a number of critical findings about the actions to date and existing protection measures across the country. This included:

- Regulation and Governance – Government interventions undertaken in response to the rise in cases of accelerated silicosis appear to have been inconsistently implemented and monitored, creating an unequal and fragmented level of health protection.
- Workforce Organisation and Culture – Culture is an important consideration to address the problems identified. All stakeholders have an important role to shape the attitudes and behaviours required to achieve meaningful change.
- Resourcing and Capability – To ensure the health of workers there are opportunities to align and harness the skills and knowledge of industry, workplaces, workers and governments to identify, and control silica dust exposure.
- Research and Development – To inform government decision making there is limited information on the development pathway of accelerated silicosis resulting from working with engineered stone, and no identified treatment plan.⁴⁶

1.50 The Australian Government subsequently announced in January 2020 that it is acting to accept all five recommendations of the National Taskforce's interim advice, stating that 'these actions will be implemented progressively in 2020 in parallel to the Taskforce finalising its report'.⁴⁷ The Australian Government also stated that it has sought the ongoing support of the state and territory health ministers, noting that 'these recommendations will require action and collaboration between the Commonwealth, State and Territory Governments'.⁴⁸

1.51 The National Taskforce's final report to the Council of Australian Governments' Health Council is due no later than December 2020.

⁴⁵ National Dust Disease Taskforce, *Interim Advice to Minister for Health*, December 2019, p 8.

⁴⁶ National Dust Disease Taskforce, *Interim Advice to Minister for Health*, December 2019, pp 9-11.

⁴⁷ Media Release, Hon Greg Hunt MP, Minister for Health, 'Action on National Dust Disease Taskforce interim advice', 23 January 2020.

⁴⁸ Media Release, Hon Greg Hunt MP, Minister for Health, 'Action on National Dust Disease Taskforce interim advice', 23 January 2020.

National Dust Disease Registry

- 1.52 Of particular interest to the committee in its ongoing review of the Dust Diseases Scheme is the announcement of a National Dust Disease Registry. The registry, as recommended by the National Taskforce and accepted by the Australian Government, will initially focus on accelerated silicosis related to engineered stone, and is envisaged to:
- include disease notifications from all jurisdictions together with available case finding data, exposure history and air sampling data, and
 - be designed with the capability for potential future expansion to cover other occupational lung diseases.⁴⁹

Occupational lung diseases work plan and review of the workplace exposure standard

- 1.53 In response to occupational lung diseases, including silicosis, being a priority condition under the *Australian Work Health and Safety Strategy 2012-2022*, Safe Work Australia is currently implementing a comprehensive occupational lung diseases work plan. The work plan began implementation in 2019 and will continue throughout 2020, and has three key initiatives – research, education, and data and evidence.⁵⁰
- 1.54 As part of its education initiatives, Safe Work Australia prioritised the development of a national *Guide for working with silica and silica containing products*, published in September 2019. The guide provides practical information about how to prevent and manage exposure to respirable crystalline silica.⁵¹
- 1.55 Parallel to the work plan, SafeWork Australia began reviewing the workplace exposure standards for airborne contaminants. The workplace exposure standard for crystalline silica was reviewed as a priority, and as at December 2019 was reduced to an eight-hour time-weighted average of 0.05 mg/m³.⁵² The workplace exposure standard for silica is discussed in greater detail in chapter 4.

Manufactured Stone – Silica Rebate

- 1.56 A Manufactured Stone – Silica Rebate is currently available to businesses in the manufactured stone industry for the purchase of safety equipment and tools to protect workers from silica.⁵³ While a \$500 rebate has been available since 2017 to any small business working with silica, a

⁴⁹ National Dust Disease Taskforce, *Interim Advice to Minister for Health*, December 2019, p 8.

⁵⁰ Submission 9, Safe Work Australia, p 1.

⁵¹ Submission 9, Safe Work Australia, p 1; Safe Work Australia, *Working with silica and silica containing products – National guidance material*, September 2019.

⁵² Safe Work Australia, Workplace exposure standards for chemicals, <https://www.safeworkaustralia.gov.au/exposure-standards>.

⁵³ Evidence, Ms Rose Webb, Deputy Secretary, Better Regulation Division, SafeWork NSW, 11 February 2020, p 32.

\$1000 rebate became available in January 2020 specifically for manufactured stone businesses.⁵⁴ The \$1000 rebate is available until June 2020.⁵⁵

- 1.57** Administered by SafeWork NSW, the rebate covers equipment such as wet cutting tools, dust capture tools, H and M Class vacuums, fit testing equipment and clamps for holding stone for manual handling. The rebate does not cover the purchase of equipment or services engaged for air monitoring.⁵⁶
- 1.58** SafeWork NSW advised that, as at early February 2020, six businesses have been granted the rebate, with a seventh under review, out of a projected 246 eligible businesses.⁵⁷
- 1.59** In March 2020, SafeWork NSW further advised that there were 12 businesses who had applied for the rebate.⁵⁸

Legal action

- 1.60** In addition to claims being made under the Workers Compensation Scheme, a class action is currently being prepared against a number of manufacturers in the industry in relation to whether they adequately communicated the safety risks or precautions that workers need to take when working with manufactured stone products.⁵⁹ The nature or progress of these claims was not explored in detail during this inquiry.
- 1.61** When questioned about the litigation, Mr David Cullen, Australian Engineered Stone Advisory Group and Managing Director, Caesarstone Australia, stated: 'Most of the liability will sit with workers compensation in reality. There will be some liability from manufacturers, potentially, but that has to go through a process'.⁶⁰

The response to silicosis in other jurisdictions

- 1.62** With the increasing trend of silicosis cases across the country, other Australian jurisdictions have responded to the disease within the context of the manufactured stone industry. These jurisdictions include Queensland and Victoria.

⁵⁴ Evidence, Ms Megan McCool, Director, Hazardous Chemical Facilities and Safe Management Audits, SafeWork NSW, 11 February 2020, p 46.

⁵⁵ Evidence, Ms Webb, 11 February 2020, p 32.

⁵⁶ Evidence, Ms McCool, 11 February 2020, p 46.

⁵⁷ Evidence, Ms McCool, 11 February 2020, p 47.

⁵⁸ Portfolio Committee No. 6 – Budget Estimates 2019-2020, Evidence, Ms Megan McCool, Director, Hazardous Chemical Facilities and Safety, SafeWork NSW, 16 March 2020, p 42.

⁵⁹ Submission 4, Australian Institute of Occupational Hygienists, p 10.

⁶⁰ Evidence, Mr David Cullen, Australian Engineered Stone Advisory Group and Managing Director, Caesarstone Australia, 15 November 2019, p 22.

Queensland

- 1.63** A number of policy developments and initiatives have recently advanced in Queensland, including the banning of dry cutting, the establishment of a notifiable dust lung disease register, the release of an industry specific code of practice for working with silica, and the progressive health screening of stonemasons.
- 1.64** In mid-September 2018, the Office of Industrial Relations in Queensland issued a safety alert to highlight the significant health risks of working with engineered stone. The Queensland Government then commenced a state-wide audit of 140 engineered stone benchtop fabricators to enforce a ban on uncontrolled dry cutting of manufactured stone.⁶¹
- 1.65** In July 2019, changes to Queensland health legislation commenced allowing for the establishment of a notifiable dust lung disease register.⁶² As the first of its kind in Australia, the register allows Queensland Health to monitor and analyse the incidence of occupational dust diseases, including silicosis.⁶³
- 1.66** On 31 October 2019, a new code of practice relevant to managing silica dust exposure commenced in Queensland.⁶⁴ The code provides practical guidance on how to manage the risks associated with exposure to respirable crystalline silica dust in the stone benchtop industry.⁶⁵ Among the issues covered by the code are the duties of manufacturers, importers and suppliers of stone benchtops, identifying respirable dust hazards, controlling silica dust risks, and health monitoring.⁶⁶
- 1.67** As at 31 December 2019, Queensland WorkCover had facilitated the health screening of 1,009 stonemasons, with 19 at that time still to complete the process. From this total, 195 people were diagnosed with a lung condition, including 159 people diagnosed with silicosis, 26 diagnosed with a progressive massive fibrosis, and 10 diagnosed with another respiratory condition.⁶⁷

⁶¹ Queensland Government, Workplace Health and Safety, Electrical Safety Office, Workers' Compensation Regulator, Work Cover Queensland, Silicosis and support for stonemasonry workers and employers, <https://www.worksafe.qld.gov.au/silicosis/background-to-silicosis>.

⁶² Answers to questions on notice, State Insurance Regulatory Authority, 17 October 2019, p 2.

⁶³ Media Release, Hon Steven Miles, Queensland Minister for Health and Minister for Ambulance Services, Hon Grace Grace, Queensland Minister for Education and Ministry for Industrial Relations, Hon Dr Anthony Lynham, Queensland Minister for Natural Resources, Mines and Energy, 'Nation's first dust-related disease register starting in Queensland', 2 July 2019.

⁶⁴ Media Release, Hon Grace Grace, Queensland Minister for Education and Ministry for Industrial Relations, 'Government finalizes new code in battle against silicosis', 18 September 2019.

⁶⁵ Answers to questions on notice, Dr Graeme Edwards, Senior Occupational Physician, Specialist in Occupational Medicine, Work and Health Risk Management, 18 October 2019 – Attachment, Office of Industrial Relations, Workplace Health and Safety Queensland, *Managing respirable crystalline silica dust exposure in the stone benchtop industry – Code of Practice 2019*, p 1.

⁶⁶ Office of Industrial Relations, Workplace Health and Safety Queensland, *Managing respirable crystalline silica dust exposure in the stone benchtop industry – Code of Practice 2019*, p 1.

⁶⁷ Queensland Government, Workplace Health and Safety, Electrical Safety Office, Workers' Compensation Regulator, Work Cover Queensland, Silicosis and support for stonemasonry workers and employers, <https://www.worksafe.qld.gov.au/silicosis/background-to-silicosis>

Victoria

- 1.68 There has also been a number of developments in Victoria in response to silicosis in the engineered stone industry.
- 1.69 On 1 May 2019 the Victorian Government announced that there would be a state-wide ban on uncontrolled dry cutting of materials that contain crystalline silica dust. As part of a comprehensive action plan unveiled by the Premier, the Victorian Government also committed to free health screening for 1400 stonemasons, a new compliance code for businesses working with silica and an awareness campaign to highlight the risks of working with engineered stone.⁶⁸
- 1.70 The Victorian Government also announced that it was 'leading a push to develop a national silicosis strategy and reduce the Australian silica workplace exposure standard from 0.1mg/m³ to 0.02mg/m³ over an eight hour day. It also promised a summit for GPs and medical specialists and education seminars for those in the stone industry and health sector.⁶⁹
- 1.71 Earlier in 2019, Monash University was commissioned to undertake the Silica Associated Lung Disease Health Assessment Research Project by WorkSafe Victoria to address the lack of evidence regarding the burden of disease and risk factors for silicosis, as well as to generate evidence about the most effective health screening methods.⁷⁰
- 1.72 In February 2020, a new compliance code for managing crystalline silica when working with engineered stone was released. Developed by WorkSafe Victoria in consultation with medical experts, employers and employees, the code provides practical guidance to working with engineered stone, and sets out employers' obligations and duties to provide a safe working environment.⁷¹ The code also addresses issues such as identifying hazards, assessing and controlling risks, and health monitoring.⁷²

⁶⁸ Media Release, Hon Daniel Andrews, Victorian Premier, 'Protecting Victorian Workers from Deadly Silica Dust', 1 May 2019.

⁶⁹ Media Release, Hon Daniel Andrews, Victorian Premier, 'Protecting Victorian Workers from Deadly Silica Dust', 1 May 2019.

⁷⁰ Answers to questions on notice, State Insurance Regulatory Authority, 17 October 2019, p2.

⁷¹ Media Release, Hon Jill Hennessy, Victorian Attorney General and Minister for Workplace Safety, 'New compliance code for working with engineered stone', 12 February 2020.

⁷² WorkSafe Victoria, *Compliance code – Managing exposure to crystalline silica: Engineered stone*, Edition 1, February 2020.

Chapter 2 Nature and prevalence

This chapter focuses on crystalline silica as a hazardous chemical and its presence in manufactured stone products. It then looks at the impacts of breathing in crystalline silica, including one of the most concerning types of silicosis emerging within the stonemason industry – accelerated silicosis.

To understand the significance of silicosis within the industry, this chapter will also look at the data that is available to indicate prevalence of the disease.

Crystalline silica and manufactured stone products

- 2.1 Crystalline silica is a hazardous chemical. It is listed as the second highest priority chemical in the NSW Government's *2017-2022 Hazardous Chemicals and Materials Exposures Baseline and Reduction Strategy*, a strategy implemented to reduce workplace exposure and improve work health and safety.⁷³
- 2.2 Crystalline silica is present in various natural and artificial stones but a higher concentrate of it is found in manufactured stone (also referred to as engineered stone). Typical crystalline silica levels in different materials are:
- manufactured stone: 93 per cent or higher
 - sand and sandstone: 70-100 per cent
 - granite: 20-45 per cent (typically 30 per cent)
 - concrete and mortar: 25-70 per cent
 - slate: 20-40 per cent
 - brick: up to 30 per cent
 - fibre cement sheets: 10-30 per cent
 - marble: 2 per cent
 - limestone: 2 per cent.⁷⁴
- 2.3 Although silica is found within many industries including tunneling, building construction, foundry moulding and mining, this review focused on silica in the manufactured stone industry.

Use, composition and popularity of manufactured stone

- 2.4 As outlined above, a high concentrate of crystalline silica is typically found in manufactured stone products. These products are frequently used for kitchen and bathroom benchtops, and generally became available from the early 2000s, increasing in popularity over time.

⁷³ Answers to pre-hearing questions on notice, SafeWork NSW, 13 September 2019, p 1.

⁷⁴ Answers to questions on notice, SafeWork NSW, 31 October 2019, p 2.

- 2.5 According to the Australian Engineered Stone Advisory Group (AESAG), an industry group comprised of representatives from Caesarstone Australia, WK Quantum Quartz and Smartstone Australia, 'engineered quartz surfaces are an advanced solution for kitchen countertops, bathroom vanities, flooring, wall cladding and other internal applications'. As a product, it is used widely:

Quartz surfaces are in use today in millions of homes around the world, and in many environments that require the strictest standards of cleanliness and sterility, including the Starbucks Coffee chain in the US and the McDonald's chain in Australia.⁷⁵

- 2.6 Mr David Cullen, Managing Director of Caesarstone Australia, highlighted some of the qualities of manufactured stone which make it popular for bench tops: 'It is non-porous. It is scratch proof. It is easy to maintain. It gives all the attributes the consumer is after, including the look and feel'. In respect of Caesarstone branded products, Mr Cullen stated 'Consumers love our products because of the user maintenance'.⁷⁶
- 2.7 Cosentino, a Spanish producer and supplier of manufactured stone, explained that manufactured stone 'applications far beyond kitchen benchtops'. It added that 'the product's ability to deliver a sterile and dependable surface lends itself to a great many uses'.⁷⁷
- 2.8 In terms of the composition of manufactured stone, the committee was advised by the AESAG that it typically includes over 90 per cent quartz and high quality polymer resins and pigments.⁷⁸ Mr Mark Norman, General Manager, WK Quantum Quartz, explained that the make up is approximately 90 per cent quartz, 8-9 per cent resin and a small amount of pigment. He also stated that sometimes there can be the addition of a decorative product such as shell or mirror.⁷⁹
- 2.9 CDK Stone, an associate member of the AESAG, also provided evidence about the rapid growth in the manufactured stone market. It stated that in the past laminate benchtops were popular, but 'engineered stone wholesalers targeted mass builders and within a few years' approximately 80 per cent of kitchen benchtops were produced from engineered stone, 15 per cent from natural stone and the remainder other materials.⁸⁰

The manufactured stone industry

- 2.10 Generally, the manufactured stone industry is comprised of suppliers, fabricators and those who undertake installation and joinery work. The products themselves are manufactured overseas and imported by companies into Australia. Most of the supply comes from the United States of America, China, Israel, Vietnam and Europe.⁸¹

⁷⁵ Submission 13, Australian Engineered Stone Advisory Group, p 2.

⁷⁶ Evidence, Mr David Cullen, Managing Director, Caesarstone Australia, 15 November 2019, p 21.

⁷⁷ Submission 14, Cosentino Australia Pty Ltd, p 4.

⁷⁸ Submission 13, Australian Engineered Stone Advisory Group, p 2.

⁷⁹ Evidence, Mr Mark Norman, General Manager, WK Quantum Quartz, 15 November 2019, p 9.

⁸⁰ Submission 15, CDK Stone Pty Ltd, p 2.

⁸¹ Evidence, Mr Cullen, 15 November 2019, pp 8-9.

- 2.11 Key suppliers include Caesarstone, WK Quantum Quartz, Smartstone and Stone Ambassador, with these companies supplying approximately 70 per cent of engineered stone in the industry in Australia.⁸² These companies are all members of the AESAG.⁸³
- 2.12 According to Mr David Cullen, Managing Director of Caesarstone Australia, there are approximately 7000 fabricators employed directly in the industry nationally, with about 35 per cent of this total being New South Wales-based.⁸⁴
- 2.13 Suppliers in the industry provide manufactured stone to fabricators and kitchen and bathroom companies. Mr Cullen explained that there are over 1000 businesses operating in the industry, in addition to 'affiliated companies' and 'channel partners', for example, builders, designers and architects.⁸⁵
- 2.14 Mr Cullen also said that from an installation perspective, 'installation is controlled by fabricators', with approximately 50 per cent undertaken by employees and the other 50 per cent 'done by contractors, but controlled by fabricators'.⁸⁶

Silicosis

- 2.15 Silicosis is a serious, irreversible lung disease that causes permanent disability and can be fatal. It is caused by breathing in crystalline silica dust when workers cut, crush, drill, polish, saw, sandblast or grind materials that contain silica, such as manufactured stone.⁸⁷
- 2.16 When crystalline silica dust particles are deposited in lung tissue, inflammation and scarring is caused, thereby affecting the ability of the lungs to take in oxygen. As the illness progresses, workers experience shortness of breath, a severe cough and weakness.⁸⁸ In serious cases, it leads to the need for a lung transplant and/or can be fatal.⁸⁹
- 2.17 According to the Royal Australasian College of Physicians, there are three types of silicosis:
- acute silicosis – which is rare and results from exposure to very short term and very large amounts of silica
 - accelerated silicosis – caused by short term exposure to large amounts of silica

⁸² Evidence, Mr Cullen, 15 November 2019, p 2.

⁸³ See submission 13 Australian Engineered Stone Advisory Group, p 4 and Submission 16, Stone Ambassador Australia, p 1.

⁸⁴ Evidence, Mr Cullen, 15 November 2019, p 2.

⁸⁵ Evidence, Mr Cullen, 15 November 2019, p 2.

⁸⁶ Evidence, Mr Cullen, 15 November 2019, p 2.

⁸⁷ Safe Work Australia, *Crystalline silica and silicosis: Overview* (5 November 2019), <https://www.safeworkaustralia.gov.au/silica>

⁸⁸ Safe Work Australia, *Crystalline silica and silicosis: Overview* (5 November 2019), <https://www.safeworkaustralia.gov.au/silica>

⁸⁹ Evidence, Dr Susan Miles, Respiratory, Sleep and General Medicine Physician, representing the Lung Foundation and Thoracic Society of Australia and New Zealand, 16 September 2019, p 13.

- chronic silicosis – which results from long term exposure (often more than ten years) to low levels of silica.⁹⁰
- 2.18 Before focusing on accelerated silicosis, it is important to note that breathing in crystalline silica can lead to a range of other illnesses, including bronchitis, emphysema, lung cancer and kidney disease.⁹¹ Dr Susan Miles, Respiratory Clinician, also advised the committee that there is evidence that silica exposure can also lead to chronic obstructive pulmonary disease, autoimmune and rheumatologic conditions, Sjogren's Syndrome and scleroderma.⁹²
- 2.19 Throughout this report, where relevant, we refer to these wide range of illnesses as 'silica-related health conditions'.

Accelerated silicosis

- 2.20 This review stemmed from concerns that accelerated silicosis cases are increasing in the manufactured stone industry. As noted above, accelerated silicosis tends to occur from high levels of exposure to crystalline silica within a short period of time.
- 2.21 Several prominent medical professionals have stressed their concerns about a growing silicosis 'problem' within the stone industry. Australia's Chief Medical Officer, Professor Brendan Murphy, has described the re-emergence of silicosis cases as an 'epidemic'.⁹³
- 2.22 Other occupational and lung physicians have shared similar concerns. Dr Susan Miles, Respiratory Clinician, told the committee that 'silicosis is a national and international emergency' in the manufactured stone industry, particularly in terms of accelerated silicosis.⁹⁴
- 2.23 In the submission from the Lung Foundation of Australia and Thoracic Society of Australia and New Zealand, Dr Deborah Yates, an occupational physician, is quoted as saying 'I have never seen such severe cases of silicosis in my professional life'.⁹⁵
- 2.24 The media has also documented this issue, and highlighted cases of young men being diagnosed with accelerated silicosis, several of whom worked in the industry only for a short period. Some required lung transplants and others have lost their life to the disease.⁹⁶
- 2.25 On this issue, the Manufactured Stone Industry Taskforce, a taskforce convened by SafeWork NSW and comprised of key stakeholders, noted that what 'heightens' the alarm in terms of the

⁹⁰ Royal Australian College of Physicians, *Frequently Asked Questions – Accelerated Silicosis*, <https://www.racp.edu.au/advocacy/division-faculty-and-chapter-priorities/faculty-of-occupational-environmental-medicine/accelerated-silicosis/faqs>.

⁹¹ Safe Work Australia, *Crystalline silica and silicosis: Overview* (5 November 2019), <https://www.safeworkaustralia.gov.au/silica>.

⁹² Answers to questions on notice, Dr Susan Miles, Respiratory, Sleep and General Medicine Physician, Hunter Diabetes and Specialist Centre, 22 October 2019, p 1.

⁹³ Submission 4, Australian Institute of Occupational Hygienists, p 4.

⁹⁴ Evidence, Dr Miles, 16 September 2019, p 12.

⁹⁵ Submission 3, Lung Foundation of Australia and Thoracic Society of Australia and New Zealand, p 2.

⁹⁶ See Submission 4, Australian Institute of Occupational Hygienists, p 4.

exposure to silica dust is the 'relatively short latency period compared to other dust diseases'. The report noted that 'diagnosis of silicosis in manufactured stone workers is occurring for some in the first five to ten years of their working life'. It also said that 'for advanced silicosis, it is terminal with the only treatment being a lung-transplant'.⁹⁷

2.26 These concerns were echoed by all of the medical professionals that provided evidence to the committee.⁹⁸ In addition, Maurice Blackburn Lawyers highlighted the shorter latency period associated with accelerated silicosis cases, with workers being diagnosed at a younger age:

Traditionally workers who contracted silicosis did not develop significant disability for 20 to 30 years following their exposure to silica. This meant that many workers did not develop a disabling disease until late in their working lives, or often when they were already in retirement.

In contrast, workers in the artificial stone industry who develop Accelerated Silicosis on average tend to be in their 40s, although there have been many cases of workers diagnosed in their 20s and 30s.⁹⁹

2.27 Additionally, Maurice Blackburn Lawyers noted these factors which also show how accelerated silicosis cases are different to more typical silicosis cases:

- the duration of occupational exposure is generally shorter, with workers developing accelerated silicosis with less than 10 years of exposure to manufactured stone products, and some cases even as little as 4 years exposure
- the disease tends to 'progress faster than other forms of silicosis, leading to a poorer prognosis'.¹⁰⁰

2.28 On this last point, Maurice Blackburn Lawyers stated:

Traditional forms of silicosis tend to progress very slowly over many years. In some, cases there can be no discernible progression for years. This meant that most cases of silicosis were not immediately fatal, with many patients living for years with only moderate impairment.

Accelerated Silicosis on the other hand, as the name suggests, tends to progress more quickly, with some cases showing severe progression of disability in just a couple of years.¹⁰¹

2.29 The committee tried to ascertain whether the composition of manufactured stone products has changed over time and may be contributing to the nature of the silicosis cases emerging in the

⁹⁷ SafeWork NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, July 2019, p 4.

⁹⁸ See for example, Evidence, Dr Miles, 16 September 2019, p 15; Evidence, Dr Graeme Edwards, Occupational and Environmental Physician, representing the Royal Australian College of Physicians, and member, National Dust Diseases Taskforce, 16 September 2019, p 25 and Evidence, Dr Deborah Yates, Consultant Thoracic Physician and Conjoint Associate Professor, University of New South Wales, 16 September 2019, p 30.

⁹⁹ Submission 8, Maurice Blackburn Lawyers, p 5.

¹⁰⁰ Submission 8, Maurice Blackburn Lawyers, p 5.

¹⁰¹ Submission 8, Maurice Blackburn Lawyers, pp 5-6.

industry. In particular, there was discussion about whether the resins or pigments, along with the high concentrate of silica, could be a factor in explaining the re-emergence of silicosis cases.

- 2.30** Dr Miles was asked whether the issue is the quantum of the silica in the product or the nature of the crystals. She explained that more research is needed on this aspect, although she flagged that there are 'some theories that the resins, glues and adhesives within it may protect the fragments of silica from being broken down by the immune system and may make them more likely to cause disease'.¹⁰²
- 2.31** Manufactured stone suppliers were also questioned on this issue. Mr Cullen, Managing Director of Caesartstone, stated: 'We have had no evidence whatsoever that the resin causes any additional issue from a safety perspective'.¹⁰³ He maintained that their understanding is that 'it is a silica-based issue' and that the specific health effects 'are not related to anything else'.¹⁰⁴

Is manufactured stone the 'new asbestos'?

- 2.32** Throughout this inquiry, some parallels were drawn between the impacts of asbestos and manufactured stone. This section will outline some of the comparisons and key differences, mainly from a health perspective.
- 2.33** In terms of the products themselves – asbestos and manufactured stone – Dr Susan Miles highlighted that the similarities are that they are both less expensive and non-porous materials. Dr Miles stated that asbestos is 'very non-friable, flexible, heat-resistant and cheap' and manufactured stone 'has some characteristics that make it attractive to be used as widely as it has' too.¹⁰⁵
- 2.34** In terms of the health impacts though, the diseases caused by each of these products are different. Dr Miles explained the latency differences between silicosis and mesothelioma:

A heavy exposure will give you disease but often there is a longer latency with disease, with asbestosis taking 10 to 20 years to develop with heavy disease, plaques taking 10 years and mesothelioma taking 30 to 40 years with minimal exposure. By that time the patients are much older and many of them are not working and have other life-limiting illnesses.¹⁰⁶

- 2.35** In this regard, Dr Miles stated for silicosis: 'This is different. This is young people at the peak of their careers with dependents who thought they were going to live a long life but are not'.¹⁰⁷
- 2.36** In a similar vein, Dr Graeme Edwards, an occupational and environmental physician and national spokesperson for the Royal Australasian College of Physicians, said that in his opinion 'this is worse than asbestos because of the age at which these people are suffering'. He expanded:

¹⁰² Evidence, Dr Miles, 16 September 2019, p 12.

¹⁰³ Evidence, Mr Cullen, 15 November 2019, p 4.

¹⁰⁴ Evidence, Mr Cullen, 15 November 2019, p 10.

¹⁰⁵ Evidence, Dr Miles, 16 September 2019, p 15.

¹⁰⁶ Evidence, Dr Miles, 16 September 2019, p 15.

¹⁰⁷ Evidence, Dr Miles, 16 September 2019, p 15.

With asbestos and asbestos-related diseases it is affecting people at the end of their working life and into their retirement; they have had an opportunity to contribute. My youngest patient is 23 years of age. I have patients who have to contemplate what are they going to say to their eight-year-old daughter at Christmas time because they are dying.¹⁰⁸

- 2.37** Dr Jeremy McAnulty, Executive Director, Health Protection NSW, NSW Health, also reflected on the similarities and differences between asbestosis and silicosis, stating that both are 'tragic diseases ... related to occupational exposures'. He pointed out the difference in terms of the people exposed to the risk:

...[W]ith silicosis ... the risk is occupational and when you are exposed to levels of silica dust that creates that risk. When you are outside an industry and the home and there is no dust being generated I think that is a key difference with asbestosis where asbestos later on can become friable and people might be exposed during a home renovation and so on.¹⁰⁹

- 2.38** His colleague from NSW Health, Dr Richard Broome, Director of Environmental Health, contended though that in terms of managing silicosis it is not entirely helpful to draw analogies with asbestos:

Whilst that analogy has been drawn, I think there are certainly differences in what we know about the effects of asbestos versus the effects of silicosis and from the point of view of managing silicosis we need to focus on the science of what silicosis does and what we know about silicosis and how it can be managed and all those sorts of things. So that analogy—I know it is out there—but I do not necessarily think it helps us in terms of the appropriate management options.¹¹⁰

- 2.39** Given some of the parallels, some inquiry participants discussed whether asbestos controls should be applied to manufactured stone products. This question is examined in greater detail in chapter 4.

Secondary or 'bystander exposure'

- 2.40** The committee explored whether there is a risk of secondary exposure with silica dust, similar to the risks posed by asbestos.
- 2.41** Dr Susan Miles, Respiratory, Sleep and General Medicine Physician, advised the committee that there have been 'remarkably few studies on the exposures to the general public in relation to silica in workplaces'. She suggested that the risk of 'bystander' exposure may depend on the conditions in which the installer works or the operations in the fabrication factories:

For instance a stonemason or bystander working in a small poorly ventilated factory or building would have higher exposure than someone in a well ventilated large facility or

¹⁰⁸ Evidence, Dr Edwards, 16 September 2019, p 25.

¹⁰⁹ Evidence, Dr Jeremy McAnulty, Executive Director, Health Protection NSW, NSW Health, 2 October 2019, p 24.

¹¹⁰ Evidence, Dr Richard Broome, Director, Environmental Health, NSW Health, 2 October 2019, p 24.

cutting and cleaning up outdoors. In SafeWork NSW's experience some of the manufactured stone factories they visited were small and poorly ventilated.¹¹¹

- 2.42** Dr Miles added that in her experience some patients have showed her photographs of worksites being very dusty, and told her that dust is tracked into cars and taken home on their clothes. She noted that some groups that may be affected are those who work alongside installers or fabricators, such as carpenters, electricians and plumbers. As to partners though, who for example may wash dusty clothing, Dr Miles stated:

I would have thought that the risk would be fairly minimal as larger exposures are generally needed to cause disease. This is not the case with asbestos where a small exposure can lead to mesothelioma with a long latency of 30-40 years.¹¹²

- 2.43** While there may be limited evidence on the risks of secondary exposure to silica dust, Dr Miles suggested it would be an important area for further research. She concluded her response on this issue by stating:

My clinical impression is that bystanders may well be at risk depending on their proximity to the manufacture, processing and installation of manufactured stone and the work and safety practices. The risk of silica related diseases increases with duration and intensity of exposure to this product.¹¹³

Committee comment

- 2.44** Ordinarily, our oversight review of the Dust Diseases Scheme focuses more broadly on scheme operation and performance. This review was different in that it focused specifically on one area of concern – silicosis cases in the manufactured stone industry.
- 2.45** This was necessary given the continuing concerns medical professionals were raising with us about high levels of exposure to silica dust being experienced by manufactured stone workers. These concerns, along with increasing media attention, troubled us and we wanted to explore the issue further to assess what was happening in the industry, why the disease has re-emerged and what could be done to improve safety standards and the protection of workers.
- 2.46** Unfortunately, what this review has shown us is that we were right to be concerned. Since starting the review, silicosis cases have significantly increased in New South Wales, similar to the experience in other jurisdictions. While this will be discussed in detail in the next section, it is important to state upfront that all members of the committee are deeply troubled about what appears to be unfolding. The stories we have heard of young men being diagnosed with silicosis or other silica related lung conditions is tragic and sadly, completely avoidable.
- 2.47** The committee believes that this review has been critical in showing what the issues are in New South Wales, who is at risk and how safety and control measures need to be improved and strengthened. It has been constructive in identifying initiatives that will help to identify, control and manage silica related diseases, particularly within the stone industry.

¹¹¹ Answers to supplementary questions, Dr Susan Miles, Respiratory, Sleep and General Medicine Physician, Hunter Diabetes and Specialist Centre, 20 October 2019, pp 2-3.

¹¹² Answers to supplementary questions, Dr Susan Miles, 20 October 2019, p 3.

¹¹³ Answers to supplementary questions, Dr Susan Miles, 20 October 2019, p 3.

- 2.48 Given the importance of the issues at hand, we will continue to monitor these matters in future reviews. In particular, our next review of the Dust Diseases Scheme, in 2021, will review progress made against recommendations in this report.

Prevalence of silicosis

- 2.49 As noted in the Manufactured Stone Industry Taskforce's Final Report, it is unclear how many workers within the manufactured stone industry have been diagnosed with silicosis or other types of silica related lung disease.¹¹⁴
- 2.50 There is currently no system for mandatory notification of the disease, and while progress is underway to establish a register, at this stage it is not operating. While these measures will be discussed in chapter 6, this section will focus on what data is available to indicate prevalence of the disease within the manufactured stone industry.
- 2.51 Before considering the data, it is important to consider the size of the industry itself. As noted earlier, industry representatives have suggested that in New South Wales there are approximately 2500 to 3000 individuals engaged to work with manufactured stone products.¹¹⁵
- 2.52 However, icare noted that this data has not been independently validated and 'may not capture builders or other tradespeople who install manufactured stone products'. icare also stated that it is unable to provide specific data from the Australian Bureau of Statistics on this issue, as the manufactured stone industry does not have a specific statistical code.¹¹⁶

Number of silicosis cases

- 2.53 As this inquiry progressed, the number of silicosis cases rose. At the last hearing for the inquiry, on 11 February 2020, icare told the committee that in the period from 1 July 2019 to the end of January 2020, 70 new cases of silicosis or silica related diseases had been diagnosed.¹¹⁷
- 2.54 By comparison, in 2018-19, there were 40 certified cases of silicosis, 21 of which were related to manufactured stone. The others were related to silica exposure in other industries.¹¹⁸
- 2.55 Data provided by icare in Figure 1 shows the number of new cases of silicosis diagnosed over the last ten years, although this does not show how many were relevant to the manufactured stone industry.

¹¹⁴ SafeWork NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, p 7.

¹¹⁵ Answers to questions on notice, icare, 16 October 2019, p 5.

¹¹⁶ Answers to questions on notice, icare, 16 October 2019, p 5.

¹¹⁷ Evidence, Dr Nick Allsop, Group Executive, Care and Community, icare, 11 February 2020, p 2.

¹¹⁸ Answers to questions on notice, SafeWork NSW, 31 October 2019, p 2.

Figure 1 Number of new silicosis cases diagnosed over the last ten years¹¹⁹

Financial Year	New cases of silicosis
2010/11	11
2011/12	9
2012/13	10
2013/14	9
2014/15	9
2016/16	9
2016/17	6
2017/18	9
2018/19	40
2019/20 (to 31 January 2020)	70

2.56 Explaining the context for a rise in cases, Dr Allsop attributed the increase to an emphasis on increased education and awareness and a focus on screening of workers within the industry. He stated:

There are a number of changes that have happened ... Firstly, there is a much greater awareness of the risks of working with silica-containing products and a far greater focus on educating people and having them seek screening well before they present with any sort of symptoms. So in the past, prior to this increased awareness and focus, people would have presented for screening generally when they started to experience symptoms of the disease...

We are now picking up people who have no symptoms of the disease but have early markers of the disease. So early signs of scarring or nodules on the lungs. But they are not presenting with any degree of impairment or any symptoms and it is really pleasing that the awareness and the education campaigns are working and people are being reached and they are coming forward for screening and getting the information they need to make the right choices about their health. So yes, it is a large increase and impart it will be reflective of changes in industry practice and things like that, but it is also predominantly this education and awareness.¹²⁰

2.57 To further illustrate the connection between the number of new cases diagnosed and health screenings undertaken, icare provided the data in Figures 2 and 3.

2.58 Dr Allsop also provided information about the demographics of the 70 cases recently diagnosed. Of the total, about 70 per cent were from the manufactured stone industry, and the median age of the workers was around 50-60. One of the youngest individuals diagnosed was in their late 20s.¹²¹

2.59 In terms of impairment levels, the committee was advised that over the last year and a half, 95 of the total 110 people who presented with silicosis have had an impairment level of between 0 to 1 per cent. Five have had a 100 per cent impairment level, meaning they have a very serious health condition.¹²²

¹¹⁹ Answers to questions on notice, icare, 26 February 2020, p 1.

¹²⁰ Evidence, Dr Allsop, 11 February 2020, p 2.

¹²¹ Evidence, Dr Allsop, 11 February 2020, pp 3-4.

¹²² Evidence, Dr Allsop, 11 February 2020, p 4.

Figure 2 Number of health screenings over the last ten years¹²³

Financial year	Number of screenings
2010/11	3,205
2011/12	4,429
2012/13	4,517
2013/14	4,838
2014/15	4,124
2015/16	3,934
2016/17	2,773
2017/18	4,191
2018/19	5,283
2019/20 (to 31 January 2020)	3,023

Figure 3 The frequency of silica related disease per worker screened over the last ten years¹²⁴

Financial year	New case detection frequency
2010/11	0.3 per cent
2011/12	0.2 per cent
2012/13	0.2 per cent
2013/14	0.2 per cent
2014/15	0.2 per cent
2015/16	0.2 per cent
2016/17	0.2 per cent
2017/18	0.2 per cent
2018/19	0.8 per cent
2019/20 (to 31 January 2020)	2.3 per cent

- 2.60** In terms of the information provided by icare, there were limitations. The committee was advised that their data does not take into account workers diagnosed with silicosis who have not received screening or assistance through icare, such as stonemasons who are independent contractors.¹²⁵
- 2.61** Due to this, and based on broader concerns about the lack of comprehensive data and reporting mechanisms, stakeholders questioned whether there is an underreporting and detection of silica related conditions. In context, these concerns were raised prior to icare releasing its latest figures showing the additional 70 silicosis cases.
- 2.62** Ms Rita Mallia, President of the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU), highlighted that the data provided by icare cannot be relied on. She explained that icare statistics will not include those who are not deemed to be a 'worker', or cases where the disease has been caused by products outside of an employment relationship.¹²⁶

¹²³ Answers to questions on notice, icare, 26 February 2020, p 1.

¹²⁴ Answers to questions on notice, icare, 26 February 2020, p 2.

¹²⁵ Evidence, Dr Allsop, 20 September 2019, p 28.

¹²⁶ Evidence, Ms Rita Mallia, President, Construction, Forestry, Maritime, Mining and Energy Union, 16 September 2019, p 18.

- 2.63** The Lung Foundation of Australia and Thoracic Society of Australia and New Zealand had similar concerns. These organisations expressed a concern that the exact number of people affected by silicosis in New South Wales is unclear. Like other stakeholders, they contended that there was an under diagnosis of silicosis of workers in the manufactured stone industry in New South Wales, particularly given the experience in Queensland.¹²⁷
- 2.64** As at 31 December 2019, WorkCover in Queensland had completed health screening of 1,009 stonemasons and 195 of these were diagnosed with an occupational related lung disease. This included 26 workers who were diagnosed with progressive massive fibrosis, 159 diagnosed with silicosis and 10 diagnosed with other respiratory conditions.¹²⁸
- 2.65** The Lung Foundation of Australia and Thoracic Society of Australia and New Zealand suggested that there is an under diagnosis occurring due to workers being unaware of the opportunity or need for screening and the cost of screening services (discussed further in the next chapter).¹²⁹
- 2.66** Mr Ben Kruse, Legal and Industrial Officer, CFMMEU, also highlighted the number of diagnosed cases in Queensland, pointing out that this occurred after a case funding study. He stated that the 'New South Wales figures have gone from eight to nine to 40. That is without any attempt to implement mandatory reporting and without the case finding study'. Mr Kruse said that workers within his organisation have reported the figures should be much higher than 40 – 'It is just that we have not found them yet'.¹³⁰
- 2.67** Dr Miles, who represented the Lung Foundation of Australia and Thoracic Society of Australia and New Zealand at a hearing, stated that she suspects there will be 'a very high prevalence' of silicosis in Australia. In her view, 'we are seeing the tip of the iceberg':
- There is no question it is a dangerous product. We are going to see a huge burden of disease as a result of it—some in the short term with the accelerated silicosis, some in the much longer term. It is a sleeping giant; we are trying to wake it up and detect it.¹³¹
- 2.68** Given these concerns and the limitations with icare's data, the committee asked representatives from NSW Health whether they had any data to indicate the number of patients diagnosed with silicosis.

¹²⁷ Submission 3, Lung Foundation of Australia and Thoracic Society of Australia and New Zealand, p 2.

¹²⁸ Queensland Government, Workplace Health and Safety, Electrical Safety Office, Workers' Compensation Regulator, Work Cover Queensland, *Silicosis and support for stonemasonry workers and employers: Background to silicosis*, <https://www.worksafe.qld.gov.au/silicosis/background-to-silicosis>.

¹²⁹ Submission 3, Lung Foundation of Australia and Thoracic Society of Australia and New Zealand, p 2.

¹³⁰ Evidence, Mr Ben Kruse, Legal and Industrial Officer, Construction, Forestry, Maritime, Mining and Energy Union, 16 September 2019, p 18.

¹³¹ Evidence, Dr Miles, 16 September 2019, p 15.

- 2.69 Dr Jeremy McNulty, Executive Director, Health Protection, NSW Health, advised that he had looked at trends in terms of hospital admissions for silicosis. The data showed a 'decline in the total number of hospital admissions where silicosis was the primary or secondary diagnosis between 2005 and 2018'.¹³² See Figures 4 and 5 below.

Figure 4 Total number of admissions to NSW hospitals where silicosis was the primary or secondary diagnosis, 2005-2018¹³³

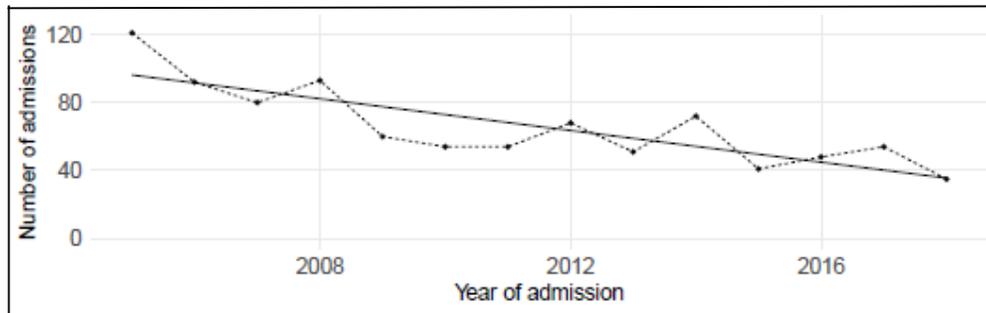
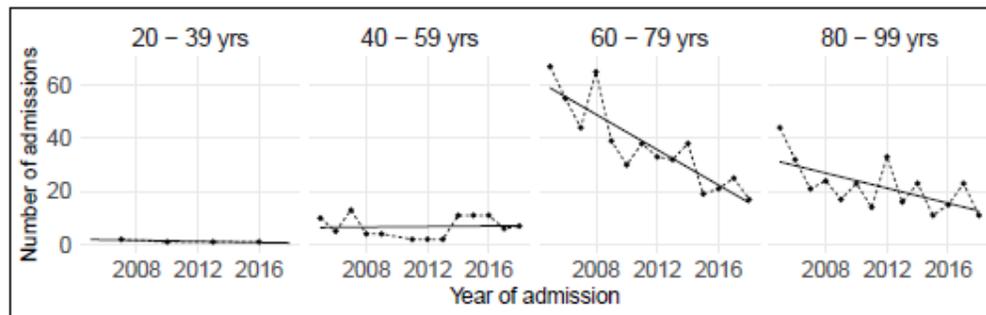


Figure 5 Number of admissions to NSW hospitals where silicosis was the primary or secondary diagnosis by age-group, 2005-2018¹³⁴



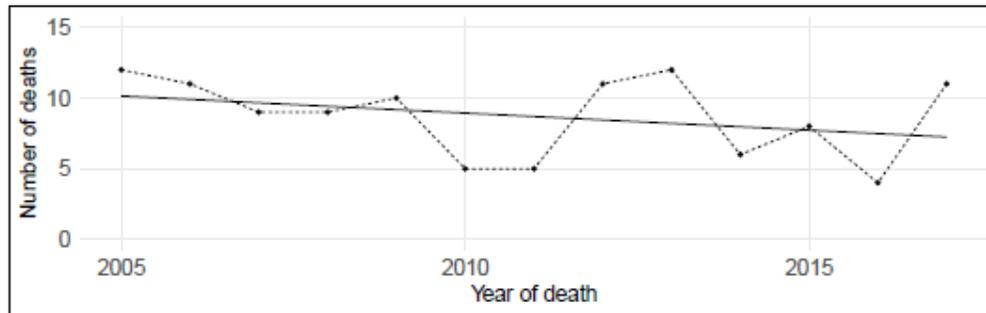
- 2.70 Data from Health NSW also indicated a decline in the number of deaths where silicosis was an underlying or contributing cause between 2005 and 2017. See Figure 6 below.

¹³² Health Protection NSW, *Hospital admissions and deaths from silicosis in NSW*, 1 October 2019, Answers to questions on notice, NSW Health, 31 October 2019, Attachment A, p 2.

¹³³ Health Protection NSW, *Hospital admissions and deaths from silicosis in NSW*, p 2.

¹³⁴ Health Protection NSW, *Hospital admissions and deaths from silicosis in NSW*, p 3.

Figure 6 Total number of deaths where silicosis was an underlying or contributory cause, 2005-2017¹³⁵



- 2.71 There was no data provided indicating the trends from 2018 onwards. Health NSW also qualified the data it did provide, noting that 'hospitalisation and death represent the more severe end of the spectrum of silicosis and so do not capture people who have the disease and who have not been admitted to hospital or died'. Further, it relies on coding to be accurate when people are admitted to hospital for the disease.¹³⁶
- 2.72 In terms of trying to accurately identify the number of silicosis cases in New South Wales, several suggestions were put forward by stakeholders, including undertaking a case finding study, creating the requirement for mandatory notification when the disease is diagnosed and the establishment of a register. These suggestions will be discussed in chapter 6.
- 2.73 More broadly, Safe Work Australia informed the committee that one of their current projects is data investigation and collation, which aims to determine whether a combination of datasets can more accurately identify silicosis cases. Ms Jackii Shepherd, Director, Occupational Hygiene Policy, Safe Work Australia, advised that work is currently being done with the Australian Institute of Health and Welfare, the Australian Bureau of Statistics and the Commonwealth Department of Health to pursue a more comprehensive approach to data linkage.¹³⁷

Committee comment

- 2.74 It was challenging during this inquiry to get a complete picture of how many workers in the manufactured stone industry have been diagnosed with a silica related health condition. The data provided from both icare and Health NSW had limitations. It is the committee's view that the limitations and gaps in the information and data is of particular concern. Complete, accurate and up-to-date information and data is fundamental in enabling work health and safety threats to be properly addressed in a timely way

¹³⁵ Health Protection NSW, *Hospital admissions and deaths from silicosis in NSW*, p 5.

¹³⁶ Health Protection NSW, *Hospital admissions and deaths from silicosis in NSW*, p 1.

¹³⁷ Evidence, Ms Jackii Shepherd, Director, Occupational Hygiene Policy, Safe Work Australia, 11 February 2020, p 26.

- 2.75** The icare data only shows cases where individuals have used icare's screening services, and the data from Health NSW was not as current as we had hoped, and did not indicate cases where people were in the early stages of a silica related disease. The data from Health NSW also did not provide a breakdown by industry, which makes it impossible to know whether the silicosis cases captured are from the stone industry or not.
- 2.76** These limitations aside, the latest figures released from icare were nothing short of alarming. Seventy new cases were diagnosed between July 2019 and January 2020, 70 per cent of which were related to working with manufactured stone. These numbers, and the sharp increase we have witnessed over the last few years, is evidence of a significant problem within the industry.
- 2.77** Unfortunately, these figures may continue to rise, particularly as health screening continues and education and awareness increases. The challenge we have is capturing those currently not being identified and reported – the independent contractors who are not aware of the issue, the workers not being sent for health screening by their employers, and the workers who have left the industry to later present to local GPs with lung concerns.
- 2.78** Addressing these gaps, and implementing solutions to improve the identification, management and reporting in relation to silica related diseases, is absolutely critical. Given this, we expect that our report will spur New South Wales further forward in responding to this issue.

Chapter 3 Medical screening, assessment and support

This chapter will consider the medical screening process generally used to diagnose silicosis. In particular, it will discuss concerns about the effectiveness of existing screening processes. The chapter will also discuss the support available if individuals are diagnosed with the disease.

Health monitoring

- 3.1** Under current work health and safety (WHS) regulations which recognise crystalline silica as a Schedule 14 hazardous chemical, employees who work with crystalline silica must be offered regular health monitoring by their employer if there are significant health risks. Guidelines from SafeWork Australia recommend this screening be undertaken on a yearly basis.¹³⁸
- 3.2** Employers can choose to have their workers undergo health monitoring either at the icare Dust Diseases Screening Clinic in Sydney CBD, through the icare Lung Screen mobile respiratory unit or through a recommended locally based provider.¹³⁹
- 3.3** As shown in the previous chapter, 4,191 screenings for silica/asbestos were undertaken in 2017/18, 5,283 in 2018/19 and 3,023 since 1 July 2019 and 31 January 2020.¹⁴⁰
- 3.4** In terms of the number of screenings undertaken by the Lung Bus, icare advised that it completed 1,858 screenings in 2017/18, 2,875 screenings in 2018/19 and 1,728 screenings since 1 July 2019.¹⁴¹

The screening process

- 3.5** The committee heard that the silicosis screening process which has been used by icare Dust Diseases Care for the last 20 years involves three steps:
- an x-ray and lung function test
 - a review of that information, including a report, by a qualified radiologist with experience in dust diseases
 - a computed tomography (CT) scan if an anomaly is detected.¹⁴²
- 3.6** In evidence, Dr Susan Miles, Lung Foundation Australia and Thoracic Society of Australia and New Zealand, explained in more detail how this process works in practice:

At the moment icare Dust Diseases Care does an initial screening—in some cases at the Pitt Street practice or with the bus coming throughout regional New South Wales—which involves a chest X-ray and lung function tests and does include what is called

¹³⁸ Evidence, Dr Chris Colquhoun, Chief Medical Officer, icare, 11 February 2020, p 8.

¹³⁹ Answers to pre-hearing questions, icare, 12 September 2019, p 3.

¹⁴⁰ Answers to questions on notice, icare, 26 February 2020, p 1.

¹⁴¹ Answers to questions on notice, icare, 26 February 2020, p 7.

¹⁴² Evidence, Dr Nick Allsop, Group Executive, Care and Community, icare, 20 September 2019, pp 22 and 23.

diffusing capacity which is a measure of oxygen into the bloodstream and lung size, which we would recommend. It does include a detailed occupational history and assessment by a clinician with expertise in the field. They are not respiratory physicians. That is what is initially provided for all patients with dust diseases that are compensable and covered by that program but then there is a second stage. If patients are identified by that as possibly having a disease or at high risk for a disease, they proceed on, either to be referred back to their GP for follow-up and referral to a respiratory physician or referred on for a CAT scan, paid for by the organisation, and full lung function tests. The patient will receive a letter saying that they do or do not possibly have disease and that they need further investigation, as will their local doctor.¹⁴³

- 3.7** However, several inquiry participants expressed concern about this process in light of recent evidence regarding the false negative rate associated with screening for silicosis using chest x-rays. For example, in its submission to the review, the Royal Australasian College of Physicians informed the committee of recent medical evidence:

There is now a significant body of medical information from more recent case-based experience in Queensland, South Australia and Victoria highlighting the false negative rate of chest x-rays used to assess workers exposed to the very high levels of respirable silica dust generated when fabricating engineered stone.¹⁴⁴

- 3.8** At the hearing, Dr Graeme Edwards, Occupational and Environmental Physician, Royal Australasian College of Physicians, expanded on this evidence, telling the committee that 'in this particular cohort of individuals, the chest x-ray is falsely reported as negative in over 40 per cent of cases'.¹⁴⁵ Dr Edwards also noted that the false negative rate of 40 per cent was the case even using a B reader system, which involves an independent reading of x-ray results by a second or subsequent radiologists:

The first read is done by the assessing radiologist. Then there is a B read, a second read that is done independent of the initial read and then, depending upon the concurrence between those two reads as to whether it goes on to a third, fourth or even a fifth read as necessary to get a considered opinion as to what is the actual characterisation of the radiology.

So the B reading process was developed to improve reliability and consistency of the radiology reports. It is an internationally accepted credential process. ... What we know is that even when you have highly qualified and experienced radiologists reading those chest x-rays, four out of 10 are wrong when you compare it with the findings on high resolution CT scan.

¹⁴³ Evidence, Dr Susan Miles, Respiratory, Sleep and General Medicine Physician, representing the Lung Foundation Australia and Thoracic Society of Australia and New Zealand, 16 September 2019, p 13.

¹⁴⁴ Submission 6, The Royal Australasian College of Physicians, p 4.

¹⁴⁵ Dr Graeme Edwards, Occupational and Environmental Physician, representing the Royal Australasian College of Physicians, and member, National Dust Disease Taskforce, 16 September 2019, p 30.

3.9 In this context, the committee also heard that the icare Dust Diseases Care Lung Bus does not have a B reader, meaning that the false negative rate associated with silicosis screening x-rays performed on the bus may potentially be higher than 40 per cent.¹⁴⁶

3.10 Stakeholders highlighted that the consequence of this high false negative rate was that workers with silicosis who are screened using a chest x-ray, including those screened on the Lung Bus, may simply not be identified. The committee heard, for example, that:

- 'Patients are being told that they do not have silicosis, based on normal basic lung function tests and a chest X-ray, which is all the occupational screening some places provide. That is not correct'.¹⁴⁷
- '[A] significant number of asymptomatic at-risk artificial stone workers will fall through the cracks in spite of all steps that may be taken to screen them at a point in time'.¹⁴⁸

3.11 In terms of alternatives to the use of chest x-rays as the primary silicosis screening tool, the committee heard evidence from the medical profession that high-resolution CT scans screen far more accurately and is now the preferred screening method. For example, Dr Deborah Yates, Consultant Thoracic Physician and Conjoint Associate Professor, University of New South Wales, commented that '[t]he high-resolution CT scanner is far superior and is the modern technology now'.¹⁴⁹ Similarly, Dr Miles stated that:

No patient should be told that they do not have silicosis unless they have had a proper assessment with a high-resolution CAT scan, a detailed occupational medicine history, a good clinical examination and formal laboratory pulmonary function tests.¹⁵⁰

3.12 Indeed, this view is consistent with the position of The Royal Australian and New Zealand College of Radiologists (RANZCR), who also acknowledged that chest x-rays are failing to reliably detect lung diseases among stonemasons. Reflecting on a preliminary review of data from Queensland, the RANZCR noted:

Preliminary review of data from Australian centres caring for workers with engineered stone related lung disease has found that chest x-rays are failing to reliably detect disease (2,4). In one cohort of Queensland workers 43% with ILO [International Labour Organisation] classified normal chest x-rays had disease visible on CT. In the same cohort bilateral progressive massive fibrosis opacities was only visible on chest x-ray in 64% of workers with this finding on CT (4). A range of interstitial lung abnormalities have been identified on CT in engineered stone workers, including subtle findings such as small ground glass attenuation nodules. The relationship of some of the findings to morbidity and outcomes is uncertain.¹⁵¹

¹⁴⁶ Evidence, Dr Edwards, 16 September 2019, p 32; Evidence, Dr Deborah Yates, Consultant Thoracic Physician and Conjoint Associate Professor, University of New South Wales, 16 September 2019, p 32.

¹⁴⁷ Evidence, Dr Miles, 16 September 2019, pp 12-13.

¹⁴⁸ Submission 8, Maurice Blackburn Lawyers, p 10.

¹⁴⁹ Evidence, Dr Yates, 16 September 2019, p 31.

¹⁵⁰ Evidence, Dr Miles, 16 September 2019, p 13.

¹⁵¹ The Royal Australian and New Zealand College of Radiologists, Silicosis Position Statement – *Imaging of Occupational Lung Disease*, 4 October 2019, <https://www.ranzcr.com/college/document-library/silicosis-position-statement>, p 4.

- 3.13** Given this, the RANZCR stated that its position is that CT is the preferred screening process for lung diseases caused by silica exposure:

CT has replaced the chest x-ray in the diagnosis of non-occupational diffuse lung diseases and has been recommended for use in occupational lung diseases (5,6). While historically chest x-ray has been the primary imaging modality used to detect lung disease due to silica exposure, CT has a higher sensitivity for detecting early disease, and greater accuracy in characterising the patterns of disease (5,6). For these reasons, and in the context of the findings described in Australian workers, CT of the chest is strongly recommended as the primary imaging modality to be used for screening exposed workers.¹⁵²

- 3.14** In addition, Mr Jonathan Walsh, Principal, Maurice Blackburn Lawyers, told the committee that from his perspective as a lawyer specialising in asbestos and dust diseases, high-resolution CT scans should be used as the primary method to accurately screen for silicosis:

We often liken, at least from the legal perspective, a chest X-ray as a prehistoric way in which to basically identify general disease. We often advise our clients to obtain a high-resolution CT scan as almost a first point in the evidence gathering process from the medical side of things because that is the best method to detect the nature and extent of disease at that point.¹⁵³

- 3.15** In terms of barriers to implementing this technology to screen for silicosis, Dr Edwards drew attention to the fact that 'chest X-rays are embedded in the current regulatory framework of the model laws, so it is in the legislation that that is what you have to do'.¹⁵⁴ It was also acknowledged that high resolution CT scanning technology is still evolving, with low dose, ultra-low dose and standard dose scans available, exposing patients to different levels of radiation.¹⁵⁵

- 3.16** In this context, the committee heard from Dr Miles that 'radiation doses have been significantly reduced with increasing sophistication of CAT scanning machines',¹⁵⁶ with Dr Yates commenting that ultra-low dose high-resolution CT scans are now available 'which have a much, much lower dose and it is practical to actually recommend and use those in Australia at the moment'.¹⁵⁷

- 3.17** When questioned about the effectiveness of the silicosis screening process used by icare, Dr Nick Allsop, Group Executive, Care and Community, icare, acknowledged that he had heard mention of the 40 per cent false negative rate in the inquiry but questioned its validity in the New South Wales context:

¹⁵² The Royal Australian and New Zealand College of Radiologists, *Silicosis Position Statement – Imaging of Occupational Lung Disease*, 4 October 2019, <https://www.ranzcr.com/college/document-library/silicosis-position-statement>, p 4.

¹⁵³ Evidence, Mr Jonathan Walsh, Principal, Maurice Blackburn Lawyers, 16 September 2019, p 41; Ms Joanne Wade, NSW Committee, Australian Lawyer Alliance, 16 September 2019, p 41.

¹⁵⁴ Evidence, Dr Edwards, 16 September 2019, p 31.

¹⁵⁵ Evidence, Dr Edwards, 16 September 2019, p 31.

¹⁵⁶ Evidence, Dr Miles, 16 September 2019, p 13.

¹⁵⁷ Evidence, Dr Yates, 16 September 2019, p 31.

I have certainly heard that number. I have not been provided with any evidence to support that figure and we would certainly question the validity of it. We do not believe that we are missing that number of cases. As I said, the screening process is very detailed. We have three sets of eyes going over everything. If there is even a trace of an anomaly the person goes for CT scanning. I am reasonably confident that we are not missing anywhere near that number of cases.

3.18 Subsequently, in response to a question taken on notice, icare stated that it assumed the claim that x-rays miss 40 per cent of silicosis cases was based on a recent scientific letter which outlined the findings of a review of chest x-ray reports for stonemasons using International Labour Organisation standards.¹⁵⁸

3.19 icare contended that this review 'did not examine the images themselves' and the reports were 'prepared by radiologists who do not specialise in detecting dust diseases and not reviewed by a senior respiratory physician'. Expanding on the review, and how screening process in New South Wales are different, icare stated:

The retrospective review was undertaken in Queensland, which at the time, utilised a screening process which was different to NSW, using different imaging service providers throughout Queensland ... This may affect image quality as well as interpretation and reporting. In NSW, the majority of silicosis screening is provided centrally by icare, providing a specialised lung screening service that looks only for dust diseases. We contract all radiology to one senior respiratory physician for secondary review, enabling a highly specialised service with multiple review points.¹⁵⁹

3.20 icare also advised the committee that guidance for screening processes is provided by Safe Work Australia and that the screening process, which uses chest x-rays as a screening tool, is endorsed by peak bodies nationally including the Royal Australian College of Physicians, the Australasian Faculty of Occupational and Environmental Medicine and international bodies such as the National Institute for Occupational Safety and Health US and the Health and Safety Executive UK.¹⁶⁰

3.21 In terms of whether chest x-rays should be replaced by high-resolution CT scans to screen for silicosis, icare initially expressed some caution with this proposal. In the Chief Executive Officer's view, expressed on 20 September 2019, there had been 'no combined call from any of the royal colleges around changing the procedure'.¹⁶¹ However, Dr Colquhoun made clear that icare was open to this course of action if consensus was reached:

From a CT scanning point of view, if the relevant workplace health and safety regulator, the Royal Australasian College of Physicians and/or the other peak bodies were to endorse that then we would without a doubt be able to implement it.¹⁶²

¹⁵⁸ Answers to questions on notice, icare, 16 October 2019, p 1.

¹⁵⁹ Answers to questions on notice, icare, 16 October 2019, p 1.

¹⁶⁰ Answers to questions on notice, icare, 16 October 2019, p 1.

¹⁶¹ Evidence, Mr John Nagle, Chief Executive Officer and Managing Director, icare, 20 September 2019, p 25.

¹⁶² Evidence, Dr Chris Colquhoun, Chief Medical Officer, icare, 20 September 2019, p 23.

3.22 This position changed to some extent, when the committee was advised on 11 February 2020 that icare were 'pre-empting' some changes to SafeWork Australia guidelines on this issue. Dr Colquhoun stated:

...we are pre-empting proactively some changes to SafeWork Australia guidelines—they are currently in draft—that states that any worker in the manufactured stone industry who has been working in that occupation for three or more years should immediately go to a high-resolution CT scan as a screening method. We have implemented that as of this year.

3.23 Subsequent to Dr Colquhoun's appearance at the February hearing, icare clarified that since early February 2020 it has been referring workers with a minimum three year exposure to silica or who have a history of high exposure (for example, working with manufactured stone products and dry cutting) for high resolution CT scanning as part of the initial diagnostic process.¹⁶³

3.24 This approach is consistent with the revised guidelines published by SafeWork Australia on 14 February 2020 in the *Crystalline silica health monitoring guide*.¹⁶⁴

3.25 In terms of having high resolution CT scanning in the first instance, Dr Colquhoun explained how this might work in practice and what the challenges are in terms of having this technology on the lung bus:

We have pre-empted that decision to try to put an index of exposure risk around what sort of potential silica load would indicate going to CT. Various people have put comments around that; some people would say three years would be an appropriate time of exposure to go straight to CT. That was the direct answer to that particular point. Longer term, one of the real questions from the lung bus point of view is how can that sort of technology be accessed by the regional and remote areas in New South Wales that we visit. This new process had been implemented by icare, so the next stage will obviously be offering those workers CT scans in their regions.¹⁶⁵

3.26 On this point, the committee was told that high-resolution CT scan technology was already in use on buses in the United States.¹⁶⁶

3.27 Early in the inquiry, icare's Chief Executive Officer, Mr John Nagle, advised that icare would 'happily embrace' this technology, including on the Lung Bus, once there is evidence from peak bodies that this was the best screening tool.¹⁶⁷

3.28 However, Dr Allsop explained that icare has since investigated the issue and identified difficulties in providing the technology on a 'mobile platform':

We have investigated that further on the advice that we have from senior people in the college of radiologists is that it is not possible to keep such a device calibrated on a mobile platform. Yes, if you are taking it somewhere and you have the time to set up

¹⁶³ Answers to questions on notice, icare, 26 February 2020, p 13.

¹⁶⁴ SafeWork Australia, *Crystalline silica health monitoring guide*, p 7.

¹⁶⁵ Evidence, Dr Colquhoun, 11 February 2020, p 11.

¹⁶⁶ Evidence, Dr Yates, 16 September 2019, p 32.

¹⁶⁷ Evidence, Mr Nagle, 20 September 2019, p 25.

and calibrate and then do the screening thereafter and then move it again. If it is going to stay in one place for a long period of time and then be moved—sure. But if you are putting on a bus and driving it around, the calibration is just not possible at this stage.¹⁶⁸

3.29 Instead, icare is exploring the possibility of 'having a network of CT scanners across New South Wales'. Dr Allsop stated that this would ensure that for those in regional or remote areas, access to CT scanning facilities is 'within a reasonable proximity'.¹⁶⁹

3.30 Dr Allsop also stated that 'the approach we have adopted is to absorb the cost of CT screening for any worker that goes down that path'.¹⁷⁰

Access to screening services

3.31 Although there is an obligation for employers to provide health monitoring, the committee heard that the cost of accessing screening services is a concern. It also heard that some workers fear the testing process, given the implications the outcome can have on their employment and health.

3.32 In terms of costs for screening, employers who have their staff screened through icare for silicosis pay a subsidised rate of approximately \$100 per worker. However if an employer is served an improvement notice by SafeWork NSW, for example, for not complying with work health and safety standards in terms of minimising exposure to silica dust:

- the screening will be free of charge for small business with less than 30 employees
- the screening will be half the standard cost for businesses with over 30 employees (approximately \$50 per worker).¹⁷¹

3.33 If an individual worker accesses screening through icare independently of their employer, the worker is not charged.¹⁷² The committee was also advised by Dr Nick Allsop, Group Executive, Care and Community, icare, that a subcontractor can also access the screening provided by icare if they were an employee at some stage and believe they have a work related exposure.¹⁷³

3.34 Some stakeholders raised concerns in relation to the costs associated with screening services. The Lung Foundation of Australia and the Thoracic Society of Australia and New Zealand recommended that for all fabrication workshops where 'dust related notices' have been served there be free screening for workers.¹⁷⁴

3.35 The Australian Lawyers Alliance contended that all employees in the manufactured stone industry should be offered free lung screening for the first round of screening.¹⁷⁵ Likewise, the

¹⁶⁸ Evidence, Dr Nick Allsop, Group Executive, Care and Community, icare, 11 February 2020, p 11.

¹⁶⁹ Evidence, Dr Allsop, 11 February 2020, p 11.

¹⁷⁰ Evidence, Dr Allsop, 11 February 2020, p 11.

¹⁷¹ Answers to questions on notice, icare, 16 October 2019, p 6.

¹⁷² Answers to questions on notice, icare, 16 October 2019, p 6.

¹⁷³ Evidence, Dr Allsop, 20 September 2019, pp 34-35.

¹⁷⁴ Submission 3, Lung Foundation of Australia and Thoracic Society of Australia and New Zealand, p 3.

¹⁷⁵ Submission 10, Australian Lawyers Alliance, p 4.

- Australian Engineered Stone Advisory Group called for the government to fund the cost of silicosis testing for all workers who are currently, or have been, exposed to crystalline silica as a consequence of being in the industry.¹⁷⁶
- 3.36** Relevant to this, Maurice Blackburn Lawyers highlighted to the committee that in both Queensland and Victoria, the government funded the health screening available for stonemasons. Approximately 810 stonemasons in Queensland registered for health screening, at a cost to the government of about \$3-4 million. In Victoria, free health screening is in the process of being provided to 1400 stonemasons.¹⁷⁷
- 3.37** In terms of whether it is possible for icare to offer universal free screening to all stonemasons, regardless of whether workers are independent contractors or employees, Dr Allsop stated that the cost of funding would be 'unclear at this stage...as the number of self-employed people in the industry is yet to be confirmed'. He noted that the cost of providing health monitoring services in 2018/19 was approximately \$5.216 million. He also reflected on the potential challenges in 'obtaining sufficiently skilled resources to assess the results of screening for dust diseases'.¹⁷⁸
- 3.38** The committee also heard that some workers are scared to be screened, as they fear the implications on their employment and family if they are diagnosed with the disease. This was clear when the committee visited icare's testing service in the city and spoke to a worker who had been through the testing process. During a hearing, Mr Nagle acknowledged that one of the difficulties is that 'people are scared of the screening, scared of what the outcome will be'.¹⁷⁹
- 3.39** He also added that the other difficulty icare has in terms of awareness about silicosis and getting screened is reaching 'tradies'. He noted that 'a self-employed tradesman unfortunately is not covered by our scheme'.¹⁸⁰
- 3.40** On the issue of reaching installers, who can often be independently contracted, the committee asked icare if it has a list of installers. Dr Allsop replied:

This is where the collaboration with SafeWork NSW comes in. It has identified the fabricators in New South Wales and a lot of the installers are tied to the fabricators, so we are using those channels and that relationship with SafeWork NSW to try to reach out further.¹⁸¹

Committee comment

- 3.41** The committee was troubled by evidence it received in this inquiry that there may be a 40 per cent false negative rate with x-ray results used in the silicosis screening process.

¹⁷⁶ Submission 13, Australian Engineered Stone Advisory Group, p 2; Submission 16, Stone Ambassador, p 2.

¹⁷⁷ Submission 8, Maurice Blackburn Lawyers, p 9.

¹⁷⁸ Answers to questions on notice, icare, 16 October 2019, p 6.

¹⁷⁹ Evidence, Mr Nagle, 20 September 2019, p 30.

¹⁸⁰ Evidence, Mr Nagle, 20 September 2019, p 30.

¹⁸¹ Evidence, Dr Allsop, 11 February 2020, p 6.

- 3.42 It is concerning that some silicosis cases may not have been appropriately identified up until now, given the latest guidelines issued by SafeWork Australia which recommend that workers with a minimum three year exposure to silica or those who have a history of high exposure undertake high resolution CT scanning as part of the initial diagnostic process.
- 3.43 While we are pleased to see that this change in process is being implemented, we are concerned about the number of stonemasons that have already been screened and assessed without having a CT scan.
- 3.44 The committee therefore recommends that, in light of Safework Australia's revised guidelines in the *Crystalline silica health monitoring guide*, icare inform all manufactured stone workers previously screened that CT scanning is now part of the initial diagnostic process. Further, the committee recommends that icare conduct an urgent review of all cases of manufactured stone workers previously screened for silica-related health conditions, in order to identify and prioritise those who should be sent for CT scanning as soon as possible.

Recommendation 1

That icare, in light of SafeWork Australia's revised guidelines in the *Crystalline silica health monitoring guide*:

- inform all manufactured stone workers previously screened that CT scanning is now part of the initial diagnostic process
- conduct an urgent review of all cases of manufactured stone workers previously screened for silica-related health conditions, in order to identify and prioritise those who should be sent for CT scanning as soon as possible.

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- 3.45 The committee also encourages icare to investigate further the potential for the lung bus to provide CT scanning in the future, in addition to other measures which will enable regional and remote workers to access CT scanning facilities.
- 3.46 In terms of the cost of screening services, we acknowledge that stakeholders are calling for screening to be free. We also note that other jurisdictions have provided free screening for stonemasons. The committee notes that the term 'stonemason' is too narrow in its application. The correct term to be used, to ensure the appropriate capture of persons engaged in the manufactured stone industry, is 'manufactured stone worker'. This term is intended to include suppliers, fabricators and installers of manufactured stone.
- 3.47 The committee agrees that there should be a free screening service for all workers within the manufactured stone industry. We believe that this service should be offered and actively promoted over the next 12 months. Thereafter, exiting and new workers in the manufactured stone industry must be tested regularly.

Recommendation 2

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.

- 3.48 We accept the evidence from the radiologists that low dose high resolution CT scanning is the preferred diagnostic measure for any person who has had significant exposure to silica dust from manufactured stone. As such we believe that the regulations should change to provide that low dose high resolution CT scanning, and not a chest x-ray, be the standard diagnostic tool for any such person.

Recommendation 3

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.

Support for workers diagnosed with silicosis

- 3.49 The committee received evidence about the importance of support being provided to individuals diagnosed with silicosis. There were some concerns that individuals may continue working in the industry after diagnosis as they feel there is no other option.

Retraining, financial and non-financial supports

- 3.50 When a worker is diagnosed with a silica related condition, they can seek support from icare, for example, to cover expenses associated with treatment or seek compensation depending on their level of impairment.
- 3.51 The committee heard, however, about the challenges workers face once receiving a diagnosis, particularly in terms of deciding whether to find alternate employment in order to remove the risk of further exposure to silica dust.
- 3.52 Dr Susan Miles, a clinician who has a number of patients with silicosis, told the committee that some workers leave the industry and others return as 'they have no other prior skills and trades'. Dr Miles explained how she works with employers to ensure workers returning to their job are kept safe:

I do my very best, with the help of my occupational and safety and hygiene colleagues, to keep them as safe as possible. We have a negotiation, with their permission, with the workplace as to what they can and cannot do and what protection needs to be offered and what the duty of care is from their employer.¹⁸²

- 3.53 Dr Miles also stated that there should be support for workers diagnosed with silicosis to help them retrain if they wish to leave the industry. She also suggested that there should be support groups established to specifically support workers within the manufactured stone industry who are diagnosed with the disease.¹⁸³

¹⁸² Evidence, Dr Miles, 16 September 2019, p 14.

¹⁸³ Evidence, Dr Miles, 16 September 2019, p 14.

3.54 Dr Yates also agreed that there needed to be more support for those diagnosed with silicosis, including greater financial assistance:

One of the problems is that these people are stuck in this situation because they have wives and children to support and there are no other jobs that they can go to. What they need is a financial bridge to a different job. That is something that could be relatively easy to implement. What it does require is money. But this is absolutely key.¹⁸⁴

3.55 One of the limitations to providing financial support is that there is a requirement for a worker to meet the eligibility criteria for assistance, particularly in terms of their level of impairment. Dr Graeme Edwards explained that the 'definition within the statutory entitlements part of the Scheme relies on them [the worker] having either an impairment or advanced radiological changes on their chest x-rays'. He suggested this has been problematic given concerns with the accuracy of chest x-rays (see paragraph 3.8).¹⁸⁵

3.56 icare advised that workers who can no longer work as a result of a dust disease may be eligible for weekly compensation benefits but the level of support they receive will vary depending on their level of disability, the portion of dust exposure attributable to employment as a worker in New South Wales and post injury earnings (in the case of partially disabled workers who are undertaking suitable duties).¹⁸⁶

3.57 icare, under the Dust Diseases Scheme, will also reimburse expenses relating to medical treatments and other supports that relate to a worker's dust diseases, for example, doctors' appointments and medications, therapeutic treatments, counselling and psychological support, home modifications, domestic assistance and personal care and home nursing.¹⁸⁷

3.58 icare also advised that funding for occupational rehabilitation and retraining, along with peer to peer support services, is available to workers disabled with a dust diseases.¹⁸⁸

3.59 When appearing before the committee, Dr Colquhoun, explained that generally when a worker is diagnosed with silicosis or a silica related diseases, 'removal from ongoing exposure is generally recommended'. He noted that this decision 'cannot always be taken lightly', and that workers will consider their 'financial future, their health and a number of other factors'.¹⁸⁹

3.60 Dr Colquhoun explained that 'a multidisciplinary approach needs to be taken with all relevant stakeholders brought into the room to discuss that particular worker and their options ongoing'.¹⁹⁰

3.61 Dr Allsop explained that icare is providing vocational support for workers who want to transition out of the industry, in addition to counselling and support.¹⁹¹ In terms of numbers accessing vocational support, Dr Allsop advised:

¹⁸⁴ Evidence, Dr Yates, 16 September 2019, p 30.

¹⁸⁵ Evidence, Dr Edwards, 16 September 2019, p 30.

¹⁸⁶ Answers to questions on notice, icare, 16 October 2019, p 7.

¹⁸⁷ Answers to questions on notice, icare, 16 October 2019, p 7.

¹⁸⁸ Answers to questions on notice, icare, 16 October 2019, p 7.

¹⁸⁹ Evidence, Dr Colquhoun, 11 February 2020, p 9.

¹⁹⁰ Evidence, Dr Colquhoun, 11 February 2020, p 9.

¹⁹¹ Evidence, Dr Allsop, 11 February 2020, p 9.

To date, the numbers have been relatively low. I think I do have them here. Five workers have been referred for vocational rehabilitation services, with a further three being referred to providers in the area.¹⁹²

Committee comment

- 3.62** The committee agrees that workers diagnosed with silicosis need to be adequately supported, both financially and non-financially. We acknowledge that icare provides a range of support measures, including counselling and cover for medical expenses associated with the disease.
- 3.63** The committee is concerned, however, that some workers may feel forced to remain in the industry after they have been diagnosed with a silica related disease. We acknowledge that for affected workers this would undoubtedly be a hard situation – given family, financial and employment pressures. In our view, affected workers should be given every opportunity and support to retrain and find alternate employment if they wish, so as to avoid any further exposure and damage to their health.
- 3.64** Therefore, the committee recommends 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 condition, to ensure workers feel appropriately supported to leave the industry if they wish.
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Recommendation 4

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.

Silicosis claims and scheme liability

- 3.65** During this review, the committee also considered the costs of silicosis claims under the scheme and the potential future liability of the scheme.
- 3.66** The Dust Diseases Scheme is funded via levies collected from NSW workers compensations insurers. icare explained that these insurers factor the levies into the premiums they charge employers to offset this cost. It also explained that based on independent actuarial advice using the historical costs of dust disease claims in the Scheme, icare determines the aggregate levy requirement for each financial year. This is communicated to the State Insurance Regulatory Authority (SIRA) who then determines the levy to be charged by each industry group covered by workers compensation insurance.¹⁹³
- 3.67** In light of the rising number of silicosis cases, the committee explored the potential future liability of the scheme, noting concerns from some stakeholders about an increase in the cost of claims.

¹⁹² Evidence, Dr Allsop, 11 February 2020, p 15.

¹⁹³ Answers to questions on notice, icare, 26 February 2020, p 4.

3.68 Mr Timothy McGinley, an Associate with Maurice Blackburn Lawyers, who specialises in asbestos and dust diseases, contended that silicosis claims will likely be more expensive than those for mesothelioma, given the age at which someone is likely to be diagnosed, the extent of medical expenses and the resulting economic loss:

...someone who gets mesothelioma in their 70s has less medical expenses because there is no treatment and because it is such a short period—as perverse as that may seem—there is less compensation for medical expenses to be sought. Because they are often retired, there is usually no loss of earnings claim. The opposite of that is true in silicosis claims. They are in their 20s, 30s and 40s, so if they are taken away from work they have a huge economic loss claim for future earnings. On top of that, while you do get some silicosis claims that have very short life expectancies, there are many claims, especially if they are found early and moved away but not early enough that they can continue working, they may be disabled and have a life expectancy for decades, in which case they will be disabled and require care and medical expenses throughout that period.¹⁹⁴

3.69 In this regard, Mr McGinley emphasised that claims for medical expenses in silicosis cases can be 'quite significant'. He noted that the costs associated with lung transplants in a public hospital were 'somewhere between \$120,000 and \$150,000 just for the surgery'. Given this, he stated: 'You might find that even if not as many cases of silicosis occur in this wave than in the previous asbestos wave, it may come at a much greater cost'.¹⁹⁵

3.70 On this aspect, icare advised that on average a silicosis claim costs around \$500,000 over the lifetime of the claim. It said this is based on past experience and may change given that younger workers are presenting with signs of silicosis.¹⁹⁶

3.71 In terms of scheme liability, icare advised the committee that every six months, on behalf of the Dust Diseases Authority, it engages independent actuaries to estimate the outstanding claims liabilities for the scheme. It provided the following update:

This was last completed at 31 December 2019, however the results are still in draft and subject to change. The liability assessment covers asbestos related diseases as well as non-asbestos related diseases covered by the Scheme. The majority of the non-asbestos related diseases are related to silica exposure.

- The inflated and discounted liabilities held for non-asbestos-related disease claims as at 30 June 2019 was \$100.5 million. This does not include the liability held to cover the cost of administering these claims.
- The inflated and discounted liabilities held for non-asbestos-related disease claims as at 31 December 2019 was \$148.4 million (draft and subject to change). This does not include the liability held to cover the cost of administering these claims.¹⁹⁷

3.72 icare also noted that the estimated draft liability for the Dust Diseases Scheme in its entirety as at 31 December 2019 was \$1,906.1 million on an inflated and discounted basis. Explaining this increase, icare reflected:

¹⁹⁴ Evidence, Mr Timothy McGinley, Associate, Maurice Blackburn Lawyers, 16 September 2019, p 40.

¹⁹⁵ Evidence, Mr McGinley, 16 September 2019, p 40.

¹⁹⁶ Answers to questions on notice, icare, 16 October 2019, p 4.

¹⁹⁷ Answers to questions on notice, icare, 26 February 2020, p 6.

The growth in the non-asbestos liability between 30 June 2019 and 31 December 2019 reflects the increasing numbers of cases of silicosis being identified. There is significant uncertainty in this figure and it relies on estimates of the number of low impairment cases that will progress as well as the number of cases yet to be detected. It is possible this estimate will require further revision, but it could be up or down.¹⁹⁸

- 3.73** In terms of whether icare could impose a special levy on the manufactured stone industry, given the future increase in scheme liability likely, Dr Allsop replied:

No, we cannot. Our role is to determine the pay-as-you-go levy to be collected in each individual year. We pass that information to the State Insurance Regulatory Authority [SIRA] and it determines which employer groups to collect that levy from. Our legislation is quite prescriptive in terms of collecting the amount we need to expend on paying claims and expenses.¹⁹⁹

- 3.74** Dr Allsop agreed that the State Insurance Regulatory Authority could tailor a request from icare for a total levy across the industry groups.²⁰⁰

Committee comment

- 3.75** Given the increase in silicosis cases being diagnosed, the majority of which relate to the manufactured stone industry, the committee is concerned about the future liability of the Dust Diseases Scheme. It is expected that over the next few years we will see an increase in the number and value of compensation claims related to silica dust exposure.
- 3.76** To ensure this liability is covered, the committee recommends 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 suppliers within the manufactured stone industry, or to establishing a specific compensation fund, similar to what was established for those that sustained asbestos-related diseases.

Recommendation 5

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.

¹⁹⁸ Answers to questions on notice, icare, 26 February 2020, p 6.

¹⁹⁹ Evidence, Dr Allsop, 11 February 2020, p 5.

²⁰⁰ Evidence, Dr Allsop, 11 February 2020, p 5.

Chapter 4 Safety and control measures

This chapter considers various measures used to prevent and minimise exposure to crystalline silica in the manufactured stone industry. It will first start by exploring arguments in relation to whether manufactured stone products can be handled safely at all, or whether they are too dangerous and should be banned.

Following this, a range of safety and control measures will be discussed, including product labels and safety data sheets, the workplace exposure standard, water suppression when working with manufactured stone and personal protective equipment.

Can manufactured stone products be handled safely?

- 4.1 A point of contention in the inquiry was whether manufactured stone products can be handled safely or whether they are such a hazard and pose such a high health risk that they should not be used. This section will outline competing views on this issue.

Arguments that crystalline silica exposure can be safely managed

- 4.2 According to the Manufactured Stone Industry Taskforce Final Report on Silica Dust which was finalised in July 2019, silicosis is a disease that is preventable if the correct safety measures are put in place, such as communicating the hazards through labelling of products, the provision of safety data sheets and the provision of safe systems of work.²⁰¹
- 4.3 Work safety measures can include having adequate ventilation systems, dust capture systems on portable tools, the wetting down of stone and use of personal protective equipment such as masks and respirators. The effectiveness of some of these measures will be discussed later in this chapter.
- 4.4 The position put forward by some suppliers and importers was that manufactured stone products are safe if handled correctly, and that exposure to crystalline silica can be effectively managed if the appropriate safety measures and guidelines are followed.
- 4.5 According to the Australian Engineered Stone Advisory Group (AESAG), which is comprised of key suppliers of engineered stone products, including Caesarstone Australia, Smartstone and WK Quantum Quartz:
- Stonemason exposure to RCS [Respirable Crystalline Silica] can be effectively managed if the correct safety procedures and guidelines are followed while fabricating the products and if followed the likelihood of detectable silicosis should be negligible.²⁰²
- 4.6 At a hearing, Mr David Cullen, Managing Director of Caesarstone Australia, and a founding member of the AESAG, reiterated his view that manufactured stone, like other products with silica in them, can be handed safely. He stated:

²⁰¹ SafeWork NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, July 2019, p 4.

²⁰² Submission 13, Australian Engineered Stone Advisory Group, p 2.

The product, with the right procedures, can be handled safely. Tunnelling can be handled safely, construction can be handled safely and concrete can be handled safely. They all have silica and they all have to be handled safely. Going back to what you said earlier, one of the obvious issues is that within the industry we have had some fabricators who have not handled the product safely. That is why we have had the issues.²⁰³

- 4.7** Mr Cullen attributed the recent cases of silicosis in the industry to poor safety practices being undertaken. He agreed that there is evidence of this both at the point of fabrication and installation.²⁰⁴ Mr Bruce Rayment, Chief Executive Officer of Smartstone Australia, also a member of AESAG, contended that 'the largest risk occurs at the fabrication stage in the factory, where the product is cut, polished and shaped, rather than at the installation stage on a work site'.²⁰⁵
- 4.8** In addition to poor safety practices, some suppliers and businesses within the stone industry contended that the growth in popularity of the products is a factor in the re-emergence of silicosis cases.
- 4.9** CDK Stone stated that the rise in popularity of engineered stone has contributed to a 'dramatic' growth in the number of workers processing 'silica-containing products'. It suggested this growth was 'possibly four-fold', with many workers having little knowledge of stonemasonry and very few being enrolled in relevant TAFE courses. It also suggested that the simpler processing methods used when working with manufactured stone has contributed to workers with little knowledge and education being employed.²⁰⁶
- 4.10** Emphasising that the focus needs to be on improving safety when working with manufactured stone, Mr Cullen stressed: 'The product can be handled safely. It will be handled safely. We need to work with regulators, manufacturers, fabricators, kitchen companies and builders to make sure that is the case'.²⁰⁷
- 4.11** Mr Cullen also spoke about the importance of having the right safety equipment in place, such as personal protective equipment, ventilation and wet cutting. He said that if these are used 'this product can be handled safely – 100 per cent'.²⁰⁸
- 4.12** Mr Rayment expressed a similar view, noting that there has been warnings against dry cutting since at least the mid-2000s. He added 'we agree with government agencies, medical experts and the wider industry that illness associated with fabricating engineered stone is preventable provided appropriate work practices and safety measures are followed'.²⁰⁹

²⁰³ Evidence, Mr David Cullen, Australian Engineered Stone Advisory Group and Managing Director, Caesarstone Australia, 15 November 2019, p 5.

²⁰⁴ Evidence, Mr Cullen, 15 November 2019, p 5.

²⁰⁵ Evidence, Mr Bruce Rayment, Chief Executive Officer, Smartstone Australia, 15 November 2019, p 6.

²⁰⁶ Submission 15, CDK Stone Pty Ltd, p 2.

²⁰⁷ Evidence, Mr Cullen, 15 November 2019, p 3.

²⁰⁸ Evidence, Mr Cullen, 15 November 2019, p 4.

²⁰⁹ Evidence, Mr Rayment, 15 November 2019, p 3.

- 4.13 In this regard, the importance of regulation and enforcement was stressed. Mr Rayment reflected that the popularity of engineered stone has increased over time and 'so too have the number of fabricators and installers around the state'. He stated that because of this 'regulation must adapt and be strengthened'.²¹⁰ This will be discussed more broadly in chapter 5.
- 4.14 Likewise, Mr Mark Norman, General Manager, WK Quantum Quartz, also a member of the AESAG, noted that it is up to industry to continue educating workers on safe cutting practices. Reaffirming the view that the products can be handled safely, he stated:
- The employer's job is to follow those clearly documented safe cutting practices and the authorities need to enforce those clearly documented safe cutting practices. If everybody works together, there is no doubt that the industry can be 100 per cent safe and can have a long future.²¹¹
- 4.15 Cosentino, a Spanish supplier of engineered stone, also contended that '[e]ngineered quartz products are not inherently dangerous'. It stated that '[s]ilicosis associated with the use of those products is 100% preventable when manufacture, fabrication and installation occur in accordance with published OH&S guidelines'.²¹²
- 4.16 According to the AESAG, the view that exposure to respirable crystalline silica can be effectively managed if safe practices are followed has been endorsed by SafeWork Australia and SafeWork NSW. It noted that both of these organisations provide comprehensive information on safe fabrication. Further, AESAG stated that their position is also consistent with the view of the Australian Institute of Occupational Hygienists (AIOH).²¹³
- 4.17 The regulation and enforcement of work health and safety standards is examined in greater detail in the next chapter.

Arguments that manufactured stone products should be banned

- 4.18 In direct contrast to the views above, some stakeholders contended that manufactured stone products are so dangerous that they should be eliminated or substituted. This was suggested on the basis that elimination is the first option to consider in the hierarchy of controls when dealing with a hazard.
- 4.19 As noted in paragraph 2.10, all manufactured stone is currently imported from countries like Israel, China and Vietnam. Elimination of the product within New South Wales, or more broadly, would require a prohibition on importation of the product.
- 4.20 Ms Rita Mallia, President, Construction and General Division of the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) strongly advocated a ban of manufactured stone products for the following reasons:

²¹⁰ Evidence, Mr Rayment, 15 November 2019, p 3.

²¹¹ Evidence, Mr Mark Norman, General Manager, WK Quantum Quartz, 15 November 2019, p 4.

²¹² Submission 14, Cosentino Australia Pty Ltd, p 4.

²¹³ Submission 13, Australian Engineered Stone Advisory Group, p 2.

- concerns with SafeWork's position that the dangers with manufactured stone can be resolved through control measures when there is a high level of non-compliance, and difficulty in locating installers who are most at risk
 - exposure standards that are out of date, and the impossibility of measuring a safe standard
 - concerns that the state 'lacks in terms of its health response'.²¹⁴
- 4.21** During the period in which the Manufactured Stone Industry Taskforce operated, the CFMMEU sought support for the proposal that there be a prohibition on manufactured stone. While this was not supported by a majority of Taskforce members, the CFMMEU again requested the Taskforce to support the 'substitution' of manufactured stone, noting that businesses and consumers have other options such as marble, granite, sandstone and other stone materials in the market.²¹⁵
- 4.22** From a medical perspective, Dr Susan Miles, representing the Lung Foundation and Thoracic Society of Australia and New Zealand, said that a ban may be 'foreseeable', 'especially when there are other options that are safer'.²¹⁶ Fellow at the AIOH, Mr Martin Jennings, pointed to Geoluxe which has a much lower silica content, as well as DuPont Corian which has no silica.²¹⁷
- 4.23** Dr Deborah Yates, Consultant Thoracic Physician and Conjoint Associate Professor at the University of New South Wales, supported a ban from a personal perspective, but noted that the stance of the Royal Australasian College of Physicians on this issue was 'still under consideration'.²¹⁸
- 4.24** Despite the calls for manufactured stone to be banned, some stakeholders argued that a ban would be problematic and that it would be preferable instead to focus on the control measures that can be used to reduce exposure to crystalline silica.
- 4.25** Putting forward an industry perspective, the Australian Engineered Stone Advisory Group stated that 'suggestions that engineered quartz products be banned are impractical and would have a detrimental economic impact on many industries'.²¹⁹ The potential negative impact on the industry was also raised by the Mine Ventilation Society of Australia.²²⁰
- 4.26** Cosentino, a supplier of stone, also raised concerns about the proposal for a ban. In its view, elimination of manufactured stone would require a review of other analogous products that have similar composite materials, for example, glass, bricks and tiles. Cosentino stated:

²¹⁴ Evidence, Ms Rita Mallia, President, Construction and General Division, Construction, Forestry, Maritime, Mining and Energy Union, 16 September 2019, p 16.

²¹⁵ Safework NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, p 21.

²¹⁶ Evidence, Dr Susan Miles, Respiratory, Sleep and General Medicine Physician, representing the Lung Foundation and Thoracic Society of Australia and New Zealand, 16 September 2019, p 12.

²¹⁷ Evidence, Mr Martin Jennings, Fellow, Australian Institute of Occupational Hygienists, 16 September 2019, p 8.

²¹⁸ Evidence, Dr Deborah Yates, Consultant Thoracic Physician and Conjoint Associate Professor, University of New South Wales, 16 September 2019, p 24.

²¹⁹ Submission 13, Australian Engineered Stone Advisory Group, p 2.

²²⁰ Submission 12, Mine Ventilation Society of Australia, p 2.

Considering that risks are not inherent to the product but instead arise from the lack of health and safety measures which are already elaborated, elimination is not a reasonably practicable solution. Instead, the greatest prospect of successfully addressing the risk of RCS injury will result from the regulation of those persons who are most exposed to the risk via their respective workplaces and practices.²²¹

4.27 The Masters Building Association also did not support a ban on manufactured stone, arguing that there are control measures that make working with the product 'acceptably safe'.²²² Mr David Solomon, Executive Officer – Safety and Risk at the Master Builders Association, pointed to examples of control measures, such as the availability of full respirators that cover a full beard and head, wet cutting, and the allocation of a 'cutting room' in an apartment environment.²²³

4.28 Lawyers from Maurice Blackburn Lawyers also expressed some concerns about the proposal for a ban, despite agreeing in principle to a ban on high-risk products. Mr Timothy McGinley, Associate, noted that it would be important for legislators to define the parameters of the ban so that natural products were not captured and that manufacturers could not 'work around' the ban:

We would support looking into a total ban on certain high-risk products, if it can be shown that those occupational standards cannot be properly enforced. What we would say is that legislators would have to be very careful about defining and coming up with this ban because there is no set definition of engineered stone ...

If you were to simply say, 'Let's ban all products that have 50 per cent silica content in them', the effect would be that you would ban some natural granite products as well. As well as, what would stop a company from producing something that is 49 per cent silica, which would still be quite dangerous?²²⁴

4.29 Mr McGinley argued that until a comprehensive ban is investigated and implemented, the 'immediate' action, in the interim, is to increase the occupational health and safety standards.²²⁵ His colleague, Mr Jonathan Walsh, contended that there should be 'actual enforcement of proper engineering controls'.²²⁶

4.30 In response to questioning on whether SafeWork NSW has considered a ban of manufactured stone, Mr Peter Dunphy, Acting Deputy Secretary, Better Regulation Division, SafeWork NSW, highlighted that manufactured stone is not the only material that has silica content. He stated: 'We know that there are high levels of silica particularly in Sydney sandstone as well. There is a whole range of products'.²²⁷

²²¹ Submission 14, Cosentino Australia Pty Ltd, p 4.

²²² Evidence, Mr Peter Glover, Director Construction, Master Builders Association, 20 September 2019, p 11.

²²³ Evidence, Mr David Solomon, Executive Officer – Safety and Risk, Master Builders Association, 20 September 2019, p 12.

²²⁴ Evidence, Mr Timothy McGinley, Associate, Maurice Blackburn Lawyers, 16 September 2019, p 36.

²²⁵ Evidence, Mr McGinley, 16 September 2019, p 37.

²²⁶ Evidence, Mr Jonathan Walsh, Principal, Maurice Blackburn Lawyers, 16 September 2019, p 37.

²²⁷ Evidence, Mr Peter Dunphy, Acting Deputy Secretary, Better Regulation Division, SafeWork NSW, 2 October 2019, p 15.

4.31 This was also highlighted by the Mine Ventilation Society of Australia, who argued that due to the abundance of silica in the earth's crust substitution would be difficult, although possible with technological advances.²²⁸

4.32 When it was suggested that the silica content in manufactured stone is quite high though, when compared with other materials, Mr Dunphy acknowledged this, although he also pointed out that 'not all manufactured stone has the same concentration or content'.²²⁹ Like other stakeholders, Mr Dunphy preferred to focus on effective control measures in minimising exposure to silica:

Before we go to looking at a ban, the first thing is to look at the appropriate level of controls that are in place and whether the controls are effective... [W]e have gone in and looked at those controls and have been able to determine that those controls, when they are operating appropriately, do work effectively. That is the approach we take in terms of risk management for any hazardous material. Banning would be the extreme and the final decision if none of those other controls were in place and were working effectively.²³⁰

4.33 SafeWork NSW also noted that as manufactured stone products are imported into Australia, a ban would require Commonwealth action and potentially prohibiting importation under the *Commonwealth Customs (Prohibited Imports) Regulation 1956*.²³¹

4.34 On this issue, Dr Graeme Edwards, Occupational and Environmental Physician, who is a member of the National Dust Diseases Taskforce, told the committee that banning the product 'is a subject of further inquiry'. He explained that the National Taskforce has had a presentation from border protection about 'the processes and the ability to detect the product coming into Australia'. He followed this up by stating: 'Part of the remit of the national task force is to look at the regulatory framework and to identify what changes need to be made at the model law level'.²³²

Committee comment

4.35 The committee acknowledges that there are two contrasting views in relation to whether manufactured stone products can be handled safely. We understand that, on the one hand, the CFMMEU and medical professionals are concerned that manufactured stone workers are at risk when working with these products, given evidence of poor safety practices in the industry (discussed in the next chapter) and the rising number of workers being diagnosed with silica related conditions.

4.36 The committee also understands that, on the other hand, suppliers and manufacturers are maintaining that the risks posed by manufactured stone products can be managed, as long as

²²⁸ Submission 12, Mine Ventilation Society of Australia, p 2.

²²⁹ Evidence, Mr Dunphy, 2 October 2019, p 15.

²³⁰ Evidence, Mr Dunphy, 2 October 2019, p 15.

²³¹ Answers to questions on notice, SafeWork NSW, 31 October 2019, p 2.

²³² Evidence, Dr Graeme Edwards, Occupational and Environmental Physician, representing the Royal Australian College of Physicians, and member, National Dust Diseases Taskforce, 16 September 2019, p 33.

workers follow strict health and safety standards. Like other hazards in the workplace, we acknowledge that there must be continued education, training and compliance activities focused on ensuring that relevant regulations and standards are met.

- 4.37** The committee also accepts that the growth of the industry over the last two decades has contributed to the outcomes we are now seeing. Work health and safety standards when working with manufactured stone have clearly fallen and workers are paying the price. We understand that some stakeholders are so concerned about this that they want manufactured stone products banned. The committee is not, however, in a position to make a recommendation about this, given a ban would best operate at a federal level.
- 4.38** The committee believes that there are other measures which can be taken to improve work health and safety standards in the manufactured stone industry. We understand that workers need to be protected, and we believe that some of the initiatives already underway will assist in this regard. This report also makes a number of other recommendations which we believe will help to respond to the silicosis problem within the industry.

Product labels and safety data sheets

- 4.39** In discussing control measures for the safe handling of manufactured stone products, the use and effectiveness of product labels and safety data sheets was raised during the inquiry. In particular, stakeholders considered whether these measures are adequately and appropriately communicating the health and safety risks associated with exposure to crystalline silica by those who manufacture and supply the product.
- 4.40** In its national guidance material for working with products containing silica, Safe Work Australia outlines the responsibilities of manufacturers and suppliers of manufactured stone, including the need to provide specific information about the product such as its hazardous properties and the precautions required when handling the product:

Designers, manufacturers, importers and suppliers of silica containing products must ensure, so far as is reasonably practicable, that the plant or substance is without risks to health and safety. This duty includes carrying out testing and analysis of the product and providing specific information about the product. This information can be provided in the form of a label, product information sheet or a safety data sheet (SDS). Important information that must be provided includes:

- the amount of crystalline silica in the product
- the hazardous properties and risks to health of silica dust, and
- the health and safety precautions that must be taken when fabricating, installing, maintaining or removing silica containing products.²³³

- 4.41** The AIOH reflected these expectations in evidence to the committee, advising that, as engineered stone meets the definition of a 'substance' under current state work health and safety (WHS) legislation, manufacturers, importers and suppliers of engineered stone have a particular duty of care to those who handle their products.²³⁴ Moreover, the AIOH contended that

²³³ Safe Work Australia, *Working with silica and silica containing products – National guidance material*, September 2019, p 7, https://www.safeworkaustralia.gov.au/system/files/documents/2003/national_guide_for_working_with_silica_and_silica_containing_products_1.pdf.

²³⁴ Submission 4, Australian Institute of Occupational Hygienists, p 10.

manufacturers of engineered stone have a role in providing 'appropriate product stewardship measures' to ensure risks are communicated clearly and information is provided on preventative and protective measures.²³⁵

- 4.42 However, concerns were expressed about whether efforts to communicate health and safety risks have been and continue to be adequate in raising awareness amongst workers. For example, the AIOH questioned the extent to which manufacturers have provided information on safe work practices to their customers in the past, particularly in light of a class action currently targeted at suppliers of engineered stone. According to the AIOH, the law firm representing those involved in the class action is claiming that certain suppliers of engineered stone have not adequately communicated the safety risks or safety precautions.²³⁶
- 4.43 This section considers the use of product labels and safety data sheets, in particular, in facilitating the safe handling of manufactured stone products.

Product labels

- 4.44 One way in which health and safety risks are currently being communicated is through product or 'slab' labels which are affixed to manufactured stone products.
- 4.45 According to Mr David Cullen, a representative of the Australian Engineered Stone Advisory Group (AESAG) and Managing Director of Caesarstone Australia, the manufactured stone industry has long used warnings to promote safe handling of its products, stating: 'In Australia we have had the warnings about how our product should be handled and the fact that it has to be handled in a safe environment since day one'.²³⁷ More specifically, Mr Cullen advised that 'warnings and information about hazards and safety measures were available from the late 1990s and warning stickers were put on engineered stone products from 2010'.²³⁸
- 4.46 Mr Cullen explained Caesarstone's and the broader industry's increased promotion of safe work practices over the years, including the use of product labels and warnings. In particular, he explained that his company has continuously updated material safety data sheets, and also introduced and updated fabrication manuals. Caesarstone has also provided various other communications to fabricators, including health and safety guides, letters, warning labels on slabs, DVDs and roadshows.²³⁹
- 4.47 Similarly, Cosentino Australia, an international producer and supplier of manufactured stone, advised their approach to communicating safety information with the products they distribute in Australia, stating:

All manufactured stone products delivered to Australia by Cosentino are appropriately labelled and marked with SMS data which identifies fully, using easily understood pictograms, the hazards associated with working with that product. Delivery notes of

²³⁵ Submission 4, Australian Institute of Occupational Hygienists, p 10.

²³⁶ Submission 4, Australian Institute of Occupational Hygienists, p 10.

²³⁷ Evidence, Mr Cullen, 15 November 2019, p 6.

²³⁸ Correspondence from Mr David Cullen, Australian Engineered Stone Advisory Group, to Chair, 2 December 2019.

²³⁹ Evidence, Mr Cullen, 15 November 2019, pp 2-3.

the material supplied to its customers in Australia include a clear reference to the relevant Occupational Health & Safety information ...²⁴⁰

- 4.48** Laminex, an importer and supplier of engineered stone, also described their use of warnings on product labels, stating that 'Laminex affixes labels on each slab providing simple visual and written warnings to the users of the hazards associated with cutting and fabrication of engineered stone'.²⁴¹ While acknowledging that other suppliers of manufactured stone have a similar approach to labelling, Laminex pointed out that 'there is no standardised warning label within the industry' and thus expressed support for a standardised warning label to be introduced across the industry.²⁴²
- 4.49** When questioned about the accessibility of safety information on product labels, particularly by culturally and linguistically diverse workers, the manufacturers representing AESAG spoke of their efforts to make product labels more easily understood. For example, Mr Cullen said that Caesarstone produce warning labels in various languages, including Arabic, Vietnamese, Greek and Chinese, saying: 'If we need another language we will add another language'.²⁴³
- 4.50** Likewise, Mr Bruce Rayment, Chief Executive Officer of Smartstone Australia, informed that their warning labels are 'larger and more explicit' and are also produced in multiple languages, as is the most recent update of their fabrication manual.²⁴⁴
- 4.51** Mr Mark Norman, General Manager, WK Quantum Quartz, told the committee that, 'on suggestion from WorkSafe Victoria, New South Wales and Queensland', they recently revised their warning labels as they had 'too many words and not enough pictures'.²⁴⁵ Mr Norman informed that they subsequently 'put pictures, fewer words and all three bodies across all three States have approved that warning'.²⁴⁶
- 4.52** Notwithstanding these recent efforts, the committee received evidence from the Lung Foundation Australia and Thoracic Society of Australia and New Zealand featuring a case study of a stonemason, Peter, who was unaware of any health risks in his work but now lives with silicosis. Peter cut and polished manufactured stone in a small shed where he was exposed to silica dust.²⁴⁷ Peter asserted that he never saw warning labels on the stone he worked:

We didn't wear any personal protective equipment like a respirator, and I was unaware that this was a problem ... I was diagnosed about 2 months ago and can only hope to be free from silicosis in the future ... During my time in the industry I have not seen warning labels on manufactured stone and think that this should be done.²⁴⁸

²⁴⁰ Submission 14, Cosentino Australia Pty Ltd, p 5.

²⁴¹ Submission 17, Laminex, p 1.

²⁴² Submission 17, Laminex, p 1.

²⁴³ Evidence, Mr Cullen, 15 November 2019, p 23.

²⁴⁴ Evidence, Mr Rayment, 15 November 2019, p 23.

²⁴⁵ Evidence, Mr Norman, 15 November 2019, p 23.

²⁴⁶ Evidence, Mr Norman, 15 November 2019, p 23.

²⁴⁷ Submission 3, Lung Foundation Australia and Thoracic Society of Australia and New Zealand, p 3. Please note, 'Peter' is not his real name.

²⁴⁸ Submission 3, Lung Foundation Australia and Thoracic Society of Australia and New Zealand, p 3.

- 4.53 In its final report, the Manufactured Stone Industry Taskforce noted that CDK Stone, a major stone supplier, has agreed to undertake in-situ advertising in stone benchtop workplaces by printing SafeWork NSW's campaign messaging on their product wrappings for their next 20,000 deliveries.²⁴⁹
- 4.54 Noting such initiatives to be entirely voluntary, the committee questioned SafeWork NSW about whether there is merit in introducing mandatory warning labels on manufactured stone products. In response, Mr Dunphy, SafeWork NSW, insisted that the risk in placing warning labels on product wrappings is that there is 'potential that the wrapping will [be] removed' and that 'you will not see [the warning labels]'.²⁵⁰ When pressed, Mr Dunphy accepted that wrappings are required for products to be transported and eventually stated that warning labels is 'something [SafeWork NSW] would be happy to look at'.²⁵¹

Safety data sheets

- 4.55 In addition to product labels, safety information about manufactured stone products is also available on safety data sheets (SDS).
- 4.56 According to the national guidance material for working with products containing silica released by Safe Work Australia, the supplier of a hazardous chemical 'must provide, free of charge, a copy of the manufacturer or importer's SDS with the chemical on first supply to the workplace or when asked to do so'.²⁵² However, there is no requirement for SDSs to be provided for 'solid products', such as manufactured stone:
- Manufacturers do not have a duty to provide safety data sheets (SDS) for solid products that contain silica, such as composite stone, brick or tiles. However, it is a good practice to make them available.²⁵³
- 4.57 This was reflected by Mr Dunphy, SafeWork NSW, who expressed the understanding that SDSs are not routinely provided with manufactured stone products but are rather made available on request.²⁵⁴
- 4.58 While the manufacturers representing AESAG during the inquiry were open about the chemical composition of their products and the accessibility of such information in their SDSs,²⁵⁵ others drew attention to those in the industry who do not work for major companies and may not be captured by the processes that communicate important safety information, such as that found in SDSs. For example, Mr Andrew Orfanos, President Elect of the AIOH, spoke of the subcontractors from 'microbusinesses' who are not being told of health risks, stating:

²⁴⁹ SafeWork NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, p 20.

²⁵⁰ Evidence, Mr Dunphy, 2 October 2019, p 20.

²⁵¹ Evidence, Mr Dunphy, 2 October 2019, p 21.

²⁵² Safe Work Australia, *Understanding Safety Data Sheets for Hazardous Chemicals – Fact Sheet*, April 2012, https://www.safeworkaustralia.gov.au/system/files/documents/1702/understanding_sds_fact_sheet.pdf

²⁵³ Safe Work Australia, *Working with silica and silica containing products – National guidance material*, p 7.

²⁵⁴ Evidence, Mr Dunphy, 2 October 2019, p 20.

²⁵⁵ Evidence, Mr Norman, 15 November 2019, p 9; Evidence, Mr Cullen, 15 November 2019, p 9.

... [M]y biggest concern is not the worker that is working for a big company—they have the resources, the money, the extraction systems—I am worried about the smaller micro businesses, the father and son businesses that are subcontracting to a principal and they have to get in. They want to do their work and they are not given that material safety data sheet. No-one is telling them that there is a risk to their health.²⁵⁶

Committee comment

- 4.59** While the committee acknowledges that product labels and safety data sheets have long been required of manufacturers and suppliers of manufactured stone, we question whether what is actually being provided is enough – do workers on the frontline readily see and have access to information about the health and safety risks associated with handling manufactured stone?
- 4.60** The committee believes more can – and must – be done to provide clear and consistent messaging to workers, particularly as labels and safety data sheets are the most simplest of measures to directly communicate information to workers.
- 4.61** The committee notes the efforts of manufacturers and suppliers to make warnings on their products more explicit and accessible. However, we think the industry would benefit from the introduction of a standardised, easily recognisable warning label capturing the hazards associated with working with manufactured stone. Moreover, the committee believes that such labelling should be a mandatory requirement for all manufactured stone products.
- 4.62** The committee also acknowledges that safety data sheets are initially required on first supply of a manufactured stone product to a workplace and then are available on request. However, we consider this to be inadequate and ineffective in ensuring that important safety information is disseminated to workers.
- 4.63** To this end, we recommend that the NSW Government introduce a mandatory requirement for manufacturers and suppliers to affix standardised warning labels on their manufactured stone products, and to routinely provide safety data sheets for all manufactured stone products, in a comprehensive range of languages.

Recommendation 6

That the NSW Government introduce a mandatory requirement for manufacturers and suppliers to:

- affix standardised warning labels on all manufactured stone products
 - provide safety data sheets with all manufactured stone products, in a comprehensive range of languages.
-

²⁵⁶ Evidence, Mr Andrew Orfanos, President Elect, Australian Institute of Occupational Hygienists, 16 September 2019, p 7.

The workplace exposure standard and air monitoring requirements

4.64 Another key issue raised during the inquiry was whether the current workplace exposure standard (WES) is an adequate control measure to help protect workers from harmful levels of exposure to silica dust. Closely related to this is the issue of air monitoring and, in particular, the current requirements under WHS laws to ensure exposure levels are not exceeded.

Development of the current workplace exposure standard

- 4.65 The WES sets the limits to which workers can be exposed to hazardous airborne chemicals.²⁵⁷
- 4.66 As noted in chapter 1, the current WES for crystalline silica under the model work, health and safety (WHS) regulations sets the maximum exposure limit to an eight-hour time-weighted average (TWA) of 0.05 mg/m³.²⁵⁸ Prior to this standard – and for the majority of this inquiry – the WES for crystalline silica was 0.1 mg/m³.
- 4.67 In February 2019, as part of Safe Work Australia's broader review of the workplace exposure standards for hazardous airborne chemicals, the WES for silica was reviewed as a priority. A draft evaluation report recommending a reduction of the WES to 0.02 mg/m³ was released for public comment, closing in April 2019.²⁵⁹ The committee was advised that this initial recommendation of 0.02 mg/m³ was based on peer reviewed work undertaken by external experts engaged by Safe Work Australia.²⁶⁰
- 4.68 While this recommended level was supported by some stakeholders, including the Victorian Government,²⁶¹ the committee was told that the majority of submissions received during the public consultation period 'were confirmed as not supporting the proposal for 0.02 mg/m³', with reasons cited including 'the limitations of a health-based evaluation (cumulative assessment preferred), measurement and analysis reliability at 0.02 mg/m³ particularly for extended work shifts (more than 8 hours); and compliance and enforcement'.²⁶² The limitations to measuring lower levels of exposure is further discussed later in this section.
- 4.69 The initial recommendation of reducing the WES to 0.02 mg/m³ was thus ultimately rejected by a majority decision of the members of Safe Work Australia who voted for a recommended standard of 0.05 mg/m³ instead.²⁶³

²⁵⁷ Safe Work Australia, Workplace exposure standards review methodology (2 March 2020), <https://www.safeworkaustralia.gov.au/workplace-exposure-standards-review-methodology>.

²⁵⁸ Safe Work Australia, *Workplace exposure standards for airborne contaminants*, 16 December 2019, p 36, <https://www.safeworkaustralia.gov.au/system/files/documents/1912/workplace-exposure-standards-airborne-contaminants.pdf>.

²⁵⁹ Safe Work Australia, *Silica, Crystalline (Respirable Dust)*, p 1, <https://engage.swa.gov.au/wes-review-release-1-RCS-RCD>.

²⁶⁰ Evidence, Ms Michelle Baxter, Chief Executive Officer, Safe Work Australia, 11 February 2020, pp 20-21.

²⁶¹ Evidence, Ms Jackii Shepherd, Director, Occupational Hygiene Policy, Safe Work Australia, 11 February 2020, p 21.

²⁶² Answers to questions on notice, SafeWork NSW, 25 February 2020, p 4.

²⁶³ Evidence, Ms Baxter, 11 February 2020, p 22.

4.70 Subsequently, in July 2019, SafeWork Australia made the following recommendations to the WHS ministers of all Australian jurisdictions for their consideration:

- a reduction in the WES for silica to a TWA of 0.05 mg/m³
- that the reduction be implemented as soon as practicable but by a date no longer than three years from any ministerial decision, and
- that investigation be undertaken into measurement and practical considerations that would enable a future reduction to a TWA of 0.02 mg/m³ by WHS ministers.²⁶⁴

4.71 While these recommendations were being considered by WHS ministers, the NSW Government announced separately in October 2019 that it would reduce the WES for crystalline silica from 0.1 mg/m³ to 0.05 mg/m³. Supportive of Safe Work Australia's recommendations, the Minister for Better Regulation and Innovation, the Hon Kevin Anderson MP, stated:

To reduce the possible exposure to silica dust, the NSW Government will support SafeWork Australia's recommendation to reduce the Australian Workplace Exposure Standard from 0.1 to 0.05 mg/m³, and will also support SafeWork Australia undertaking further research on whether a reduction to 0.02 mg/m³ is achievable.

...

With the implementation of the new exposure standard and access to increased rebates, manufactured stone fabricators will be expected to achieve compliance or face tough new penalties that the NSW Government will soon introduce.²⁶⁵

4.72 By November 2019, WHS ministers had agreed by the requisite majority to reduce the WES for crystalline silica to a TWA of 0.05 mg/m³.²⁶⁶ WHS ministers further agreed that the revised WES be implemented 'as soon as practicable' and no later than 1 July 2020.²⁶⁷

4.73 According to SafeWork NSW, the reduced WES is due to commence in New South Wales on 1 July 2020.²⁶⁸

Stakeholder views on workplace exposure standard levels

4.74 During the inquiry, stakeholders expressed diverse views about the workplace exposure standard and what it should be, drawing particular attention to the challenges associated with defining and measuring safe exposure levels. It should be noted that, as mentioned earlier, the WES was set at 0.1 mg/m³ at the time the committee received most of its evidence.

²⁶⁴ Answers to questions on notice, State Insurance Regulatory Authority, 17 October 2019, p 8.

²⁶⁵ Media release, SafeWork NSW, 'New initiatives protect workers using sandstone and silica products, 21 October 2019, <https://www.safework.nsw.gov.au/news/safework-media-releases/new-initiatives-protect-workers-using-sandstone-and-silica-products>.

²⁶⁶ Evidence, Ms Shepherd, 11 February 2020, p 23; Evidence, Ms Baxter, 11 February 2020, p 24.

²⁶⁷ Safe Work Australia, Workplace exposure standards for chemicals, <https://www.safeworkaustralia.gov.au/exposure-standards> (24 February 2020); Evidence, Ms Shepherd, 11 February 2020, p 21.

²⁶⁸ Answers to questions on notice, SafeWork NSW, 25 February 2020, p 4.

- 4.75 Some inquiry participants argued that the previous WES of 0.1 mg/m³ should be maintained and not be lowered. The Mine Ventilation Society of Australia, in particular, argued that the standard should stay at that level, asserting that 'there is no merit in the changes supporting the reduction in silicosis from occurring'.²⁶⁹
- 4.76 The Mine Ventilation Society of Australia contended that lowering the standard 'may have a devastating impact on the employment and the economy' and advocated instead for a range of preventative measures, including engineering and administrative control measures.²⁷⁰ Mr Michael Shearer, President of the organisation explained:
- Standards ... like the levels of exposure—specifically lowering the levels of exposure is not really going to take care of, in the first instance, eliminating or trying to mitigate the potential source. I think more work needs to go into actually controlling the source and some more research.²⁷¹
- 4.77 Many other inquiry participants, however, believed that the previous standard was too high and exposes workers to harmful levels of silica. For example, Dr Deborah Yates from the Royal Australasian College of Physicians likened the impact of silica exposure levels at 0.1mg/m³ to that of smoking cigarettes, stating: '... 20 cigarettes a day for a year is probably equivalent to the [then] current recommended dust exposure levels...'.²⁷² While acknowledging that it is not 'an exact science', Dr Yates explained that the health outcomes are comparable:
- ... [W]ith these long-latency diseases we are looking at people who have been exposed 10 to 15 years ago with the historical exposures. It is not an exact science. But if you look at the studies that have actually measured the effects of both silica and coal dust in terms of the information we can get, then the equivalent effect on emphysema and chronic bronchitis is identical to that of cigarettes.²⁷³
- 4.78 Several stakeholders thus advocated lowering the WES from 0.1 mg/m³, particularly when the standard was double the legal limit than that of the United States and the United Kingdom at 0.05 mg/m³,²⁷⁴ and reportedly four times that of the American construction industry standard at 0.025 mg/m³.²⁷⁵ As Mr Jonathon Walsh, Principal of Maurice Black Lawyers remarked early in the inquiry: 'We believe that Australia is ranking behind other developed nations in the limits we set on exposure to crystalline silica'.²⁷⁶

²⁶⁹ Submission 12, Mine Ventilation Society of Australia, p 6.

²⁷⁰ Submission 12, Mine Ventilation Society of Australia, pp 2 - 6.

²⁷¹ Evidence, Mr Michael Shearer, President, Mine Ventilation Society of Australia, 20 September 2019, p 3.

²⁷² Evidence, Dr Yates, 16 September 2019, p 25.

²⁷³ Evidence, Dr Yates, 16 September 2019, p 26.

²⁷⁴ Submission 8, Maurice Blackburn Lawyers, p 9; SafeWork NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, p 8; Submission 5, Construction, Forestry, Maritime, Mining and Energy Union, Attachment entitled *Manufactured Stone Industry Task Force: CFMMEU Final Report*, p 6.

²⁷⁵ Submission 5, Construction, Forestry, Maritime, Mining and Energy Union, p 2.

²⁷⁶ Evidence, Mr Walsh, 16 September 2019, p 36.

- 4.79 Some inquiry participants actively called for the WES to be set at 0.05 mg/m³,²⁷⁷ as recommended by Safe Work Australia. For example, Maurice Blackburn Lawyers argued for the standard to be lowered to 0.05 mg/m³ as an immediate priority, asserting that even with improved occupational hygiene standards, 'there are some processes [such as dry cutting] that cannot be conducted safely'.²⁷⁸ Mr Walsh explained:

As an initial step the reduction must be by at least half and that is why we recommend 0.05 milligrams. Of course, we adopt and endorse the approach that any reduction to the exposure of crystalline silica in the workplace must occur, and must occur immediately.²⁷⁹

- 4.80 Likewise, the AIOH recommended a WES of 0.05 mg/m³, and emphasised greater compliance with the standard in dusty workplaces.²⁸⁰ Mr Andrew Orfanos, President Elect, drew particular attention to the importance of enforcing standards, suggesting that if even exposure levels at 0.1 mg/m³ were complied with, the number of accelerated silicosis cases would not be at the levels they are today:

It is important to understand that the levels of exposure where we are seeing these incidents of accelerated silicosis are 20, 30, 50 times greater than our [then] current exposure standard. The issue here is if the [then] current exposure standard was enforced and people were not exposed to levels above that level we would not be seeing what we are seeing today.²⁸¹

- 4.81 The issue of enforcement and compliance will be examined more closely in the next chapter.

Challenges with measuring lower exposure levels

- 4.82 While inquiry participants generally accepted a reduction of the WES to the now current measure of 0.05 mg/m³, lowering the standard further to 0.02 mg/m³ raised questions amongst stakeholders who highlighted the difficulty in measuring exposure to silica at these levels.²⁸² In particular, inquiry participants discussed the implications of a time-weighted average (TWA) to determine standards and the limitations to current air monitoring technology.

Using a time weighted average

- 4.83 SafeWork NSW, for example, acknowledged that there are 'currently a number of limitations and practical implications for an exposure standard at 0.02 mg/m³', such as the WES being based on a time weighted average over eight hours. SafeWork NSW pointed out that for industries which commonly operate on shifts longer than eight hours, such as mining and tunneling, adjustments need to be made to the silica exposure standard to ensure an equivalent protective benefit – adjustments that would require the cumulative standard to be lowered to

²⁷⁷ For example, see Submission 17, Laminex, p 2.

²⁷⁸ Submission 8, Maurice Blackburn Lawyers, pp 8 and 9.

²⁷⁹ Evidence, Mr Walsh, 16 September 2019, p 36.

²⁸⁰ Submission 4, Australian Institute of Occupational Hygienists, p 3.

²⁸¹ Evidence, Mr Orfanos, 16 September 2019, p 6.

²⁸² For example, see evidence, Mr Jennings, 16 September 2019, p 6.

levels that are 'difficult to measure reliably'.²⁸³ As Mr Dunphy, SafeWork NSW, stated: '... [T]he lower you go, the more uncertainty...'.²⁸⁴

- 4.84** Ms Meagan McCool, Director, Hazardous Chemical Facilities and Safety Management Audits, SafeWork NSW explained how this translates in practice for someone working a 12-hour shift as an example:

[Y]ou more or less need to nearly halve [the WES]. So if it was 0.02 [mg/m³], if you were working more than eight hours it would have to be 0.01 [mg/m³]. So that is giving an idea that that is where you are testing at, and that is a difficult level to measure at'.²⁸⁵

- 4.85** Some inquiry participants called into the question the very use of a TWA over an eight hour or 12 hour period when the nature of the work involving manufactured stone at present typically requires short-term, high volume exposure. For example, Maurice Blackburn Lawyers asserted that a TWA over a standard shift provides little guidance for workers exposed to silica dust in shorter, more intense bursts:

The 8-hour standard was developed in the context of traditional industries where silicosis was a risk. It does not provide guidance as to the risk associated with less traditional, high-intensity, short-duration exposures, such as cutting artificial stone.²⁸⁶

- 4.86** Dr Chris Colquhoun, Chief Medical Officer, icare, expressed a similar view, asking: '... [W]hy are we using a time-weighted average of eight or 12 hours when the nature of the industry is short, intermittent, high-dose, massive volume of dust? We do know there is a peak limit and a short-term exposure limit'.²⁸⁷ Indeed, when asked by the committee, Dr Colquhoun concurred that peak exposure to silica in this way may in part account for the accelerated nature of silicosis experienced today.²⁸⁸

- 4.87** Notwithstanding this, inquiry participants advised that the uncertainty around using a WES with a time-weighted average of 0.02 mg/m³, particularly over a longer period of time, is primarily based on the limitations of current air monitoring measures and the technological challenges with determining exposure at these levels.

Air monitoring technology

- 4.88** Dr Colquhoun advised that there are two main types of air monitoring – personal monitoring, where the worker wears the monitor on themselves, and area monitoring, where a monitor sits in a particular area of the room for a certain duration. These monitors contain a filter which

²⁸³ Answers to questions on notice, State Insurance Regulatory Authority, 17 October 2019, p 8; see also evidence, Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, 20 September 2019, p 37.

²⁸⁴ Evidence, Mr Dunphy, 2 October 2019, p 16.

²⁸⁵ Evidence, Ms Meagan McCool, Director, Hazardous Chemical Facilities and Safety Management Audits, SafeWork NSW, 2 October 2019, p 16.

²⁸⁶ Submission 8, Maurice Blackburn Lawyers, p 8.

²⁸⁷ Evidence, Dr Chris Colquhoun, Chief Medical Officer, icare, 20 September 2019, p 38.

²⁸⁸ Evidence, Dr Colquhoun, 20 September 2019, p 38.

- collects air samples that are taken back to a laboratory to determine the quantity of hazardous substance.²⁸⁹
- 4.89** A number of stakeholders indicated that the technology is not yet available or widely accessible in a commercial setting to measure respirable substances in the air at levels of 0.02 mg/m³ or lower.
- 4.90** For example, Mr Solomon of the Master Builders Association told the committee that he was unaware of any technology that could measure 0.02 mg/m³ in the air. Given this, Mr Solomon expressed his opposition to lowering the WES to this level, arguing: '... [W]e do not support a measurement that there is no technology to measure. It is simply not out there...'.²⁹⁰
- 4.91** Similarly, the CFMMEU asserted that 'in practical workplace settings it is not technically feasible to measure limits at 0.02 mcg/m³ with currently available commercial monitoring technology'.²⁹¹
- 4.92** Mr Ben Kruse, Legal and Industrial Officer with the CFMMEU, pointed in particular to the expense associated with the equipment needed to measure at these lower levels, stating: 'My understanding is that there are machines available... But they are not portable and they are too expensive to install in workplace settings'.²⁹²
- 4.93** While some discussed the costs involved, others discussed the delays in getting results. For example, Dr Nick Allsop, Group Executive, Care and Community, icare, suggested that, more challenging than the cost, are the timeframes involved in testing air samples and determining whether exposure levels are too high. He explained:
- I think the bigger challenge is the time it takes to get the answer back. If you are an installer and it takes you a month to get an answer back as to whether or not your workplace was dusty, you have worked in 16 different sites since then anyway. We need that real-time monitoring to give people feedback instantaneously.²⁹³
- 4.94** Ms McCool also made reference to these issues when questioned why air monitoring is currently not mandated as a standard, stating:
- ... [W]hen it is done, they test all tasks that are being performed. The results go to a laboratory, which can take up to a month to receive results ...
- ...
- Regular air monitoring can take some businesses one to two weeks. In terms of the cost, it can be \$10,000 to \$20,000 per experience'.²⁹⁴

²⁸⁹ Evidence, Dr Colquhoun, 20 September 2019, p 39.

²⁹⁰ Evidence, Mr Solomon, 20 September 2019, p 14.

²⁹¹ Construction, Forestry, Maritime, Mining and Energy Union, *Manufactured Stone Industry Task Force: CFMMEU Final Report*, pp 6-7.

²⁹² Evidence, Mr Ben Kruse, Legal and Industrial Officer, Construction, Forestry, Maritime, Mining and Energy Union, 16 September 2019, p 20.

²⁹³ Evidence, Dr Nick Allsop, Group Executive, Care and Community, icare, 20 September 2019, p 42.

²⁹⁴ Evidence, Ms McCool, 11 February 2020, p 46.

- 4.95** In this regard, Dr Allsop advised the kinds of advances in technology required to ensure effective air monitoring, including real-time area monitoring tools in the first instance and equivalent personal air monitoring devices that can be worn:

The piece of work that SafeWork are doing that we are supporting is looking at real-time monitoring of air quality and particles in the air. That work is probably a year away from actually yielding a device that could go into the workplace, but as far as we are aware that would be the first ever device that could do real-time monitoring.

...

[T]his is a desktop-based environment monitoring tool. They are looking at whether or not they can turn it into a wearable form as a second phase but at this stage that research is very embryonic.²⁹⁵

- 4.96** SafeWork NSW also informed the committee that, as part of a key focus on research, work has been engaged by the Centre for Work Health and Safety to develop a respirable crystalline silica sensor 'which can provide real-time feedback to workers at risk of exposure'. This project is due to be completed in August 2020.²⁹⁶

The value of the workplace exposure standard as a control measure

- 4.97** In response to all of these issues, inquiry participants drew various conclusions about the WES and its value in minimising exposure as a control measure.

- 4.98** For example, Ms Mallia, CFMMEU, argued that the exposure standards are 'out of date' and that it is 'impossible to measure a safe standard'. Coupled with high non-compliance levels and an inability to measure the impact of silica on a certain cohort of workers, she advised that the CFMMEU's position is that manufactured stone should be banned (as outlined earlier in paragraph 4.21).²⁹⁷ Ms Mallia explained:

Quite frankly, our position is that this product should be banned ... SafeWork's own statistics show a frighteningly high level of non-compliance with workplace controls in the fabrication factories in western Sydney in particular but they have also admitted that they cannot measure the impact on installers because they do not know where they are and they cannot find them. They are such a mobile group of workers that these workers who are highly at risk, the effects of this product on them is almost immeasurable. It is one of the reasons why we are calling for a ban on the product. The exposure standards are out of date; in fact, it is impossible to measure a safe standard, which again supports our argument for a ban.²⁹⁸

- 4.99** The CFMMEU were particularly critical of the recommendation to reduce the WES to no lower than 0.05 mg/m³ simply because that is the level at which silica can be reliably measured,

²⁹⁵ Evidence, Dr Allsop, 20 September 2019, p 40.

²⁹⁶ Evidence, Ms Rose Webb, Deputy Secretary, Better Regulation Division, SafeWork NSW, 11 February 2020, p 32.

²⁹⁷ Evidence, Ms Mallia, 16 September 2019, p 16.

²⁹⁸ Evidence, Ms Mallia, 16 September 2019, p 16.

describing the approach as a having a 'flawed logic'.²⁹⁹ As Mr Kruse asked: 'If this substance is so dangerous that it cannot be measured at a safe level why impose a workplace exposure standard which is adopted just because we can measure the presence of the substance at that level?'.³⁰⁰ The Union explained:

The Band-Aid solution under consideration is the recommendation of an interim standard of 0.05 mcg/m³ - to be implemented until such time that technology is able to "catch up" with the recommended health standard. There is an underlying flawed logic in this approach. If silica exposure is so toxic that it compromises health at levels below those which are capable of accurate monitoring, this supports the argument that the application of workplace controls (and monitoring their effectiveness) will remain problematic. Instead, where possible the elimination of the unsafe substances from the work environment should be the priority response.³⁰¹

- 4.100** While Mr Kruse indicated that the CFMMEU does not have a 'safe fallback position' from banning the product entirely,³⁰² the Union advised that it 'continues to argue for the earliest possible adoption of the lower, health-related standard of 0.02 mg/m³',³⁰³ notwithstanding the difficulties it acknowledged in measuring silica exposure at this level.
- 4.101** Ultimately, numerous stakeholders found value in considering the exposure standard not in isolation or as a number on page, but as a measure to be promoted, complied with and enforced in practice, as part of a broader approach to addressing silicosis.
- 4.102** As Mr Orfanos, AIOH, remarked: 'A lot of people are submitting a recommendation to reduce the exposure standard. That is great, but a number on a piece of paper is not protecting the guy out there doing the work. What is critical is that awareness and understanding of the risks...'.³⁰⁴ Ms Donnelly, Chief Executive of the State Insurance Regulatory Authority, shared this view, stating: '...I do agree that it needs to be more than a promise of a standard in words. It needs to be able to be implemented and needs to be enforced'.³⁰⁵
- 4.103** Mr Walsh similarly considered the exposure standard as one of a number of measures that need to be taken and implemented together: 'So that is banning of dry cutting, it is the introduction and the mandatory use of wet cutting in conjunction with PPE, in conjunction with adequate dust extraction equipment within the workplace to ensure that respirable crystalline silica is reduced to the lowest extent possible'.³⁰⁶
- 4.104** For Dr Colquhoun, operating on the most basic assumption that there is no safe level of exposure to silica dust ensures that the hierarchy of controls is engaged at all times. He stated: 'I think any time you are cutting manufactured stone you have to make the assumption that if

²⁹⁹ Construction, Forestry, Maritime, Mining and Energy Union, *Manufactured Stone Industry Task Force: CFMMEU Final Report*, pp 6-7.

³⁰⁰ Evidence, Mr Kruse, 16 September 2019, p 19.

³⁰¹ Construction, Forestry, Maritime, Mining and Energy Union, *Manufactured Stone Industry Task Force: CFMMEU Final Report*, pp 6-7.

³⁰² Evidence, Mr Kruse, 16 September 2019, p 20.

³⁰³ Submission 5, Construction, Forestry, Maritime, Mining and Energy Union, p 2.

³⁰⁴ Evidence, Mr Orfanos, 16 September 2019, pp 6-7.

³⁰⁵ Evidence, Ms Donnelly, 20 September 2019, p 38.

³⁰⁶ Evidence, Mr Walsh, 16 September 2019, p 37.

you breathe the stuff in you are going to die. You need to put all of the hierarchic controls in place, irrespective of whether or not there is a monitor available.³⁰⁷

- 4.105** The committee referred to a previous statement of Dr Colquhoun which further clarified that the 'utmost caution' needs to be taken to keep workers safe from harm, regardless of whether exposure levels can be measured:

As with any industrial process the Hierarchy of Controls must be followed when there is any potential exposure to a hazardous substance. This includes elimination, substitution, isolation, engineering controls, administrative controls and finally personal protective equipment. Cutting and grinding manufactured stone is known to generate significant concentrations of respirable crystalline silica over a relatively short period, which, if inhaled can lead to adverse, irreversible and untreatable health consequences. Hence irrespective of whether monitoring is available, utmost caution needs to be undertaken to ensure a worker is safe and all steps are taken to prevent exposure to this hazardous substance. Keeping workers safe from harm is not negotiable.³⁰⁸

- 4.106** SafeWork NSW explained the significance of workplace exposure standards within this context, telling the committee that such standards 'do not identify a dividing line between a healthy or unhealthy working environment', nor are they intended to represent 'acceptable exposure levels for workers'.³⁰⁹

- 4.107** According to SafeWork NSW, workplace exposure standards are 'simply the maximum upper limit prescribed by legislation' before additional controls may be required.³¹⁰ Mr Dunphy, SafeWork NSW, thus described the WES as the 'trigger point' for compliance action but maintained that what the legislation ultimately intends is to ensure the health and safety of workers 'as far as reasonably practicable'.³¹¹

Air monitoring requirements

- 4.108** Relevant to the workplace exposure standard and the measurement of crystalline silica levels in the workplace is the issue of air monitoring requirements under current work health and safety regulations. In particular, the lack of clarity around what the current requirements are and the adequacy of these requirements was discussed during the inquiry.

- 4.109** According to the Work Health and Safety Regulation 2017:

A person conducting a business or undertaking at a workplace must ensure that air monitoring is carried out to determine the airborne concentration of a substance or mixture at the workplace to which an exposure standard applies if—

³⁰⁷ Evidence, Dr Colquhoun, 20 September 2019, p 40.

³⁰⁸ Dr Chris Colquhoun, Chief Medical Officer, icare, as cited by Mr David Shoebridge MLC, 2 October 2019, p 19.

³⁰⁹ Answers to questions on notice, State Insurance Regulatory Authority, 17 October 2019, p 7.

³¹⁰ Answers to questions on notice, State Insurance Regulatory Authority, 17 October 2019, p 7.

³¹¹ Evidence, Mr Dunphy, 2 October 2019, p 16.

(a) the person is not certain on reasonable grounds whether or not the airborne concentration of the substance or mixture at the workplace exceeds the relevant exposure standard, or

(b) monitoring is necessary to determine whether there is a risk to health.³¹²

- 4.110** Indeed, Safe Work NSW explained: 'PCBUs must ensure that no person at the workplace is exposed to a substance above its exposure standard and must reduce exposures so far as is reasonably practical'. In doing so, PCBUs must undertake air monitoring if they are not certain as to whether or not exposure standards are exceeded, or to determine if there is a risk to health.³¹³
- 4.111** The CFMMEU, in its report to the Manufactured Stone Industry Report, argued that such requirements lack clarity and thus called for the development of clearer regulations as to when air monitoring is required, stating: 'Terms such as "significant risk" or "on reasonable grounds" [have] created inconsistent understanding and as a result ... monitoring is not undertaken'.³¹⁴
- 4.112** Moreover, the CFMMEU contended that existing regulations enable businesses to be 'wilfully blind about the dangers of dust exposure' because regulations only require air monitoring if a business 'is not certain on reasonable grounds' whether exposure levels have been breached. The CFMMEU stated that 'this creates a situation where should the PCBU fail to implement monitoring the PCBU remains conveniently unaware whether the WES (however inadequate it may be) may be breached'.³¹⁵
- 4.113** In response to questions about the regulatory requirements for air monitoring, Ms McCool, SafeWork NSW, stated that air monitoring is essentially only triggered 'if you change a work practice' such that exposure levels are affected: 'Air monitoring is triggered if you change a work practice. If you have air monitored and there has been no change of practice, essentially, it does not trigger another requirement'.³¹⁶
- 4.114** When pressed about the adequacy of this trigger in ensuring a safe work environment given that there is no legal requirement to monitor the air unless there is a change, Ms McCool argued that there are 'other visible inspections' that are done to determine whether safety standards are being met.³¹⁷

Committee comment

- 4.115** The committee notes the reduction of the workplace exposure standard (WES) from a time weighted average of 0.1 mg/m³ to 0.05 mg/m³. However, the committee still feels a further reduction is necessary.

³¹² Work Health and Safety Regulation 2017, cl 50 (1).

³¹³ Answers to questions on notice, SafeWork NSW, 25 February 2020, pp 5-6.

³¹⁴ Construction, Forestry, Maritime, Mining and Energy Union, *Manufactured Stone Industry Task Force: CFMMEU Final Report*, p 7.

³¹⁵ Construction, Forestry, Maritime, Mining and Energy Union, *Manufactured Stone Industry Task Force: CFMMEU Final Report*, p 7.

³¹⁶ Evidence, Ms McCool, 11 February 2020, p 46.

³¹⁷ Evidence, Ms McCool, 11 February 2020, p 46.

- 4.116** In particular, the committee notes the process by which the new standard was determined, and the fact that Safe Work Australia, in their draft evaluation report which was released for public comment, initially recommended a WES of 0.02 mg/m³.
- 4.117** The committee questions the decision to ultimately recommend a standard of 0.05 mg/m³ – which was accepted by WHS Ministers – when the initial recommendation of 0.02 mg/m³ was peer-reviewed by experts in the field.
- 4.118** While the committee acknowledges the views presented by inquiry participants about the limitations of measuring a lower exposure standard, we are not convinced that this is reason enough to support a higher upper limit of 0.05 mg/m³. In our view, steps should be taken to further reduce the WES to a time weighted average of 0.02 mg/m³ for non-mining industries as soon as possible and we make this recommendation accordingly.
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Recommendation 7

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.

- 4.119** With regard to air monitoring requirements, the committee does not believe that current obligations on employers are clear or adequate in ensuring the air is regularly monitored for excessive levels of exposure to silica dust. There should be no doubt as to the circumstances under which air monitoring should occur and it should certainly not be left to employers to make a judgment as to whether they need to do this or not.
- 4.120** The risks posed by breathing in crystalline silica dust are very clear. Given this, all businesses engaged in the fabrication of manufactured stone will be required to register with SafeWork NSW, and will maintain such registration every 12 months. Furthermore, there must be an unambiguous legislative obligation on employers in manufactured stone fabrication sites to regularly conduct air monitoring and provide the results to SafeWork NSW.
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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.

Wet cutting

- 4.121** Wet cutting (or water suppression) is one control measure that can be used when working with manufactured stone. It is when water is used in the cutting process, thereby preventing dust from escaping into the air. There are water fed tools that can be used, and various methods to ensure water is supplied at the right levels while work is being undertaken.
- 4.122** This section will explore three issues related to wet cutting: whether dry cutting of manufactured stone is prohibited, whether wet cutting is effective in reducing exposure to respirable crystalline silica and whether wet cutting is used by workers on installation sites.

Is dry cutting prohibited?

- 4.123** Given the emphasis on wet cutting being used as a control measure, the committee examined whether the dry cutting of manufactured stone is prohibited.
- 4.124** Several suppliers of stone told the committee that they advise their clients to wet cut the stone when working with it to minimise exposure to crystalline silica. Mr Norman stated that his 'very first product manual indicated wet cut and wear a respirator'.³¹⁸ He noted that in 'today's manual nothing has changed' in terms of this advice.³¹⁹
- 4.125** Mr Cullen from Caesarstone provided several versions of the fabrication manual they have had since 2004, all referring to the need for wet cutting.³²⁰ Mr Rayment from Smartstone also provided fabrication manuals for his business dating back to 2012. These too referred to the need to use water when cutting, polishing or drilling Smartstone slabs.³²¹
- 4.126** As noted above, the position of these companies was that exposure to crystalline silica can be managed if workers follow appropriate safety practices, and wet cutting was just one of the methods they highlighted as being important.
- 4.127** These companies also called for a ban on dry cutting, as noted in the submission provided by the Australian Engineered Stone Advisory Group.³²² Similarly, Cosentino, a producer and supplier of stone products, called for the ban of dry cutting of stone to be implemented nationally.³²³
- 4.128** There were other stakeholders throughout this inquiry that also called for a ban on dry cutting to be put in place in New South Wales.

³¹⁸ Evidence, Mr Norman, 15 November 2019, p 11.

³¹⁹ Evidence, Mr Norman, 15 November 2019, p 4.

³²⁰ Answers to questions on notice – Attachment 4, Australian Engineered Stone Advisory Group, Mr David Cullen, Caesarstone Australia, 2 December 2019.

³²¹ Answers to questions on notice – Attachment 4, Australian Engineered Stone Advisory Group, Mr Rayment, Smartstone Australia, 28 November 2019.

³²² Submission 13, Australian Engineered Stone Advisory Group, p 3.

³²³ Submission 14, Cosentino Australia Pty Ltd, p 4.

- 4.129** Ms Mallia of the CFMMEU said that the union supports a prohibition on dry cutting, as Queensland and Victoria has introduced.³²⁴ Dr Yates also argued that dry cutting should be banned in New South Wales.³²⁵
- 4.130** Lawyers from Maurice Blackburn Lawyers and the Australian Lawyers Alliance also supported a ban on dry cutting. Maurice Blackburn Lawyers noted that, '[d]ry cutting of artificial stone with a masonry saw is the simplest way to cut the product' and that dry cutting as a practice 'is common amongst workers who perform cutting work onsite'.³²⁶
- 4.131** Mr Jonathan Walsh, Principal, Maurice Blackburn Lawyers, who has represented many clients in Queensland and New South Wales in silicosis cases, agreed that a ban on dry cutting would help to reduce exposure to silica dust, as did his colleague Mr Timothy McGinley.³²⁷
- 4.132** Ms Joanne Wade, representing the Australian Lawyers Alliance, highlighted two silicosis cases connected to the dry cutting of stone. One was a worker who had recently been diagnosed with complicated silicosis and progressive massive fibrosis, who had worked in a factory where the dry cutting of engineered stone was a daily occurrence.³²⁸
- 4.133** The other was a worker who had passed away at 46 years of age, also due to progressive massive fibrosis. This individual had worked in a very dusty factory, where only the first cut of the slab of stone was done with a bridge saw which had a water attachment. All other cuts were done by dry cutting with hand held grinders.³²⁹
- 4.134** In this regard, Ms Wade commented on the common issues she is aware of in silicosis cases, one of which is dry cutting:
- The common themes that I have seen is that nearly every worker who I have acted for and taken a history for have all been dry cutting and have not had proper PPE equipment, sometimes they are only wearing a paper mask; dust is accumulating everywhere and it is not being cleaned up at the end of the workday, so even just walking through the factory itself is dusty. For people going out installing onsite they are dry cutting and, again, with no proper PPE equipment and not cleaning up at the end of the day. All of them tell a very, very, very similar story and they all talk about the first cut is always with a bridge saw with water attached and after that everything is dry.³³⁰
- 4.135** Given most stakeholders in this review called for dry cutting to be banned, the committee explored the legislative restrictions on this practice with SafeWork NSW representatives during a hearing.
- 4.136** The committee was advised by Mr Dunphy, SafeWork NSW, that the practice is prohibited by virtue of clause 49 of the Work Health and Safety Regulation 2017. This states:

³²⁴ Evidence, Ms Mallia, 16 September 2019, p 16.

³²⁵ Evidence, Dr Yates, 16 September 2019, p 28.

³²⁶ Submission 8, Maurice Blackburn Lawyers, p 8.

³²⁷ Evidence, Mr Walsh, 16 September 2019, p 37; Evidence, Mr McGinley, 16 September 2019, p 37.

³²⁸ Evidence, Ms Joanne Wade, NSW Committee, Australian Lawyers Alliance, 16 September 2019, p 35.

³²⁹ Evidence, Ms Wade, 16 September 2019, p 35.

³³⁰ Evidence, Ms Wade, 16 September 2019, p 38.

Ensuring exposure standards for substances and mixtures not exceeded

A person conducting a business or undertaking at a workplace must ensure that no person at the workplace is exposed to a substance or mixture in an airborne concentration that exceeds the exposure standard for the substance or mixture.³³¹

4.137 Mr Dunphy explained that 'dry cutting would exceed the exposure standards so it is automatically prohibited by that clause specifically in terms of the exposure standard'.³³²

4.138 The committee tried to reconcile the evidence provided by stakeholders calling for a ban versus SafeWork's position that a ban is already in place. Mr Dunphy acknowledged: 'It is true that if you look at the legislation you cannot point to a clause and say "dry cutting is prohibited"'.³³³ Agreeing it is not in the legislation, he maintained:

What is there though is the requirement you cannot do any work that would take you over the exposure standard. We know that dry cutting takes you over the exposure standard. So that automatically stops the allowance of that type of activity.³³⁴

4.139 The committee pressed the witnesses from Safe Work NSW on this issue, highlighting that in Queensland there is a specific ban on dry cutting which states: 'Persons conducting a business or undertaking must not allow uncontrolled dry cutting, grinding or polishing of artificial/engineered stone bench tops'.³³⁵

4.140 When questioned as to why SafeWork NSW has not released the same type of statement, Mr Dunphy replied:

We do in terms of the work that we have been doing with our complaints program in terms of going in—if there is any dry cutting we will immediately issue a prohibition notice to confirm that. We can only implement what is in the law, and I pointed to the provision in the law that does make it clear that you cannot do any sorts of activity that would put you over the exposure standard. We know that dry cutting, if you do do dry cutting, would go over the exposure standard; so that clause immediately prohibits that type of activity.³³⁶

4.141 Mr Dunphy added that they 'do not make amendments to the regulation'³³⁷ and that a ban on dry cutting 'was not a recommendation that came from the task force review'.³³⁸

4.142 Like Mr Dunphy, Ms Meagan McCool, Director, Hazardous Chemical Facilities and Safety Management Audits, emphasised that dry cutting is a practice that is prohibited. She said that,

³³¹ Work Health and Safety Regulation 2017, cl 49.

³³² Evidence, Mr Dunphy, 2 October 2019, p 2.

³³³ Evidence, Mr Dunphy, 2 October 2019, p 3.

³³⁴ Evidence, Mr Dunphy, 2 October 2019, p 3.

³³⁵ Queensland Government, Workplace Health and Safety, Electrical Safety Office, Workers' Compensation Regulator, Work Cover Queensland, *Immediate action required to prevent exposure to silica for engineered stone benchtop workers*, <https://www.worksafe.qld.gov.au/injury-prevention-safety/alerts/whsq/2018/prevent-exposure-to-silica-for-engineered-stone-benchtop-workers>.

³³⁶ Evidence, Mr Dunphy, 2 October 2019, p 3.

³³⁷ Evidence, Mr Dunphy, 2 October 2019, p 3.

³³⁸ Evidence, Mr Dunphy, 2 October 2019, p 4.

'Whether it is in a factory, whether it is onsite, all through the process if it is evidenced that is uncontrolled dry cutting, a prohibition will be issued'.³³⁹

4.143 In this regard, the committee noted Ms McCool's use of the term 'uncontrolled'. She explained that uncontrolled dry cutting means there 'is not a water fed tool or a tool with a dust capture collection'.³⁴⁰

4.144 At a subsequent hearing, the committee asked members of the Australian Engineered Stone Advisory Group whether they are aware that there is a ban of dry cutting in place in New South Wales. Mr Cullen from Caesarstone Australia responded: 'I do not believe so. It has just been put in place in Queensland. I do not believe it is in New South Wales'.³⁴¹

4.145 At the final hearing for this inquiry, which took place in February 2020, the issue was again raised with representatives of SafeWork NSW. When asked why there has been no clear regulation that states that the dry cutting of manufactured stone is banned, Ms Rose Webb, Deputy Secretary, Better Regulation Division, SafeWork NSW, asserted it is a 'policy question for the Government to determine'.³⁴²

4.146 Ms McCool reiterated at this hearing that uncontrolled dry cutting is a practice which is prohibited. She explained:

...can I point you to—if a prohibition is issued for dry cutting, a prohibition is never lifted so you can never go back to that practice and if you do the penalties can go upwards to \$100,000. If you look at our website it says, "uncontrolled dry cutting and grinding is prohibited. We will enforce this by issuing a prohibition notice which bans you from doing this work. Instead you will need to wet cut, use dust extraction systems on portable tools or adopt other methods that eliminate or minimise the generation of dust. If you do not comply with the prohibition notice you can face penalties up to \$100,000." The Minister also announced last October that that would be supported through proposals to get on the spot fines that are added to that prohibition notice.³⁴³

4.147 Ms McCool advised that workers must use dust extraction and water tools to control the dust. In her view, and Mr Dunphy's view, the position in New South Wales is similar to the Victorian and Queensland approach which focuses on the prohibition of uncontrolled dry cutting. Mr Dunphy contended that SafeWork NSW has been 'very clear' about this position.³⁴⁴

4.148 In addressing whether they could be clearer or more explicit on this prohibition, Ms McCool outlined that to make a change to legislation, SafeWork NSW 'have to first take it to the national table'. Then 'if it is not accepted the New South Wales Government can consider it. So there is a process in place'.³⁴⁵

³³⁹ Evidence, Ms McCool, 2 October 2019, p 4.

³⁴⁰ Evidence, Ms McCool, 2 October 2019, p 4.

³⁴¹ Evidence, Mr Cullen, 15 November 2019, p 23.

³⁴² Evidence, Ms McCool, 11 February 2020, p 48.

³⁴³ Evidence, Ms McCool, 11 February 2020, p 48.

³⁴⁴ Evidence, Ms McCool, 11 February 2020, p 49.

³⁴⁵ Media release, Hon Kevin Anderson MP, Minister for Better Regulation, 'NSW unveils strategy to stamp out silicosis', 21 February 2020.

- 4.149 Just recently, on 21 February 2020, the Minister for Better Regulation announced that there would be on the spot fines for those who engage in dry cutting practices. The Minister also referred to rebates which are available for the purchase of equipment, such as wet cutting tools or tools that have dust extraction attached.³⁴⁶ The media also reported that a ban on dry cutting would commence on 1 July 2020.³⁴⁷

Is wet cutting effective at reducing exposure?

- 4.150 All stakeholders agreed that wet cutting is important in managing the risk of crystalline silica exposure. During the inquiry, however, there were concerns raised that even with wet cutting the exposure level to crystalline silica dust may exceed the workplace exposure standard. In this regard, the committee received evidence about the importance of respiratory protection measures as well.
- 4.151 In the Mine Ventilation Society of Australia's view, wet cutting is one of the most effective ways to reduce exposure to workers. It noted the importance of sprays and water droplets being the correct size to capture the respirable particles in the dust.³⁴⁸
- 4.152 However, according to Maurice Blackburn Lawyers, wet blade cutting still has an exposure rate of 4.9 mg/m³ over a 30 minute sampling period, which exceeds the current exposure standard of 0.05 mg/m³ and even the previous standard of 0.1 mg/m³. The law firm noted that wet cutting is vastly better than dry cutting, but contended that it 'still poses a risk to health'.³⁴⁹
- 4.153 Maurice Blackburn Lawyers also said that research would indicate that best practice is to have wet blade cutting in combination with local exhaust ventilation, which can reduce respirable crystalline silica exposure to as little as 0.6 mg/m³ over a 30 minute sampling period. It noted that this would require cutting to generally be in a workshop environment rather than on site.³⁵⁰
- 4.154 Similarly, Mr Orfanos of the AIOH said that studies have shown that even with controls in place such as wet cutting, the exposure levels are higher than the previous standard of 0.1 mg/m³. He too noted that wet cutting must be accompanied by respiratory protection:

The evidence, the studies they have done is they have undertaken monitoring where they are doing the wet cutting and as you mentioned ... evidence shows that even with those controls in place there were still airborne levels of dust above the current exposure standards, so you would need respiratory protection as well.³⁵¹

- 4.155 SafeWork NSW was questioned about the level of exposure posed by wet cutting. Ms McCool said that the average exposure with a wet blade is 2.9 mg/m³ not 4.9 mg/m³, as Maurice

³⁴⁶ Media release, Hon Kevin Anderson MP, Minister for Better Regulation, 'NSW unveils strategy to stamp out silicosis', 21 February 2020.

³⁴⁷ Anna Patty, 'NSW to ban dry cutting of stone products to combat deadly silicosis', Sydney Morning Herald, 21 February 2020.

³⁴⁸ Submission 12, Mine Ventilation Society of Australia, p 3.

³⁴⁹ Submission 8, Maurice Blackburn Lawyers, p 8.

³⁵⁰ Submission 8, Maurice Blackburn Lawyers, p 8.

³⁵¹ Evidence, Mr Orfanos, 16 September 2019, p 6.

Blackburn Lawyers claimed. Ms McCool explained that the law firm was discussing experimental research, which she put in context:

... [T]his was experimental results and not indicative of an actual work environment. It does say that the full-time time-weighted average is under actual working conditions, which would likely be much lower than the levels measured in our experiments. But what is happening is there is research being done with the University of Wollongong, as I mentioned earlier, on the difference between dry and wet cutting. So this was an experimental research study that was referred to.³⁵²

4.156 In response to a supplementary question after giving evidence at a hearing, SafeWork NSW also stated that the 'United States Occupational Health Administration has confirmed the effectiveness of wet (as opposed to dry) cutting in terms of reducing exposure to respirable crystalline silica ... for construction work'.³⁵³

4.157 SafeWork NSW discussed the findings of several experimental studies:

- one study showing that on average, dry cutting produced about 15 times more airborne respirable crystalline silica than wet cutting, 'although wet cutting levels were still high as testing was done in a small unventilated enclosure'
- one study showed dry cutting produced twice as much airborne respirable dust as a sheet flow wet cutting method.³⁵⁴

4.158 Putting this research in context, SafeWork NSW explained that these studies 'do not reflect the actual exposure to [respirable crystalline silica] when cutting engineered stone, as workers usually undertake a variety of tasks'.³⁵⁵

4.159 SafeWork NSW also drew upon the results of another study from the United States which evaluated worker exposure to respirable crystalline silica across a variety of wet and dry operations. This study showed the daily average exposure of workers performing:

- mostly wet operations was 0.083 mg/m³
- entirely dry operations was 0.87 mg/m³
- predominantly working dry was 1.0 mg/m³
- wet and dry operations extensively was 1.2 mg/m³.³⁵⁶

4.160 SafeWork NSW also pointed to data from Queensland from an audit of 10 stone fabricating workshops which showed that workers mostly involved in wet cutting had daily exposures ranging from 0.07 to 1.03 mg/m³, although it cited that the Office of Industrial Relations in Queensland has reported that the highest result was likely due to a worker carrying out a small amount of dry work. SafeWork NSW also stated that these levels are likely to be an overestimate due to an issue with the sampling device:

³⁵² Evidence, Ms McCool, 2 October 2019, p 10.

³⁵³ Answers to questions on notice, SafeWork NSW, 31 October 2019, p 9.

³⁵⁴ Answers to questions on notice, SafeWork NSW, 31 October 2019, p 9.

³⁵⁵ Answers to questions on notice, SafeWork NSW, 31 October 2019, p 9.

³⁵⁶ Answers to questions on notice, SafeWork NSW, 31 October 2019, p 9.

... in August 2018 SKC Limited announced that their Respirable Dust Cyclone Sampling device failed to meet the international convention for sampling respirable dust at the flow rate of 2.2 L/min that was recommended by SKC at the time.³⁵⁷

Does wet cutting occur on installation sites?

4.161 A further issue the committee explored was whether wet cutting only occurs in fabrication workshops or whether it is also being used on installation sites, when manufactured stone benchtops may need to be adjusted prior to being installed in a kitchen or bathroom.

4.162 There was evidence that wet cutting may not be used given the 'mess' it can make at an installation site. Mr Orfanos acknowledged the challenges associated with wet cutting on residential installation sites and stated:

When you get to the point when you are actually installing it in someone's house there would be concerns around if you use wetting you will make a mess of the place, will you not? There are probably factors there that stop people or make them hesitant to actually undertake those appropriate precautions.³⁵⁸

4.163 Dr Miles also stated that 'there may be pressure from consumers of the product as well not to make a slurry and a mess in your house while you are cutting'. She also added that there 'may be an incentive as well not to practice best practice and safest practice'.³⁵⁹

4.164 In the submission from the Lung Foundation of Australia and Thoracic Society of Australia and New Zealand there was a case study of a man that had recently been diagnosed with silicosis who reported being most exposed during his work cutting and polishing stone on site during installations.³⁶⁰

4.165 This correlates with information the committee received from the CFMMEU Final Report to the work of the Manufactured Stone Industry Taskforce. Noting that 'the greatest challenge' is manufactured stone installation and joinery operations, the CFMMEU outlined how this part of the industry is 'extremely mobile' and 'largely consists of small businesses'. The CFMMEU also stated in this reported:

The installation and joinery subsector is by far the largest participant in terms of numbers of workers exposed to silica dust. This group of workers also make up a significant cohort of those persons injured through manufactured stone dust exposure.³⁶¹

4.166 Ms Mallia of the CFMMEU also said that anecdotally, members and delegates who work on sites where big apartment blocks are being built have reported that there is often a lot of dust

³⁵⁷ Answers to questions on notice, SafeWork NSW, 31 October 2019, p 9.

³⁵⁸ Evidence, Mr Orfanos, 16 September 2019, p 6.

³⁵⁹ Evidence, Dr Miles, 16 September 2019, p 15.

³⁶⁰ Submission 3, Lung Foundation of Australia and Thoracic Society of Australia and New Zealand, pp 5-6.

³⁶¹ Construction, Forestry, Maritime, Mining and Energy Union, *Manufactured Stone Industry Task Force: CFMMEU Final Report*, p 11.

and 'no control over that dust being spread around the job'.³⁶² She later noted that 'installers are largely owner trained, they are individual contractors – they are not people who have the resources to build elaborate tents...'.³⁶³

- 4.167 By contrast, Mr Solomon, Executive Officer – Safety and Risk, Master Builders Association, explained that one option in the construction of a high rise apartment building is to put in place a controlled cutting room:

Whilst wet cutting does not eliminate the risk, it does reduce it greatly. In an apartment environment, if there was a scenario where a defect was identified, rather than taking all those benchtops back to the factory, which you may do, you could quite easily—and this happened in the past in my former life as a site manager or foreman—allocate an empty apartment that has not been fitted out and use that as a cutting room.³⁶⁴

- 4.168 Mr Solomon also contended that only a small amount of cutting occurs off site, often for the tap, which he said was 'more often than not' done with digital technology. He acknowledged that dry cutting does occur, but was of the opinion that it does not occur often.³⁶⁵

- 4.169 Mr Rayment from Smartstone Australia also argued that in terms of exposure to crystalline silica, the 'largest risk occurs at the fabrication stage in the factory, where the product is polished and shaped; rather than at the installation stage on a work site'.³⁶⁶

- 4.170 Suppliers were questioned as to the extent of adjustments or cuts undertaken on slabs of stone on installation sites. Mr Cullen discussed how the industry has matured over the years and how practices have improved, so that fabricators have done 99.9 per cent of the work by the time it gets to a person's home or apartment building. Mr Cullen stated:

There should be very little work that is done on site. There should be no dust. If there is any finalisation of the product on site, it should be done in a wet environment. If there is significant fabrication to take place on site, it should be taken back to the factory.³⁶⁷

Committee comment

- 4.171 It is clear from the evidence that breathing in silica dust while dry cutting is highly dangerous. All stakeholders agreed that dry cutting should be banned and that there needs to be a focus on using dust extraction tools or water suppression when working with manufactured stone. What troubled the committee is why there has not been a clear and unambiguous regulation to this effect.

³⁶² Evidence, Ms Mallia, 16 September 2019, p 17.

³⁶³ Evidence, Ms Mallia, 16 September 2019, p 17.

³⁶⁴ Evidence, Mr Solomon, 20 September 2019, p 12.

³⁶⁵ Evidence, Mr Solomon, 20 September 2019, p 12.

³⁶⁶ Evidence, Mr Rayment, 15 November 2019, p 6.

³⁶⁷ Evidence, Mr Cullen, 15 November 2019, p 8.

- 4.172 SafeWork NSW's position on this issue was unsatisfactory. There was a clear disconnect between stakeholders calling for a ban on dry cutting and the regulator maintaining that such a ban was already in place.
- 4.173 While we acknowledge that dry cutting without using a water or dust extraction tool would exceed the workplace exposure standard, the committee questions why a specific and clear ban was not put in place earlier. To this end, the committee recommends that the NSW Government introduce an explicit ban on dry cutting, to take effect immediately.

Recommendation 9

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

Personal Protective Equipment

- 4.174 There were a few concerns raised during the inquiry in relation to personal protective equipment. While stakeholders agreed that personal protective equipment is important, there were concerns about compliance in the industry and in particular, whether masks are being fit tested regularly.
- 4.175 In this regard, the committee noted evidence about the different type of respirators available, including disposable masks (P1, P2 and P3 filtering face pieces), reusable half masks and full face masks that include breathing apparatus.³⁶⁸
- 4.176 The CFMMEU noted that SafeWork NSW's summary of inspector notices issued during the operation of the Taskforce indicated that 73 notices had been given in relation to personal protective equipment training and 44 notices related to the provision of personal protective equipment.³⁶⁹
- 4.177 Mr Walsh from Maurice Blackburn Lawyers also outlined concerns about whether 'proper and adequate' personal protective equipment is being provided.³⁷⁰ Ms Wade, representing the Australian Lawyers Alliance, noted that some of her clients have only worn a paper mask and 'not had proper PPE equipment'.³⁷¹
- 4.178 One particular issue that was discussed was the effect of facial hair on protection. The Australian Institute of Occupational Hygienists explained that facial hair can prevent a mask from forming a good seal, as gaps can be created around the edges of the mask, thereby allowing contaminants

³⁶⁸ Breathe Freely Australia, *Respiratory Protective Equipment (RPE): Facial Hair and Face Masks - Fact Sheet*, <https://breathefreelyaustralia.org.au/wp-content/uploads/2019/05/rpe-fact-sheet-AIOH-V3-1.pdf>.

³⁶⁹ Construction, Forestry, Maritime, Mining and Energy Union, *Manufactured Stone Industry Task Force: CFMMEU Final Report*, p 10.

³⁷⁰ Evidence, Mr Walsh, 16 September 2019, p 37.

³⁷¹ Evidence, Ms Wade, 16 September 2019, p 38.

to be breathed in. The Australian Institute of Occupational Hygienists stated that 'the negative impact of facial hair on respirator performance is well known'.³⁷²

- 4.179** SafeWork NSW explained that their education campaigns have included a focus on the use of respiratory masks when working with manufactured stone.³⁷³ Mr Dunphy, SafeWork NSW, highlighted that the awareness sessions held by SafeWork NSW also talk about appropriate masks to wear, and the rules in terms of complying with Australian standards and workplace health and safety legislation.³⁷⁴
- 4.180** Ms Meagan McCool from SafeWork NSW explained though that 'the main thing is that the selection of mask will depend on the controls in front'. In this regard she noted that 'the mask is at the bottom of the queue....the less controls you have in front the higher protection you need in the mask'.³⁷⁵
- 4.181** Some stakeholders also discussed clean-shaven policies in workplaces and whether these should be mandated. The Mine Ventilation Society of Australia recommended that employers adopt a 'no facial hair' policy ... to ensure all RPE [respiratory protective equipment] provided are effective and help to drive personal ownership by the workforce'.³⁷⁶
- 4.182** Dr Allsop of icare, stated that there is some discussion currently occurring about whether there should be restrictions on facial hair, and potentially whether clean shaving policies can be mandated.³⁷⁷

Committee comment

- 4.183** The committee acknowledge SafeWork NSW's recent 'Which mask will you wear?' campaign and other education and awareness strategies that have been implemented to help address the issue of silicosis within the industry.
- 4.184** Unfortunately though, in a number of case studies discussed with the committee, certain individuals diagnosed with silicosis had not worn the appropriate masks when working with manufactured stone. This is of significant concern to the committee and must be continue to be a focus of education and public awareness campaigns.
- 4.185** That being said, the committee acknowledges that prior to consideration of PPE, workplaces must at least ensure the use of vacuum extraction or water suppression tools when cutting or working with manufactured stone. Respiratory protection is of course important, but it cannot be used on its own to mitigate the harmful health risks posed by breathing in silica dust.

³⁷² Submission 4, Australian Institute of Occupational Hygienists, p 6.

³⁷³ Evidence, Mr Andrew Gavrielatos, Executive Director, Specialist Services, SafeWork NSW, 2 October 2019, p 9.

³⁷⁴ Evidence, Mr Dunphy, 2 October 2019, p 12.

³⁷⁵ Evidence, Ms McCool, 2 October 2019, p 12.

³⁷⁶ Submission 12, Mine Ventilation Society of Australia, p 6. See also Evidence, Mr Shearer, 20 September 2019, p 4.

³⁷⁷ Evidence, Dr Allsop, 20 September 2019, p 33.

Should asbestos controls be applied to manufactured stone products?

- 4.186** Further to previous discussions in chapter 2 around whether silica in manufactured stone can be likened to asbestos given the health risks associated with it, consideration was also given to whether asbestos safety control measures could be used for managing silica. While these control measures were not clearly defined during the inquiry, stakeholders commented on their merit as an appropriate response to mitigating the impact of exposure to silica dust.
- 4.187** The Master Builders Association (MBA), in particular, recommended 'applying existing asbestos safety control measures to the generation, management and disposal of silica dust'.³⁷⁸ The MBA also recommended that 'the safe transportation and disposal of silica related products be treated the same as asbestos'.³⁷⁹
- 4.188** Mr David Solomon, Executive Officer – Safety and Risk, MBA, explained that the application of such controls is necessary to fill a void that currently exists, which might otherwise be filled with a blanket ban or blanket control measures across all products containing silica, which the MBA does not support:
- ...[T]here are controls in place with asbestos at the moment. There are laws, there are industry best practice controls, risk assessments, air monitoring, activities on site that industry well know. Whereas, with silicosis it is quite broadly unknown and we are suggesting that something in place is better than nothing in the interim, as opposed to a kneejerk reaction and just blanketly stopping businesses from working.³⁸⁰
- 4.189** Mr Solomon further stated that, '[W]hat we are afraid of ... is having a high level of control imposed right across the industry for the other products where it is not as densely populated with silica'.³⁸¹
- 4.190** Mr Solomon advised that the relevant control measures would be those around limiting exposure in the air, such as 'personal protection equipment, air monitoring and the way you contain that dust'.³⁸²
- 4.191** It is noted that there is some lack of clarity around the MBA's position. On the face of it, the MBA's recommendations in its submission infer that asbestos and silica are comparable, such that the control measures applying to asbestos should be applied to silica. However, when pressed at a hearing, the MBA stated that the two airborne substances are analogous 'in principle',³⁸³ and acknowledged that a direct comparison between the two cannot necessarily be made. As Mr Peter Glover, Director Construction, MBA, stated:

³⁷⁸ Submission 7, Master Builders Association, p 2.

³⁷⁹ Submission 7, Master Builders Association, p 3.

³⁸⁰ Evidence, Mr Solomon, 20 September 2019, p 8.

³⁸¹ Evidence, Mr Solomon, 20 September 2019, p 11.

³⁸² Evidence, Mr Solomon, 20 September 2019, p 8.

³⁸³ Evidence, Mr Solomon, 20 September 2019, p 9.

What we are saying is they are different products and in respect of stone we believe that it can still be utilised, it can still be cut, but there need to be proper control mechanisms in place to make it safe to do so, and we believe that is the case with stone. In a sense, that makes it different to asbestos.³⁸⁴

- 4.192** Indeed, unlike asbestos, Mr Glover asserted that 'working with [manufactured] stone is acceptably safe',³⁸⁵ if certain controls and strategies are in place, such as appropriate personal protective equipment and wet cutting.³⁸⁶
- 4.193** To this end, both Mr Solomon and Mr Glover maintained that the MBA proposes applying asbestos control measures to silica as an alternative to banning manufactured stone products altogether or imposing controls that could potentially – and unnecessarily – encompass a wide array of products and materials containing silica.³⁸⁷
- 4.194** The CFMMEU also expressed some support for applying asbestos control measures to silica dust, but only within the context of manufactured stone being banned. According to the CFMMEU, manufactured stone 'may need to be treated in a manner similar to asbestos', with controls being applied while manufactured stone is phased out, with 'legacy arrangements' put in place similar to those applying to asbestos.³⁸⁸
- 4.195** Other inquiry participants, however, did not believe that asbestos safety control measures could or should be applied to silica dust from manufactured stone.
- 4.196** For example, the Royal Australasian College of Physicians (RACP) argued that difficulties with defining what manufactured stone is would make it challenging to apply the controls for asbestos containing material, given the ubiquitous nature of silica. Dr Graeme Edwards, representing the RACP, explained:

Unlike asbestos containing material (ACM), quartz and the various forms of silica oxides are ubiquitous in nature and are incorporated into a very wide range of engineered, manufactured, artificial, composite silica containing products, not just 'engineered stone' used in the kitchen benchtop sector. This means it could be very difficult to define what is meant by artificial or engineered stone in a way that would enable ready translation of the ACM legislated provisions.³⁸⁹

- 4.197** Instead the RACP advocated for fabricators working with engineered stone in the benchtop setting to be licensed and for the development of a code of practice for the industry, akin to the code used in Queensland. The development of a code of practice is discussed in greater detail in chapter 6.

³⁸⁴ Evidence, Mr Glover, 20 September 2019, p 12.

³⁸⁵ Evidence, Mr Glover, 20 September 2019, p 11.

³⁸⁶ Evidence, Mr Glover, 20 September 2019, p 11.

³⁸⁷ Evidence, Mr Solomon, 20 September 2019, pp 10-11; Evidence, Mr Glover, 20 September 2019, p 11.

³⁸⁸ Construction, Forestry, Maritime, Mining and Energy Union, *Manufactured Stone Industry Task Force: CFMMEU Final Report*, p 2.

³⁸⁹ Answers to questions on notice, Dr Graeme Edwards, Senior Occupational Physician, Specialist in Occupational and Environmental Medicine, Work and Health Risk Management, 18 October 2019, p 2.

- 4.198** Likewise, Maurice Blackburn Lawyers did not support applying asbestos control measures to silica, arguing that 'the existing regulatory framework governing the handling of asbestos in New South Wales is inadequate to mitigate the specific workplace risks associated with crystalline silica dust'.³⁹⁰
- 4.199** Maurice Blackburn explained that, because asbestos has been banned since 2003, the regulatory framework around asbestos principally governs aspects of safe removal, storage and disposal of asbestos: 'There is no substantive regulatory framework governing safe uses of asbestos, specifically because it is a banned substance and use is prohibited'.³⁹¹
- 4.200** Moreover, Maurice Blackburn described many of the requirements for the disposal of asbestos as 'superfluous' in the context of silica, given the highly carcinogenic nature of asbestos fibres. Maurice Blackburn Lawyers concluded that, in the absence of an outright ban on materials containing crystalline silica, the handling of crystalline silica in New South Wales 'must be governed according to a regulatory framework that has been specially constructed to mitigate the specific health-hazards associated with crystalline silica dust'. For Maurice Blackburn, such a framework would focus on the safe use of high-risk materials rather than the removal and disposal of waste.³⁹²

Committee comment

- 4.201** The committee was not persuaded that existing asbestos controls should be applied to manufactured stone or silica products. While the health concerns from both products are an issue, the products themselves are different in nature, and require different safety and control measures to be applied when working with them. However the fact that the MBA has equated the safety concerns that arise from manufactured stone with those that arise from asbestos show how much more serious and considered protection measures need to be adopted across the board as contained in other recommendations from this committee.

³⁹⁰ Answers to questions on notice, Maurice Blackburn Lawyers, 14 October 2019, p 1.

³⁹¹ Answers to questions on notice, Maurice Blackburn Lawyers, 14 October 2019, p 2.

³⁹² Answers to questions on notice, Maurice Blackburn Lawyers, 14 October 2019, p 2.

Chapter 5 Regulation and enforcement

The importance of control measures in preventing or minimising exposure to crystalline silica was discussed in the last chapter. This chapter will focus on whether there is compliance within the manufactured stone industry in using these controls, and in particular the effectiveness of the regulatory work being undertaken by SafeWork NSW. It will then outline a proposal for self-accreditation, which aims to improve work health and safety standards within the industry.

Compliance activities

- 5.1 Compliance and enforcement activities were a key part of the Manufactured Stone Industry Taskforce's work. During the period the Taskforce operated, which was from July 2018 to July 2019, inspectors from SafeWork NSW visited all manufactured stone fabricating workshops in New South Wales. The committee was told that this included 246 sites and 523 visits.³⁹³
- 5.2 At the hearing on 11 February 2020, the committee was provided with updated information on compliance activities. It was advised that since April 2018 SafeWork NSW has made 617 manufactured stone visits across 246 fabrication sites. The committee was also informed that:
- 746 notices had been issued, which includes 695 improvement notices and 51 prohibition notices
 - 93 per cent of improvement notices have been 'fully complied with', with 'follow up visits being completed for the remaining 52' – most of these being related to health monitoring.³⁹⁴
- 5.3 Prior to this update, the committee was provided with two graphs highlighting the nature of breaches that had led to improvement notices or prohibition notices being issued – these can be seen in Figures 7 and 8.
- 5.4 The committee also considered the data SafeWork NSW provided in response to an order for the production of documents in the NSW Legislative Council, pertaining to the types of notices issued during visits to manufactured stone sites.³⁹⁵
- 5.5 The data indicated that 73 per cent of the 246 sites visited had been issued with a silica related notice. The data also showed that there were some sites that did not have a health and safety representative. On this aspect, Ms Megan McCool, Director, Hazardous Chemical Facilities and Safety Management Audits, SafeWork NSW, explained that it is not a compulsory requirement to have a health and safety representative and that other arrangements can be put in place depending on the nature of the business and number of staff employed.³⁹⁶

³⁹³ SafeWork NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, July 2019, p 20.

³⁹⁴ Evidence, Ms Rose Webb, Deputy Secretary, Better Regulation Division, SafeWork NSW, 11 February 2020, p 31.

³⁹⁵ Tabled document, *SafeWork NSW interventions – manufactured stone 131119*, obtained from return to order entitled 'Safe Work NSW'.

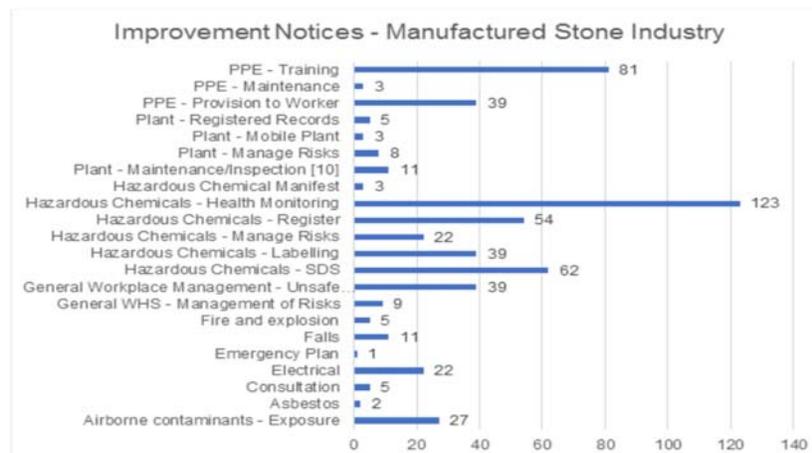
³⁹⁶ Evidence, Ms Megan McCool, Director, Hazardous Chemical Facilities and Safety Management Audits, SafeWork NSW, 11 February 2020, pp 33-34.

- 5.6 SafeWork NSW also clarified that many of the sites visited are in the Bankstown, Prestons and Blacktown area, as 'that is more where the work is being undertaken' in terms of manufactured stone factories.³⁹⁷
- 5.7 Mr Peter Dunphy, Executive Director, Fair Trading Specialist Services, SafeWork NSW, put the visits to stone sites in context for the committee, explaining that 'it is quite extraordinary that we have been to every site at least one, and more for this particular industry'. SafeWork NSW highlighted this as evidence of the important approach it is taking to dealing with silicosis concerns.³⁹⁸

Prohibition notices and prosecutions

- 5.8 In terms of prohibition notices, the committee was informed that these can be issued under section 195 of the *Work Health and Safety Act 2011* (NSW). This type of notice includes directions on the measures to be taken to remedy the issue identified, for example, ceasing uncontrolled dry cutting of stone or a direction to use wet or extraction ventilation methods when working with manufactured stone products. Failure to comply with the notice can incur a maximum penalty of \$100,000 for an individual and \$500,000 for a body corporate.³⁹⁹
- 5.9 The committee was told that all but three prohibition notices have been complied with. In terms of these three notices, SafeWork NSW advised that two related to the removal and replacement of equipment and the third related to revised cleaning procedures. SafeWork NSW also advised that stop work notices remain in these workplaces until there is compliance.⁴⁰⁰

Figure 7 Improvement notices – Manufactured Stone Industry⁴⁰¹



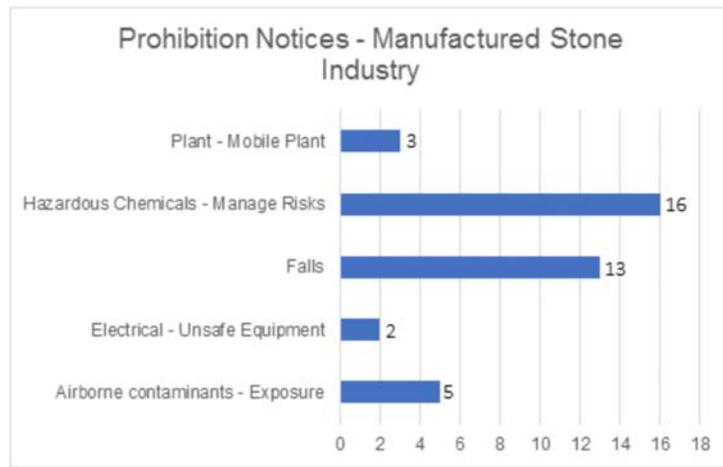
³⁹⁷ Evidence, Ms McCool, 11 February 2020, p 34.

³⁹⁸ Evidence, Mr Peter Dunphy, Executive Director, Fair Trading Specialist Services, SafeWork NSW, 11 February 2020, p 35.

³⁹⁹ *Work Health and Safety Act 2011*, s 195, s 196 and s 197.

⁴⁰⁰ Answers to questions on notice, SafeWork NSW, 25 February 2020, p 1.

⁴⁰¹ Answers to supplementary questions, SafeWork NSW, 31 October 2019, pp 3-4.

Figure 8 Prohibition Notices – Manufactured Stone Industry

5.10 Ms McCool explained that 'a prohibition can never be lifted' but 'it can be complied with, meaning you are doing other safe practices'. If a breach is seen again, she also stated that SafeWork NSW will then 'move up the compliance' and consider prosecution.⁴⁰²

5.11 The committee questioned SafeWork NSW representatives on this, to ascertain whether any prosecutions have taken place. Ms McCool confirmed that there has only been one case which has led to an enforceable undertaking, which is a legally binding agreement under the legislation:

An undertaking can be proposed by a company following an alleged contravention, which may be considered as an alternative to prosecution. As part of the undertaking the company has committed to a range of actions with a financial commitment of at least \$498,500. This is in addition to an estimated \$500,000 already spent on works carried out at the site following the incident.⁴⁰³

5.12 In addition to this though, Ms McCool stated that there is another matter in which they are 'preparing the evidence which includes interviewing workers, looking at the workplace, compiling the evidence...'.⁴⁰⁴

5.13 Given the low number of prosecutions, the committee questioned whether SafeWork NSW's role has been 'hard hitting'. Mr Dunphy replied:

There are a number of considerations. Investigations are going on which may result in prosecution and that is from the information that we have gathered in terms of recent issues. I think the other point to make is that there are over 30 cases where we actually

⁴⁰² Evidence, Ms Megan McCool, Director, Hazardous Chemical Facilities and Safety Management Audits, SafeWork NSW, 2 October 2019, p 13.

⁴⁰³ Answers to pre-hearing questions, SafeWork NSW, 13 September 2019, p 6; Evidence, Ms McCool, 2 October 2019, p 13.

⁴⁰⁴ Evidence, Ms McCool, 2 October 2019, p 13.

have stopped the business from operating and that is very hard hitting. You cannot have a more hard hitting impact than stopping a business from operating.⁴⁰⁵

- 5.14** This issue was raised again with SafeWork NSW at the final hearing on 11 February 2020. The committee asked departmental representatives why there have not been prosecutions, given the levels of non-compliance in the industry and number of silicosis cases diagnosed. Ms McCool highlighted the time it can take to get matters to that point:

From the date of collection of evidence through to listing a matter is approximately 12 months. So, with those three matters we are in that final 12 months if they have prospects for listing for prosecution. So, it is a matter of collecting statements, having them in admissible form, going through the legal processes. For three of those matters, they are well on foot.⁴⁰⁶

- 5.15** Ms McCool also reflected on the challenges experienced in prosecuting these matters:

With the 20 matters that went to the panel, that did not proceed, they may have worked for eight, 10, 12 employers. So, collecting the evidence to be able to determine which one caused the exposure—one employer is blaming the other, for example. In terms of they have been pursued, they have been interviewed, they have been run down in terms of that, the worker is entitled to compensation in that respect but in terms of holding the employer to account, the evidence is a lot trickier with a matter where they have an extensive work history.⁴⁰⁷

- 5.16** Ms Webb also explained that SafeWork NSW cannot commence a prosecution unless there is a reasonable prospect of success. She reiterated the considerations involved in prosecuting these types of matters:

...we need to make sure that we have all that evidence firmed up and that we have legal advice. As Ms McCool has been saying, sometimes the difficulty is finding something that is not anecdotal or hearsay evidence, but actual evidence that we can use. I think we have not come to the end of what we are doing about all these matters and we are taking a big priority on making sure that people do the right thing and are compliant, and that is having that effect.⁴⁰⁸

- 5.17** The committee also explored the statute of limitations for bringing prosecutions. It was advised by Ms McCool that there is 'two years from the date of instance'. Clarifying this, she added: 'The clock ticks from the date we are notified that someone has silicosis'.⁴⁰⁹

Investigation of cases where a silicosis diagnosis has been made

- 5.18** In terms of investigating the cases where people have been diagnosed with silicosis, the committee was informed that SafeWork NSW serves a notice on icare every six months for

⁴⁰⁵ Evidence, Mr Peter Dunphy, Acting Deputy Secretary, Better Regulation Division, SafeWork NSW, 2 October 2019, p 13.

⁴⁰⁶ Evidence, Ms McCool, 11 February 2020, p 36.

⁴⁰⁷ Evidence, Ms McCool, 11 February 2020, pp 37-38.

⁴⁰⁸ Evidence, Ms Webb, 11 February 2020, p 37.

⁴⁰⁹ Evidence, Ms McCool, 11 February 2020, p 37.

information. Mr Dunphy explained: 'That is an arrangement we have set up because we know it [icare] cannot voluntarily give us the information...'.⁴¹⁰

5.19 Indeed, the committee was advised that information about silicosis cases, for example the 70 cases diagnosed since July 2019, would not ordinarily be reported to SafeWork NSW. Instead, results related to health screening of those individuals is provided to SafeWork NSW based on a notice it issues every six months.⁴¹¹

5.20 Ms McCool also explained: 'It is our initiative going through the workplaces, if the screening is not being done, to compel the workplace to send those workers for screening. To get that information—the results—we serve a notice again on icare'.⁴¹²

5.21 Ms McCool noted that 'there is a duty for the employer to report any adverse findings, which is not occurring'. She explained that having a register would help address this issues as it 'puts the responsibility on the doctor and therefore icare would be responsible for reporting'.⁴¹³

5.22 As to why a notice is served every six months and not more frequently, Ms Webb pointed to the issue of resourcing:

I just want to say that I think one of the issues for us would be resources, to be really honest. The number of people that we can devote to these is quite expansive, but there is a limit. If we can finish the ones we have and not start the clock ticking on the new ones, we are in a more advantageous position...⁴¹⁴

5.23 Ms Webb also responded to the committee's concerns about how icare, SafeWork NSW and Health are working together, given SafeWork NSW representatives learnt at the hearing on 11 February 2020 about the latest cohort of 70 cases identified with silicosis. Ms Webb explained that they have regular meetings between the agencies, but the 'issue with serving the notice is to protect the personal privacy of the individuals'.⁴¹⁵ She explained:

The serving of the notice is to protect the personal privacy of the affected parties. It is not a blocker or anything. It is just making sure there is a proper legal framework around us receiving this very personal medical information about the person. If we wanted to serve notices more quickly there is nothing to stop us doing that. We have regular liaison with icare and NSW Health about this and we are moving towards more and more, as Ms McCool said, with the register.⁴¹⁶

5.24 Responding to questions about why there is not a better structure in place that facilitates the sharing of this information, Ms McCool added:

We serve every six months. Equally, appreciating if icare are only one medical provider so again the work we do in NSW Health to make it notifiable would be that we would get the whole picture. Also, respectfully, up until 2015 we were all in one banner and

⁴¹⁰ Evidence, Mr Dunphy, 11 February 2020, p 38.

⁴¹¹ Evidence, Ms McCool, 11 February 2020, p 39.

⁴¹² Evidence, Ms McCool, 11 February 2020, p 39.

⁴¹³ Evidence, Ms McCool, 11 February 2020, p 38.

⁴¹⁴ Evidence, Ms Webb, 11 February 2020, pp 39-40.

⁴¹⁵ Evidence, Ms Webb, 11 February 2020, p 40.

⁴¹⁶ Evidence, Ms Webb, 11 February 2020, p 41.

we are no longer—the three agencies of the State Insurance Regulatory Authority [SIRA], icare and SafeWork. So the barriers to get the information a little bit more problematic. But equally the register should start to remove those boundaries.⁴¹⁷

Stakeholder concerns about non-compliance

- 5.25** Although SafeWork NSW emphasised the focus that has been placed on inspecting workplaces within the manufactured stone industry recently, there were concerns that these inspections have showed a high level of non-compliance with regulatory standards. There were also concerns about whether installers are being inspected, given this cohort of workers may be more difficult to reach.
- 5.26** Both the Australian Institute of Occupational Hygienists and Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) expressed concerns about the high level of non-compliance in the manufactured stone industry, as evidenced by the data provided by SafeWork NSW, which was outlined in the Manufactured Stone Industry Taskforce Final Report.
- 5.27** The Australian Institute of Occupational Hygienists attributes the rise in silicosis cases to non-compliance with the workplace exposure standard and a lack of compliance with work health and safety regulations. In its view, the prevention of silicosis is well known and highly regulated, 'yet workers have suffered'.⁴¹⁸
- 5.28** Similarly, the CFMMEU suggested that SafeWork NSW's summary of inspector notices issued during the operation of the Manufactured Stone Industry Taskforce show 'an extremely high level of non-compliance across manufactured stone fabricators'.⁴¹⁹ In its final report on the work of the Taskforce, the CFMMEU explained its concerns regarding compliance rates:

The picture emerging from the SafeWork data is of a manufactured stone industry exhibiting a high level of non-compliance. This is of serious concern given that the fabrication sites subject to the existing initiative are based in fixed locations and at least in that respect are relatively easy to locate and deal with.⁴²⁰

- 5.29** Expanding on this, the CFMMEU noted that the next phase of compliance activities will involve attempts to locate and inspect joinery and installation businesses. The CFMMEU stated that inspectors have said that this 'presents real practical difficulties as more often than not inspectors arrive onsite to find the installers have moved on'.⁴²¹ Ms Rita Mallia, President, CFMMEU, emphasised this concern at the hearing:

SafeWork's own statistics show a frighteningly high level of non-compliance with workplace controls in the fabrication factories in western Sydney in particular but they have also admitted that they cannot measure the impact on installers because they do

⁴¹⁷ Evidence, Ms McCool, 11 February 2020, p 41.

⁴¹⁸ Submission 4, Australian Institute of Occupational Hygienists, p 2.

⁴¹⁹ Submission 5, Construction, Forestry, Maritime, Mining and Energy Union, Attachment entitled *Manufactured Stone Industry Task Force, CFMMEU Final Report*, p 10.

⁴²⁰ Construction, Forestry, Maritime, Mining and Energy Union, *Manufactured Stone Industry Task Force, CFMMEU Final Report*, p 11.

⁴²¹ Construction, Forestry, Maritime, Mining and Energy Union, *Manufactured Stone Industry Task Force, CFMMEU Final Report*, p 11.

not know where they are and they cannot find them. They are such a mobile group of workers that these workers who are highly at risk, the effects of this product on them is almost immeasurable.⁴²²

- 5.30** When asked about the locations and sites that were inspected, Ms McCool, SafeWork NSW, advised the committee that they were identified using a number of sources, 'but the most robust or definite is the list from all suppliers'.⁴²³ She also told the committee that inspections of installation sites were also occurring:

We visit those sites. So whether it is a multistorey building, a domestic home, we are seeing people cutting things on sides of the road, wherever it is, as I said, if it is a workplace it will be inspected. As I mentioned, the kind of work it is exactly the same—we will look for if it is being cut with water-fed tools or dust collection tools, we will look at what protection they are wearing. It is exactly the same process.⁴²⁴

Calls for the regulatory framework to be strengthened

- 5.31** Several inquiry participants called for regulation of the manufactured stone industry to be strengthened in response to the rise in silicosis cases.

- 5.32** In particular, this was suggested on the basis that the popularity of manufactured stone has increased and the regulatory system has not kept pace. Mr Bruce Rayment, Australian Engineered Stone Advisory Group and Chief Executive Officer, Smartstone Australia Pty Ltd, called for regulatory improvements:

All regulatory systems must adapt with time and as the popularity of engineered stone has increased over the past 20 years or so, so too have the number of fabricators and installers around the State. As a result, regulation must adapt and be strengthened.⁴²⁵

- 5.33** The committee also heard how it would be beneficial if regulation was more consistent across jurisdictions. Mr David Cullen, Australian Engineered Stone Advisory Group and Chief Executive, Caesarstone Australia, stated:

The challenge we have in Australia is that we have a federation model, so there are different regulations in every State of Australia. I have fabricators who operate across every State of Australia, who, to tick the boxes of compliance, have to look at legislation. Queensland has recently changed its legislation. They have to look at the legislation across every State, so it is involved and complicated. One of the things we have mentioned we would like to see is more Federal involvement; we would like to see more regulation that is consistent across every state of Australia...⁴²⁶

⁴²² Evidence, Ms Rita Mallia, President, Construction, Forestry, Maritime, Mining and Energy Union, 16 September 2019, p 16.

⁴²³ Evidence, Ms McCool, 2 October 2019, p 6.

⁴²⁴ Evidence, Ms McCool, 2 October 2019, p 10.

⁴²⁵ Evidence, Mr Bruce Rayment, Chief Executive Officer, Smartstone, 15 November 2019, p 3.

⁴²⁶ Evidence, Mr David Cullen, Australian Engineered Stone Advisory Group and Chief Executive, Caesarstone Australia, 15 November 2019, p 12.

Committee comment

- 5.34** Given the rising number of silicosis cases, and evidence showing non-compliance with regulatory requirements, the committee is deeply concerned about the health and safety standards being practiced at manufactured stone workplaces.
- 5.35** We are concerned that employers are not sending workers for mandatory health monitoring, and we are concerned that uncontrolled dry cutting is occurring, even despite all the education and awareness underway about the risks posed by respirable crystalline silica.
- 5.36** While we acknowledge the recent focus SafeWork NSW has had in terms of compliance activities for the industry, the committee agrees that there is more work to be done. It is up to SafeWork NSW to lift compliance rates in the industry and to show businesses that it is not a 'toothless tiger' in pursuing prosecutions.
- 5.37** With the risks associated with exposure to crystalline silica dust, the committee believes that all those working in the manufactured stone industry should complete a recognised portable safety training certificate. This is a matter that should be reviewed closely by SafeWork NSW as a matter of priority.
- 5.38** In this regard, the committee acknowledges the resources that SafeWork NSW might require to lift its compliance activities further. We understand that the focus has been on inspecting manufactured stone sites since silicosis cases started re-emerging, and we would like to ensure that regulation of this industry remains a priority for as long as necessary. Therefore, the committee recommends 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.

Recommendation 10

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.

Proposal for self-regulation

- 5.39** In response to the need for improvement in work health and safety standards within the industry, manufacturers and suppliers from the manufactured stone industry actively advocated for a self-regulation proposal. This was to take the form of an industry accreditation program, introduced by the Australian Engineered Stone Advisory Group (AESAG) in September 2019.⁴²⁷
- 5.40** For the duration of this review, the committee received evidence about this accreditation program, including notice that AESAG had lodged an application to the Australian Competition and Consumer Commission (ACCC). The application sought authorisation to adopt

⁴²⁷ Answers to questions on notice, Australian Engineered Stone Advisory Group, 2 December 2019, Attachment 8 – Accreditation FAQs, p 1.

accreditation standards, require fabricators to comply with WHS laws in order to achieve accreditation, and to consider refusing supply to fabricators if they did not meet accreditation standards. A final determination on the application was due in May/June 2020, however, in February 2020, AESAG withdrew its application.⁴²⁸

- 5.41** This section documents the evidence received by the committee prior to and up until the withdrawal of AESAG's application to the ACCC. It concludes with an account of the ACCC application in greater detail, including AESAG's intentions following the withdrawal of its application.

The Australian Engineered Stone Advisory Group (AESAG)

- 5.42** AESAG was formed in 2018 and comprises engineered stone suppliers, Caesarstone Australia, Smartstone Australia, WK Quantum Quartz and Stone Ambassador, as well as CDK Stone, an equipment and services supplier.⁴²⁹ According to Mr Bruce Rayment, Australian Engineered Stone Advisory Group and Chief Executive Officer, Smartstone Australia, the group has 'put aside competitive and commercial considerations to ensure that we can build a safer industry into the future'.⁴³⁰
- 5.43** Indeed, Mr Cullen, Australian Engineered Stone Advisory Group and Caesarstone Australia, stated that AESAG was set up to 'help create a much safer work environment for fabrication and for engineering stone in general'.⁴³¹ For AESAG, this has meant pursuing greater self-regulation, which became the impetus for establishing the accreditation program. Mr Cullen explained:

... [A]t our first meeting we discussed the fact that we think we need to be self-regulating as an industry. We cannot rely on others. We cannot necessarily rely on regulators. We need to be self-regulating, so we had to take steps to become self-regulating. The primary driver, the tool that we saw that was going to enforce this, was through an accreditation process ...⁴³²

AESAG accreditation program

- 5.44** For AESAG, the accreditation program aimed to 'ensure that fabricators of engineered stone have the necessary health and safety processes in place when fabricating engineered stone to be compliant with WHS laws'.⁴³³ By doing so, the program sought to 'build confidence in the safety

⁴²⁸ Correspondence, Ms Louisa Wilson, Analyst, Adjudication, Merger and Authorisation Review Division, Australian Competition and Consumer Commission, 27 February 2020, Attachment – Correspondence from Mr Ayman Guirguis, Partner, K & L Gates, to Mr Daniel McCrackem-Hewson, Acting General Manager, Adjudication, Australian Competition and Consumer Commission, 27 February 2020.

⁴²⁹ Answers to questions on notice, Australian Engineered Stone Advisory Group, 2 December 2019, Attachment 8 – Accreditation FAQs, p 3; Evidence, Mr Cullen, 15 November 2019, p 2.

⁴³⁰ Evidence, Mr Rayment, 15 November 2019, p 3.

⁴³¹ Evidence, Mr Cullen, 15 November 2019, p 2.

⁴³² Evidence, Mr Cullen, 15 November 2019, p 2.

⁴³³ Australian Engineered Stone Advisory Group, Accreditation FAQs, pp 1 and 3.

of the fabricating industry among regulatory authorities, consumers, cabinet makers and builders'.⁴³⁴

- 5.45** The AESAG accreditation program was developed by Greencap Pty Ltd, who were commissioned by AESAG to run the program and to develop the Health and Safety Guideline based on WHS laws.⁴³⁵ AESAG explained that Greencap was engaged to manage the accreditation program as a third party 'to ensure that the accreditation program is undertaken by ... independent OHS/WHS specialists'.⁴³⁶
- 5.46** The AESAG accreditation program required compliance with the Health and Safety Guideline in order to qualify for accreditation. The process would begin with a business registering for the program and completing an online survey ahead of an onsite audit conducted by an accredited occupational hygienist from Greencap.⁴³⁷
- 5.47** If the audit found a business compliant, Greencap would issue an accreditation certificate. If the audit identified non-compliance with the Guideline, Greencap would issue a notice specifying areas of non-compliance and provide opportunity for these areas to be addressed. Once all non-compliance issues were resolved, a follow up audit could be requested.⁴³⁸
- 5.48** Once accredited, a failure to maintain standards and comply on an annual inspection could invalidate the accreditation.⁴³⁹ Costs associated with registering for the program and maintaining registration were to be borne by the business, and included an initial registration fee, an ongoing annual fee and the cost of the onsite inspection, including air monitoring, which may vary depending on the size of the workplace.⁴⁴⁰

The use of market power to enforce compliance

- 5.49** The accreditation program was never compulsory nor legally required for a business to operate, however, AESAG stated at the time: '[I]t is envisaged that suppliers may consider not supplying engineered stone to a fabricator if they are unable to provide evidence of being compliant with WHS laws'.⁴⁴¹ As Mr Mark Norman, Australian Engineered Stone Advisory Group and General Manager, Quantam Quartz, put it: '... [I]f you do not comply you do not get accredited; if you do not get accredited we do not sell to you'.⁴⁴²

⁴³⁴ Australian Engineered Stone Advisory Group, Accreditation FAQs, p 3.

⁴³⁵ Australian Engineered Stone Advisory Group, Accreditation FAQs, p 3.

⁴³⁶ Australian Engineered Stone Advisory Group, Accreditation FAQs, p 3.

⁴³⁷ Australian Engineered Stone Advisory Group, Accreditation FAQs, pp 2 and 7.

⁴³⁸ Australian Engineered Stone Advisory Group, Accreditation FAQs, pp 2 and 9.

⁴³⁹ Australian Engineered Stone Advisory Group, Accreditation FAQs, p 9.

⁴⁴⁰ Australian Engineered Stone Advisory Group, Accreditation FAQs, p 8; Submission 13, Australian Engineered Stone Advisory Group, p 2.

⁴⁴¹ Australian Engineered Stone Advisory Group, Accreditation FAQs, p 4.

⁴⁴² Evidence, Mr Mark Norman, General Manager, Quantam Quartz, 15 November 2019, p 18.

5.50 AESAG representatives explained the rationale behind this approach and the use of market power to enforce compliance with WHS standards, asserting that ‘the risk is in fabrication ... If we control fabrication, we control the risk’.⁴⁴³

5.51 Mr Cullen told the committee that approximately 70 per cent of the stone supplied in the industry today is supplied by members of AESAG, thereby placing them in a position to have a ‘very strong influence in the marketplace’.⁴⁴⁴ Mr Rayment demonstrated this influence, stating:

Between the three of us [Caesarstone Australia, Smartstone Australia and Quantum Quartz] here today we comprise around three-quarters or so of the market. For someone to be a sustainable, profitable business to fabricate engineered stone they need to purchase from one of us, and probably all three of us. If they cannot get supply from us, they are probably not going to survive as a business.⁴⁴⁵

5.52 Mr Cullen echoed this position, advising that it is AESAG’s belief that ‘it is almost impossible for a fabricator in Australia to survive if he has not got some supply from the members of AESAG. They need some branded product to be competitive to survive in the marketplace’.⁴⁴⁶

5.53 By controlling supply in this way, AESAG maintained that they could ‘change the industry ... [and] create safe work environments so that no worker will be at risk moving forward’.⁴⁴⁷ By requiring fabricators to demonstrate safe work practices through the accreditation program, Mr Cullen insisted that safety would ultimately dictate who suppliers will do business with:

We have made a call that orders are not important; safety is important. We are going to prioritise safety as a number one thing that we do as a business ... Now we are saying to fabricators in Australia and starting to say to fabricators around the world that if you do not cut in a safe environment, we are not going to supply you. It does not matter whether you are our largest customer or our smallest customer. We will not supply unless it is a safe work environment.⁴⁴⁸

5.54 Acknowledging that ‘there are always going to be rogue players’, AESAG believed that the accreditation program would expose these businesses.⁴⁴⁹ As Mr Norman stated: ‘Right now these guys are hiding. They are moving down to the end of a lonely street; they are cutting at night. They cannot be found ... With accreditation, they cannot hide; they have to come to us’.⁴⁵⁰

5.55 Mr Cullen agreed, contending that this is where the industry ‘needs to go’, even if at a significant cost to the industry:

At the end of the day if they cannot purchase product, they cannot operate. We believe that is where the industry needs to go, in that it needs to be self-regulated. They are either working in a safe environment from a factory perspective and an install

⁴⁴³ Evidence, Mr Cullen, 15 November 2019, p 21.

⁴⁴⁴ Evidence, Mr Cullen, 15 November 2019, p 2.

⁴⁴⁵ Evidence, Mr Rayment, 15 November 2019, p 16.

⁴⁴⁶ Evidence, Mr Cullen, 15 November 2019, p 8.

⁴⁴⁷ Evidence, Mr Cullen, 15 November 2019, p 20.

⁴⁴⁸ Evidence, Mr Cullen, 15 November 2019, p 8.

⁴⁴⁹ Evidence, Mr Cullen, 15 November 2019, p 8.

⁴⁵⁰ Evidence, Mr Norman, 15 November 2019, p 13.

perspective, or they are not in the industry. We are prepared to have 20 per cent of the industry disappear if that is what is necessary.⁴⁵¹

- 5.56** Mr Cullen maintained that the accreditation program ‘will make a substantial difference in the industry’ and while noting that ‘it is difficult to give a 100 per cent guarantee’ that no worker will die from silicosis again, he declared: ‘We are highly confident that there will be very, very few people moving forward that will die or be affected by silicosis’.⁴⁵²

Response to the accreditation program

- 5.57** During the review, some inquiry participants shared their views about the accreditation program, with some supportive of the self-regulatory initiative while others concerned about the scheme.
- 5.58** For example, CDK Stone stated at the time that the accreditation program ‘is a very positive development for our industry’, arguing that ‘lives will be saved because of this’.⁴⁵³ Stone Ambassador Australia similarly endorsed this approach to industry self-regulation, noting in particular their support for fabricators being subject to the accreditation process, adoption of the program through legislation, and importers and suppliers having the authority to refuse supply to non-accredited fabricators.⁴⁵⁴
- 5.59** Laminex also supported ‘the concept of an industry certification regime’, asserting that such a program would complement the safe handling requirements of an industry code of practice once established. However, Laminex argued that such a regime ‘would best be administered by an independent body such as Work Safe; Safe Work Australia’.⁴⁵⁵
- 5.60** Other inquiry participants raised concerns about AESAG’s accreditation process. In particular, Cosentino, an international producer and supplier of manufactured stone, stated that it did not share AESAG’s position that an industry-led accreditation program ‘represents the most appropriate and effective industry response to [respirable crystalline silica] risk’, and expressed ‘serious reservations on the effectiveness of the accreditation program’.⁴⁵⁶
- 5.61** Cosentino explained that its international presence required careful consideration of a range of issues associated with the scheme, including ‘the appropriate use of power it may have in any specific market – either alone or in conjunction with other industry participants’.⁴⁵⁷
- 5.62** The CFMMEU shared these concerns, contending that ‘while the scheme is directed at improving safety standards, on one view the scheme is also directed at further securing oligarchical commercial control over what is already a concentrated market’.⁴⁵⁸ The Union noted

⁴⁵¹ Evidence, Mr Cullen, 15 November 2019, p 13.

⁴⁵² Evidence, Mr Cullen, 15 November 2019, p 21.

⁴⁵³ Submission 15, CDK Stone, p 2.

⁴⁵⁴ Submission 16, Stone Ambassador Australia, p 2.

⁴⁵⁵ Submission 17, Laminex, pp 2-3.

⁴⁵⁶ Submission 14, Cosentino Australia, p 5.

⁴⁵⁷ Submission 14, Cosentino Australia, p 5.

⁴⁵⁸ Submission 5, Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU), p 11.

that the scheme proposes a licensing arrangement ‘controlled by the manufacturers’ – an arrangement which the CFMMEU asserted represents ‘inherent conflicts of interest’.⁴⁵⁹ Challenging the industry’s call for self-regulation, the CFMMEU warned: ‘SafeWork and the government should take care not to abrogate responsibility for regulation to the manufacturers’.⁴⁶⁰

- 5.63** When questioned at the review's last hearing about SafeWork NSW's response to AESAG's proposal for self-regulation, Ms Webb, SafeWork NSW, expressed support for the industry initiative, stating: ‘... [W]e would always be supportive of self-regulatory efforts by industry, particularly if they meet the same policy outcome’.⁴⁶¹ Ms Webb added: ‘... I think absolutely if they can make some effort to make sure that the people they are supplying are complying, that will help as well’.⁴⁶²
- 5.64** SafeWork NSW further explained that, in response to a call for comment on AESAG's application to the ACCC, SafeWork NSW provided a letter of support to the industry. The letter stated that the prevalence of silicosis within the manufactured stone industry ‘requires more than government regulation alone to solve the current problem’ – it requires ‘intervention across and within the industry to address the behaviours and complacency when working with silica to ensure compliance is maintained’.⁴⁶³
- 5.65** Highlighting the need for a ‘multi-angle approach’ involving various sectors, SafeWork NSW's letter of support drew particular attention to AESAG's accreditation program as demonstrating ‘a duty of care for the industry’:

A multi-angle approach by government, industry, medical and education sectors is key to eradicating the silicosis disease in the engineered stone industry, including the initiative of AESAG and its industry accreditation scheme. The industry has a complex supply chain and by not supplying product to those who cannot demonstrate safe work practices, demonstrates a duty of care for the industry and the health and wellbeing of these workers.⁴⁶⁴

Australian Competition and Consumer Commission application

- 5.66** While the accreditation program was launched by AESAG in September 2019, the authority to withhold business from operators who are not accredited became a matter before the Australian Competition and Consumer Commission (ACCC) when AESAG lodged its application for authorisation in November 2019.

⁴⁵⁹ Submission 5, Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU), p 11.

⁴⁶⁰ Submission 5, Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU), p 11.

⁴⁶¹ Evidence, Ms Webb, 11 February 2020, p 41.

⁴⁶² Evidence, Ms Webb, 11 February 2020, p 41.

⁴⁶³ Answers to questions on notice, SafeWork NSW, 25 February, 2020, Attachment – Correspondence, Mr Andrew Gavrielatos, Executive Director Specialist Services, to Australian Engineered Stone Advisory Group (AESAG), 4 September 2019.

⁴⁶⁴ Correspondence, Mr Gavrielatos to Australian Engineered Stone Advisory Group (AESAG), 4 September 2019.

- 5.67** According to AESAG's application to the ACCC, AESAG sought, among other things, the authority to 'consider whether to refuse to supply engineered stone where fabricators do not meet the Accreditation Standards (Proposed Conduct)'.⁴⁶⁵
- 5.68** AESAG initially requested interim authorisation for this proposed conduct, however, on 7 February 2020, AESAG withdrew this interim authorisation application, flagging that a determination on their substantive application was still expected in May/June 2020 following public consultation.⁴⁶⁶
- 5.69** On 27 February 2020, AESAG withdrew its substantive application stating that it believed it 'prudent' to withdraw the application and replace it with a revised proposal in light of reviewing its application and receiving feedback through submissions, including those from work health and safety regulators across the country.⁴⁶⁷
- 5.70** In correspondence sent to the ACCC on its behalf, AESAG maintained that it was 'committed to promoting the safe fabrication of engineered stone and the application was made to contribute to achieving that objective'.⁴⁶⁸ However, AESAG's members are now considering 'alternative approaches to ensure that work health and safety laws are complied with throughout the supply chain'.⁴⁶⁹ According to information now appearing on their website, AESAG will be proposing a 'joint approach' using a slightly different model proposed by them initially:

AESAG will be proposing a joint approach that, if approved by the ACCC, will allow current and future members to require that Fabricators provide proof from a suitably qualified third party hygienist, regulatory body or other qualified organisation that the Fabricator complies with the law/code in every state and territory in which they engage in business.⁴⁷⁰

Committee comment

- 5.71** When the committee was first presented with the proposal for self-regulation through an accreditation scheme by the Australian Engineered Stone Advisory Group (AESAG), we were encouraged by the industry's efforts to ensure fabricator compliance with work health and safety standards. We take particular note of AESAG's application to the Australian Competition and Consumer Commission (ACCC) which sought authority to withhold supply of product to fabricators who did not meet accreditation standards.

⁴⁶⁵ Correspondence from Mr David Cullen, Australian Engineered Stone Advisory Group, to the secretariat, 6 December 2019, Attachment – Australian Engineered Stone Advisory Group - Application for authorisation AA1000461 – interested party consultation.

⁴⁶⁶ Correspondence, Ms Louisa Wilson, Analyst, Adjudication, Merger and Authorisation Review Division, Australian Competition and Consumer Commission, to secretariat, 17 February 2020, Attachment – Correspondence from Mr Ayman Guirguis, Partner, K & L Gates, to Mr Daniel McCrackem-Hewson, Acting General Manager, Adjudication, Australian Competition and Consumer Commission, 7 February 2020.

⁴⁶⁷ Correspondence from Mr Guirguis to Mr McCrackem-Hewson, 27 February 2020.

⁴⁶⁸ Correspondence from Mr Guirguis to Mr McCrackem-Hewson, 27 February 2020.

⁴⁶⁹ Correspondence from Mr Guirguis to Mr McCrackem-Hewson, 27 February 2020.

⁴⁷⁰ Correspondence from Mr Guirguis to Mr McCrackem-Hewson, 27 February 2020, Attachment – Text to appear on AESAG website re accreditation.

- 5.72** The committee notes with interest the most recent developments around this application, including the decision to withdraw it completely from the ACCC. The committee respects AESAG's decision to revise its proposal in light of feedback from the public consultation process, and looks forward to learning more detail about the proposed 'joint approach' to industry compliance in due course.
- 5.73** In the meantime, the committee notes the industry will continue its self-regulatory efforts to encourage businesses and workers to meet WHS standards and operate in safe working environments, in recognition of the fact that silicosis requires a collaborative and multi-faceted response from all stakeholders, including industry.
- 5.74** The committee does not believe that self-regulation is a satisfactory framework for maintaining and protecting the occupational health and safety of those working in the manufactured stone industry. It is clear to the committee that there is an immediate need for government sponsored legislation and regulation of work health and safety for workers in the manufactured stone industry.

Chapter 6 Further measures

The focus of this chapter will be on key initiatives that may help to reduce the risk of crystalline silica exposure to those working in the manufactured stone industry and improve the systems or monitoring associated with those at risk of or diagnosed with silica related diseases.

Development of a code of practice

- 6.1 Several stakeholders suggested that it would be beneficial for a code of practice to be developed within the industry, similar to other jurisdictions. It was suggested that this would help outline safe standards of practice for those working with manufactured stone.
- 6.2 In Queensland, the Office of Industrial Relations implemented a code of practice titled 'Managing respirable crystalline silica dust exposure in the stone benchtop industry' on 31 October 2019. A copy of this code was provided to the committee by Dr Graeme Edwards, who was a member of the working party responsible for its development.⁴⁷¹
- 6.3 Queensland's code of practice provides a range of information on safe practices in relation to working with manufactured stone, including standards related to wet/dry cutting, the workplace exposure standard, the duties of manufacturers, importers and suppliers and obligations in relation to health monitoring.⁴⁷²
- 6.4 The support for a code of practice for manufactured stone workers was voiced by the Mine Ventilation Society of Australia, the Lung Foundation of Australia and Thoracic Society of Australia and New Zealand and the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU).⁴⁷³
- 6.5 The CFMMEU, in its response to the Manufactured Stone Industry Taskforce's report, stated: 'A code of practice addressing for working with silica is a necessary tool that should improve safe work practices and improve regulatory outcomes'.⁴⁷⁴
- 6.6 Dr Edwards, an occupational and environmental physician and member of the Royal Australasian College of Physicians, explained the disadvantage of not having a code of practice in New South Wales. He stated:

⁴⁷¹ Answers to questions on notice, Dr Graeme Edwards, Senior Occupational Physician, Specialist in Occupational and Environmental Medicine, Work and Health Risk Management, 18 October 2019, Attachment – Office of Industrial Relations, Workplace Health and Safety Queensland, *Managing respirable crystalline silica dust exposure in the stone benchtop industry – Code of Practice 2019*.

⁴⁷² Office of Industrial Relations, Workplace Health and Safety Queensland, *Managing respirable crystalline silica dust exposure in the stone benchtop industry – Code of Practice 2019*.

⁴⁷³ Submission 12, Mine Ventilation Society of Australia, p 5; Submission 3, Lung Foundation of Australia and Thoracic Society of Australia and New Zealand, p 4; Submission 5, Construction, Forestry, Maritime, Mining and Energy Union, Attachment entitled *Manufactured Stone Industry Task Force: CFMMEU Final Report*, p 8.

⁴⁷⁴ Construction, Forestry, Maritime, Mining and Energy Union, *Manufactured Stone Industry Task Force: CFMMEU Final Report*, p 8.

When the inspectors go out to those sites, they actually make it up on the go because they have no reference document to reference against. So then you get variation in the level and consistency of applying the rules and the advice that is given to those employers.⁴⁷⁵

- 6.7 Dr Edwards then explained the benefits of having a code of practice in informing 'the industry what is expected of them'. He noted that the Queensland code was developed 'in concert with the current model laws'.⁴⁷⁶
- 6.8 It should be noted that the recently released National Dust Diseases Taskforce interim advice to the Minister for Health (outlined in chapter 1) did not include any recommendations regarding an industry code of practice.
- 6.9 However, at the last hearing for this review, held in February 2020, the committee received evidence that Safe Work Australia is developing a national code of practice for working with engineered stone, which will align with model work health and safety laws.⁴⁷⁷
- 6.10 SafeWork NSW subsequently advised the committee that the first draft of this code is 'anticipated in the coming months' and that it is actively participating in the development of this document.⁴⁷⁸

Committee comment

- 6.11 The committee believes that a code of practice on managing respirable crystalline silica dust exposure in the manufactured stone industry is necessary to provide practical guidance to those in the industry on how to achieve the standards of work health and safety required under legislation. In our view, this code should have been developed by the NSW Government sooner, just as other jurisdictions did.
- 6.12 That aside, we acknowledge that a code is currently being developed at the national level. This code should clearly set out the minimum and enforceable standards that must be met to ensure silica dust is managed safely and workers are protected from exposure. The code should be a resource that is distributed and promoted widely to everyone working in the manufactured stone industry, including suppliers, fabricators and installers of manufactured stone products.
- 6.13 As a draft of the national code is likely to be finalised in the next few months, we encourage SafeWork NSW to continue participating in the development of this resource and to consider effective strategies for implementation.

⁴⁷⁵ Evidence, Dr Graeme Edwards, Occupational and Environmental Physician, representing the Royal Australasian College of Physicians, and member, National Dust Diseases Taskforce, 16 September 2019, p 29.

⁴⁷⁶ Evidence, Dr Edwards, 16 September 2019, p 29.

⁴⁷⁷ Evidence, Ms Jackii Shepherd, Director, Occupational Hygiene Policy, Safe Work Australia, 11 February 2020, p 27.

⁴⁷⁸ Answers to supplementary questions, SafeWork NSW, 25 February 2020, p 5.

A case finding study

- 6.14** A key recommendation in the committee's 2018 Review of the Dust Diseases Scheme was for icare and SafeWork NSW to conduct a case finding study for silicosis in the manufactured stone industry. The NSW Government supported this recommendation and on 5 July 2019 stated that 'icare will work with Government agencies to determine the best way of identifying instances of silicosis in the manufactured stone industry in NSW'.⁴⁷⁹
- 6.15** Both SafeWork NSW and icare highlighted the health monitoring, screening and inspections currently being undertaken in the manufactured stone industry, as measures to identify instances of silicosis. SafeWork NSW advised that it has 'visited every manufactured stone site in NSW and issued 123 notices for health monitoring to be undertaken'.⁴⁸⁰ Ms Rose Webb, Deputy Secretary, Better Regulation Division, SafeWork NSW, advised that as at 30 June 2019, this included '523 manufactured stone visits at the 246 fabrication sites'.⁴⁸¹
- 6.16** icare stated that 'case finding is a part of icare Dust Diseases Care business as usual'. It added that 'icare works in partnership with SafeWork NSW to understand the manufactured stone industry and identify employers and workers who may require health monitoring'. It explained that:
- it has screened 5620 workers over the last two years for silica related lung changes
 - it has commenced more rigorous data collection regarding workers who have had silica related changes detected to understanding the breakdown by industry, nature and history of exposure.⁴⁸²
- 6.17** Despite these measures, several inquiry participants contended that a case finding study has not been specifically undertaken and that it would be beneficial for one still to occur.⁴⁸³
- 6.18** According to the Lung Foundation of Australia and Thoracic Society of Australia and New Zealand, as represented by Dr Susan Miles, the CFFMEU, and Dr Deborah Yates, representing the Royal Australasian College of Physicians, a case finding study would assist in detecting the prevalence of silicosis in the industry.⁴⁸⁴ Dr Miles said:

It will certainly detect a great many more cases. At the moment we cannot go out necessarily onto site as a doctor and meet these people, we cannot persuade them to come in to be screened by Dust Diseases Care. There are numerous cases of people being frightened of losing their working visas, not understanding what this represents,

⁴⁷⁹ Correspondence from the Hon Dominic Perrottet MP, Treasurer, to Clerk of the Parliaments, providing government response to the 2018 Review of the Dust Diseases Scheme, 5 July 2019.

⁴⁸⁰ Answers to pre-hearing questions, SafeWork NSW, 25 September 2019, p 1.

⁴⁸¹ Answers to questions on notice, SafeWork NSW, 25 February 2020, p 1.

⁴⁸² Answers to pre-hearing questions, icare, 12 September 2019, Tab A, p 1.

⁴⁸³ Submission 5, Construction, Forestry, Maritime, Mining and Energy Union, p 9; Evidence, Dr Deborah Yates, Consultant Thoracic Physician and Conjoint Associate Professor, University of New South Wales, 16 September 2019, p 24.

⁴⁸⁴ Submission 5, Construction, Forestry, Maritime, Mining and Energy Union, p 9; Evidence, Dr Yates, 16 September 2019, p 24; Evidence, Dr Susan Miles, Respiratory, Sleep and General Medicine Physician, representing the Lung Foundation of Australia and Thoracic Society of Australia and New Zealand, 16 September 2019, p 11.

being related to someone who is an employer. It is very difficult for people to want to present in the first place, and case finding, especially if it is mandatory, would allow us to do that.⁴⁸⁵

- 6.19** The CFMMEU called for a case finding study to occur in light of the similar process taken in Queensland which resulted in 'greatly improved knowledge concerning the incidence of silicosis in the broader population'. In the union's response to the Manufactured Stone Industry Taskforce report, it noted:

The Queensland case finding study was a resource intensive process, involving entry into workplaces, hospitals and other public and private locations where silicosis sufferers may be found. The findings in Queensland have turned the public debate towards questioning the suitability of manufactured stone as an ongoing commercial product.⁴⁸⁶

- 6.20** Mr Ben Kruse, Legal and Industrial Officer, Construction and General Division, CFMMEU, said that this type of study requires 'coordination between a few different government authorities and, in particular, the medical profession'. He told the committee that it would need to have the involvement of SafeWork, Health and medical professionals.⁴⁸⁷

- 6.21** His colleague, Ms Rita Mallia, President of the Construction and General Division, CFMMEU, said that any future recommendation for a case finding study to be undertaken should be directed to NSW Health:

It needs to be led by the medical profession, I would say, through Health and with SafeWork, if you like, to provide the muscle, and the inspectors to make sure that the doors open in the relevant work sites. Of course, the CFMMEU will keep doing what we need to do but this needs to be a Government led initiative.⁴⁸⁸

- 6.22** The CFMMEU and Dr Yates were of the view that a case finding study should have been undertaken as part of the work of the Manufactured Stone Industry Taskforce.

- 6.23** Mr Kruse told the committee that this study was considered 'out of scope' for the Manufactured Stone Industry Taskforce.⁴⁸⁹ He stated:

It is frustrating that the Manufactured Stone Industry Taskforce was established and it had representatives from Health, the unions, the medical professionals and SafeWork NSW all there. That body could have developed quite a compelling prescription for the case finding study, but it was ruled as out of scope. A body such as that needs to be established and funded to perform its activity.⁴⁹⁰

⁴⁸⁵ Evidence, Dr Miles, 16 September 2019, p 11.

⁴⁸⁶ Construction, Forestry, Maritime, Mining and Energy Union, *Manufactured Stone Industry Task Force: CFMMEU Final Report*, p 9.

⁴⁸⁷ Evidence, Mr Ben Kruse, Legal and Industrial Officer, Construction and General Division, Construction, Forestry, Maritime, Mining and Energy Union, 16 September 2019, p 21.

⁴⁸⁸ Evidence, Ms Rita Mallia, President, Construction and General Division, Construction, Forestry, Maritime, Mining and Energy Union, 16 September 2019, p 21.

⁴⁸⁹ Evidence, Mr Kruse, 16 September 2019, p 17.

⁴⁹⁰ Evidence, Mr Kruse, 16 September 2019, p 23.

- 6.24 Dr Yates echoed this view, stating: 'The silicosis task force I was hoping would actually implement change but it has resulted in fragmentation and has not resulted in an implementation of a case-finding study, which was the key recommendation'.⁴⁹¹
- 6.25 When asked why the Taskforce did not consider this study, Mr Peter Dunphy, Acting Deputy Secretary, Better Regulation Division, SafeWork NSW explained that the Manufactured Stone Industry Taskforce 'had finished its work' on 30 June 2019. Ms Megan McCool, Director, Hazardous Chemical Facilities and Safety Management Audits, SafeWork NSW, also stated that 'the task force was around looking at the regulatory requirements, not a case-finding study'.⁴⁹²
- 6.26 Expanding on this, Mr Andrew Gavrielatos, Executive Director, Specialist Services, SafeWork NSW, told the committee:

That task force was set up for a specific purpose. It had its terms of reference, it had a period to conclude a report and provide that report, which it did. The additional work could well be for another group to look at but that task force had specific terms of reference, which it met.⁴⁹³

Committee comment

- 6.27 The committee agrees that it would still be beneficial for a case finding study to be undertaken in New South Wales, similar to what Queensland implemented. We are disappointed that this has not already occurred.
- 6.28 While we acknowledge that SafeWork NSW has undertaken inspections of manufactured stone sites, a case finding study is a broader exercise that would involve a co-ordinated approach between multiple agencies, focused on identifying and assessing those workers who are at risk of crystalline silica exposure within the industry.
- 6.29 This type of exercise could focus on identifying those workers at risk who may not be working in fabrication sites or factories, for example, installers who are independent contractors. It could also consider the risk posed to workers within certain cohorts of the industry, such as those working in new high rise apartment complexes.
- 6.30 We believe that this type of study will help to paint a clearer picture in terms of prevalence of the disease, as well as identifying opportunities to better prevent and manage the risks of working with manufactured stone. The committee agrees that this study should be co-ordinated by NSW Health, with collaboration and support by SafeWork NSW and other government agencies.

⁴⁹¹ Evidence, Dr Yates, 16 September 2019, p 25.

⁴⁹² Evidence, Mr Peter Dunphy, Acting Deputy Secretary, Better Regulation Division, SafeWork NSW, 2 October 2019, p 5; Evidence, Ms Meagan McCool, Director, Hazardous Chemical Facilities and Safety Management Audits, SafeWork NSW, 2 October 2019, p 5.

⁴⁹³ Evidence, Mr Andrew Gavrielatos, Executive Director, Specialist Services, SafeWork NSW, 2 October 2019, p 5.

Recommendation 11

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.

Establishing a register and mandatory notification scheme

- 6.31** A key reform discussed in the inquiry was the proposal for a mandatory notification scheme and dust disease register. There was a general consensus that mandatory reporting of cases of silicosis by health professionals (among other potential dust diseases), would help to identify, control and manage the disease, as the information could be captured on a central registry.
- 6.32** Stakeholders discussed the potential benefits of these systems and how they might work in practice. There was also discussion about whether the register should be state or national based, and whether mandatory notification should occur under work health and safety legislation or public health legislation.

A dust disease register

- 6.33** The establishment of a dust diseases register was most recently pursued at the national level, as part of the work being conducted by the National Dust Diseases Taskforce.⁴⁹⁴ While the NSW Manufactured Stone Industry Taskforce recommended that NSW Health introduce an occupational lung disease register, NSW Health's response to this recommendation was that it is supporting consideration of this proposal through the work of the National Dust Diseases Taskforce.⁴⁹⁵
- 6.34** Since then, the National Dust Diseases Taskforce released its interim advice to the Commonwealth Minister for Health recommending, among other things, the staged establishment of a National Dust Disease Registry. As outlined in chapter 1, the Australian Government announced that it had accepted the National Taskforce's recommendations and was working towards implementing them progressively in 2020.
- 6.35** Most inquiry participants expressed support for the establishment of a dust diseases register, including the Royal Australasian College of Physicians, Dr Miles, Dr Yates, the CFMMEU, Australian Lawyers Alliance, icare and SIRA.⁴⁹⁶

⁴⁹⁴ Australian Government, Department of Health, *National Dust Disease Taskforce*, <https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-nat-dust-disease-taskforce.htm>.

⁴⁹⁵ SafeWork NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, July 2019, p 11.

⁴⁹⁶ Evidence, Dr Yates, 16 September 2019, p 30; Evidence, Dr Edwards, 16 September 2019, p 30; Construction, Forestry, Maritime, Mining and Energy Union, *Manufactured Stone Industry Task Force: CFMMEU Final Report*, p 8; Submission 10, Australian Lawyers Alliance, p 4; Evidence, Dr Nick Allsop, Group Executive, Care and Community, icare, 20 September 2019, p 28; Evidence, Dr Petrina Casey, Director Health Strategy, State Insurance Regulatory Authority, 20 September 2019, p 29.

- 6.36** However, representatives from Health NSW encouraged the committee to consider the purpose of creating a register. Dr Jeremy McAnulty, Executive Director, Health Protection NSW stated 'There are registers for a range of different conditions and I think the important thing is to understand exactly what the objective of a register is—is it to identify workers at risk and therefore put them on a register and therefore make sure they are screened, or is it something else?'.⁴⁹⁷ He added:

Registers have pluses and minuses from other disease registers, we know—they are expensive to maintain, they need to be well maintained to be accurate—but it comes down to that purpose: what is the main purpose and therefore what is the best method then to apply to meet that objective? I think it is something that a range of experts need to consider carefully and I am glad to see that the task force nationally is looking at that.⁴⁹⁸

- 6.37** Other inquiry participants discussed the need for consistency, and whether it would be problematic for New South Wales to implement a register if one was subsequently developed at the national level.

- 6.38** Dr Edwards, an occupational and environmental physician, and member of the National Dust Diseases Taskforce, highlighted the need for 'consistency and uniformity across the federation', even though it is recognised that the state has a role in work, health and safety. He explained that these issues are being considered by the National Taskforce:

So it is how do we actually achieve that in a way that recognises the authority and responsibility of the State-based jurisdictions as well as the need for a unified, nationally coordinated response to this epidemic. Using the silicosis phenomena as a lead into the occupational lung diseases—so the issues around how do you actually set up an appropriate register and where do you put the boundaries to that register—they are all issues that are under active consideration.⁴⁹⁹

- 6.39** Both Dr Edwards and Dr Yates agreed that the NSW Government could proceed to establish a state register, even though the issue was unresolved at the national level at the time of evidence. Dr Yates stated:

I do not see any reason to wait. We in the occupational medicine and respiratory health areas work together so we are very aware of trying to actually make the registries work in this space in a very similar way. A wait merely involves an extra, however many months at the other end.⁵⁰⁰

- 6.40** On a practical level, Dr Edwards explained how a state register could feed into a national register, if established. He explained:

There is no need for New South Wales to wait because the ultimate architecture of any register or composite registry will be that State-based jurisdictions will have a responsibility for State-based activity and then that will then pool into a national. Where the line in the sand is, however, that ends up working, that is a work in progress but

⁴⁹⁷ Evidence, Dr Jeremy McAnulty, Executive Director, Health Protection NSW, NSW Health, 2 October 2019, p 22.

⁴⁹⁸ Evidence, Dr McAnulty, 2 October 2019, p 22.

⁴⁹⁹ Evidence, Dr Edwards, 16 September 2019, p 34.

⁵⁰⁰ Evidence, Dr Yates, 16 September 2019, p 34.

there is absolutely no reason for New South Wales to sit on their hands at this point in time.⁵⁰¹

- 6.41** Dr Edwards also stated that he preferred the establishment of a register over a lung passport system (like a document the worker carries to get results over time). He explained that 'there are plenty of models out there where it [a register] has been effective', although he noted the 'ongoing administration and funding' required to keep them going.⁵⁰²
- 6.42** The Australasian College of Physicians, Australian Lawyers Alliance and CFMMEU also provided support for a register to be established in New South Wales, particularly if one is not established at the national level.⁵⁰³
- 6.43** The State Regulatory Insurance Authority and icare also expressed in principle support for a register to be established. During a hearing, Mr Nagle, Chief Executive Officer, icare, told the committee that icare's support for a register 'has not changed'. Dr Chris Colquhoun, Chief Medical Officer at icare, contended that 'a national register would be a lot more appropriate', although he agreed that if that did not occur, a state based register 'makes a lot of sense'.⁵⁰⁴
- 6.44** His colleague, Dr Nick Allsop, Group Executive, Care and Community at icare, acknowledged that the existing database icare has for people who have been referred to the scheme for screening is limited as it does not capture self-employed stonemasons.⁵⁰⁵
- 6.45** Ms Donnelly, Chief Executive, SIRA, explained the government's position is to 'support in principle to proceed in New South Wales' in establishing a register 'if there is not a national register'. She noted at the time that she was working with icare, NSW Health and others to look at the options for a register, including the feasibility of capturing data beyond just a diagnosis:

...we are seeing opportunities to learn from other places, including looking at a register that would capture exposure when a worker has been at risk, not just at the point of diagnosis. Some of the other considerations are the importance of not limiting it to situations of mandatory reporting because the person is a worker entitled to workers compensation—in this case in the dust diseases scheme—but to also include more broadly notification from clinicians, from diagnostics services and so on, regardless of the connection to work... Therefore to have an effective register—and I think we spoke about this earlier in the year in the previous hearing and our exploration certainly indicates that it is feasible—there is an important requirement for mandatory notification to have the coverage and to know that you can rely on the data, and notification from clinicians and diagnostic services, therefore coming under the space of health is therefore an important component.⁵⁰⁶

⁵⁰¹ Evidence, Dr Edwards, 16 September 2019, p 34.

⁵⁰² Evidence, Dr Edwards, 16 September 2019, p 33.

⁵⁰³ Submission 6, Royal Australasian College of Physicians, p 4; Construction, Forestry, Maritime, Mining and Energy Union, *Manufactured Stone Industry Task Force: CFMMEU Final Report*, p 8; Submission 10, Australian Lawyers Alliance, p 4.

⁵⁰⁴ Evidence, Dr Chris Colquhoun, Chief Medical Officer, icare, 20 September 2019, p 28.

⁵⁰⁵ Evidence, Dr Allsop, 20 September 2019, p 28.

⁵⁰⁶ Evidence, Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, 20 September 2019, pp 28-29.

- 6.46 Ms Donnelly also advised that one factor being considered is 'what kind of register will capture more widely people who have more contingent – maybe self-employed, maybe contractors that may have a different exposure than a traditional employee'.⁵⁰⁷
- 6.47 As to the information a register could capture, various views were put forward. Dr Deborah Yates, a thoracic and respiratory physician, suggested that a register could include a 'standardised occupational repository where you put all the exposure information ... in a centralised, presumably cloud-based system'.⁵⁰⁸
- 6.48 Dr Colquhoun acknowledged that there is merit in having any workers in the industry registered so that they can be tracked over time. He said: 'A top-down approach to understanding the potential scope of anybody exposed to this sort of hazard on record would make a lot of sense'.⁵⁰⁹
- 6.49 The Royal Australasian College of Physicians indicated that a registry could assist in ensuring that cases detected through case finding activities are appropriately documented and reported.⁵¹⁰
- 6.50 The registers created or being developed in other jurisdictions were also considered by the committee. In its response to a rise of silicosis cases, the Queensland Government established a notifiable dust lung diseases register. Changes to the *Public Health Act 2005* (Qld) and the Public Health Regulation 2018 (Qld) were made to establish the register and allow Queensland Health to monitor and analyse the incidence of notifiable dust lung diseases, such as asbestosis, coal workers/pneumoconiosis and silicosis. Specialist medical practitioners such as occupational and environmental physicians and respiratory and sleep physicians are required to notify the register if they make a diagnosis of a notifiable dust lung disease such as those mentioned above.⁵¹¹
- 6.51 Queensland Health can also request relevant information held by other agencies, to ensure the completeness of the register.⁵¹²
- 6.52 Dr Edwards, who has been involved at looking at this issue at the national level, was asked to reflect on the experience of Queensland and the register established there. He said:

One of the lessons of our Queensland experience is that we did not have that registry of data. So, as an aftermath effect, we have now got a disease registry which is all about the confirmed cases. The registry in Queensland is not one that enables retrospective assessment of the exposures of that individual; it is only after they have reached the diagnosis stage.⁵¹³

⁵⁰⁷ Evidence, Ms Donnelly, 20 September 2019, p 29.

⁵⁰⁸ Evidence, Dr Yates, 16 September 2019, p 33.

⁵⁰⁹ Evidence, Dr Colquhoun, 11 February 2020, p 9.

⁵¹⁰ Submission 6, Royal Australasian College of Physicians, p 4.

⁵¹¹ Queensland Health, *About the notifiable dust lung disease register*, (accessed 14 January 2020) <https://www.health.qld.gov.au/public-health/industry-environment/dust-lung-disease-register/about-the-register>.

⁵¹² Health NSW, *Notifiable lung diseases*, (accessed 14 January 2020), <https://www.qld.gov.au/health/staying-healthy/workplace/notifiable-dust-lung-diseases>.

⁵¹³ Evidence, Dr Edwards, 16 September 2019, p 33.

6.53 In terms of the Victorian experience, the committee was informed by Ms Donnelly that consideration was being given to the register containing information about someone who has had exposure to silica dust, 'an add-on' to what information the Queensland register holds.⁵¹⁴ Dr Edwards confirmed this, stating that Victoria has two registries being established: 'one is the disease registry that is coming on line and the other one is an exposure registry associated with the research projects of Monash University'.⁵¹⁵ In Dr Edwards opinion, both of these are essential.⁵¹⁶

6.54 Following the hearings for this review, on 21 February 2020, the NSW Government announced the creation of a Silicosis Health Register, stating it would make silicosis a notifiable disease:

The NSW Government will make silicosis a notifiable disease, creating a Silicosis Health Register to allow SafeWork to track and investigate the workplaces of those diagnosed with the disease.

“To protect workers from the dangers of silica dust we need more oversight of diagnosed silicosis cases, which is why it will now be a notifiable disease, with all cases listed on a single register.”

“SafeWork NSW will be notified when patients are diagnosed so they can immediately investigate the patients’ current and previous workplaces and determine the source of the unsafe work practice that led to the disease.”⁵¹⁷

Mandatory notification

6.55 In addition to the development of a central register, many stakeholders also supported the implementation of a mandatory notification system. Currently medical professionals cannot report adverse health findings due to privacy legislation. If a mandatory notification system is implemented, medical professionals could be legally required to notify when a worker is diagnosed with a silica related lung disease. Stakeholders suggested that this information could then be fed back into a central registry once it is in operation (as discussed above).

6.56 On this issue, the Manufactured Stone Industry Taskforce recommended that the NSW Health Minister consider making silicosis a notifiable disease. It also recommended that Safe Work Australia, as part of its review of the model work health and safety, include the requirement for medical practitioners to notify the work health and safety regulator of adverse health reports. It noted that currently only one notification for silica exposure had been provided to SafeWork NSW by an employer, in accordance with work health and safety requirements.⁵¹⁸

6.57 In terms of a response to this recommendation, the Taskforce noted at the time that the NSW Minister for Better Regulation and Innovation and the NSW Minister for Health and Medical

⁵¹⁴ Evidence, Ms Donnelly, 20 September 2019, p 29.

⁵¹⁵ Evidence, Dr Edwards, 16 September 2019, p 33.

⁵¹⁶ Evidence, Dr Edwards, 16 September 2019, p 33.

⁵¹⁷ Media Release, Department of Customer Service, 'NSW unveils strategy to stamp out silicosis', 21 February 2020.

⁵¹⁸ SafeWork NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, July 2019, p 8.

Research were considering the regulatory impact of options for making silicosis a notifiable condition.⁵¹⁹

- 6.58** During this review, several stakeholders outlined the benefits of establishing a mandatory notification system in responding to the issue of silicosis within the manufactured stone industry. Dr Susan Miles from the Lung Foundation Australia and Thoracic Society of Australia and New Zealand told the committee that along with a register, mandatory notification could help to identify workers potentially affected, monitor exposure and improve medical outcomes, particularly for those who work on site and are at particular risk. She stated:

It would also help us know the severity of the disease and how we can better intervene to improve outcomes. It would allow us to share information with other States and to publish our data and compare data on an international scale and develop processes in place to reduce the burden of this illness.⁵²⁰

- 6.59** The Lung Foundation of Australia and Thoracic Society of Australia and New Zealand also contended that notifications could be shared with the regulator, leading to audits of workplaces of diagnosed workers.⁵²¹
- 6.60** The CFMMEU also noted its support for the proposal that silicosis become a notifiable disease.⁵²² Ms Rita Mallia, President, CFMMEU, agreed that this would help to identify affected workers who are currently not captured by icare's scheme.⁵²³ Mandatory reporting of cases of silicosis by health professionals was also supported by members of the Australian Engineering Stone Advisory Group.⁵²⁴
- 6.61** In addition, icare advised that it supports in principle the establishment of a mandatory reporting scheme for silica related diseases in New South Wales pending the establishment of a national model.⁵²⁵ The committee was informed by Ms Donnelly, SIRA, that consideration is currently being given to different options, including mandatory notification under public health legislation or work health and safety legislation.⁵²⁶
- 6.62** On this issue, the committee took evidence from representatives of NSW Health, particularly in terms of how existing notification systems work for infectious diseases.
- 6.63** Dr Jeremy McAnulty, Executive Director, Health Protection NSW, NSW Health, explained that infectious diseases typically involve a laboratory test, and mandatory notifications are made from

⁵¹⁹ SafeWork NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, July 2019, p 11.

⁵²⁰ Evidence, Dr Miles, 16 September 2019, p 10.

⁵²¹ Submission 3, Lung Foundation of Australia and Thoracic Society of Australia and New Zealand, p 2.

⁵²² Construction, Forestry, Maritime, Mining and Energy Union, *Manufactured Stone Industry Task Force: CFMMEU Final Report*, p 8.

⁵²³ Evidence, Ms Mallia, 16 September 2019, p 18.

⁵²⁴ Submission 13, Australian Engineered Stone Advisory Group, p 3.

⁵²⁵ Answers to pre-hearing questions, icare, 12 September 2019, Attachment 1, p 3.

⁵²⁶ Evidence, Ms Donnelly, 20 September 2019, p 29.

the laboratory rather than from doctors. He stated that notification on the basis of laboratory reports is 'pretty effective', whereas doctor notifications are 'very poorly complied with'.⁵²⁷

6.64 Expanding on the reasons for this, and how this may impact the effectiveness of a register, Dr McAnulty stated:

... despite even where we put lots of effort into raising awareness among doctors, ... they are still very poor at complying with mandatory notification because they are busy doing clinical work and it is not on their minds. Relying on notification from doctors for silicosis, where there is no lab test, we believe is very likely to have a very low compliance rate and therefore be misleading...⁵²⁸

6.65 In his view, the information would be 'misleading in how it would capture what level of disease there is in the community'.⁵²⁹

6.66 Given Dr McAnulty's view that doctors may have lower compliance with a mandatory notification scheme, the committee explored whether it would be more effective if specialist physicians were legally required to report. This is based on the assumption that general practitioners would likely refer complex lung cases to respiratory physicians for diagnosis. It is also what is required in Queensland in terms of their mandatory notification scheme, as discussed at paragraph 6.50.⁵³⁰

6.67 In Dr McAnulty's view, 'specialists are not great at notifying'. He stated 'we have had experience with various infectious diseases where we seek to get additional information about patients from specialists but it is very hard to get that information back'.⁵³¹

6.68 As to alternatives, Dr McAnulty discussed 'triangulation of data', which involves 'looking at the range of different sources of data that are available to put together a picture'. This would involve consideration of data such as laboratory test results, hospital admissions and community surveillance. Drawing on the importance of looking at the purpose of mandatory notification and a register, he said: 'If it is to look at the burden of disease for silicosis, that is one objective, then it may be better to put together a range of data that is available'.⁵³²

6.69 Following the hearing, NSW Health reiterated its concern that doctors notify only a proportion of cases. It stated that 'notification takes time away from the provision of clinical care and provides no direct clinical benefit to the patients who are being notified'. It noted that under the Queensland scheme, doctors are required to complete a six page form which must be submitted via a secure email service.⁵³³

⁵²⁷ Evidence, Dr McAnulty, 2 October 2019, p 23.

⁵²⁸ Evidence, Dr McAnulty, 2 October 2019, p 23.

⁵²⁹ Evidence, Dr McAnulty, 2 October 2019, p 23.

⁵³⁰ Queensland Health, *About the notifiable dust lung disease register*, (accessed 14 January 2020) <https://www.health.qld.gov.au/public-health/industry-environment/dust-lung-disease-register/about-the-register>.

⁵³¹ Evidence, Dr McAnulty, 2 October 2019, p 26.

⁵³² Evidence, Dr McAnulty, 2 October 2019, p 26.

⁵³³ Answers to questions on notice, NSW Health, 31 October 2019, p 1.

- 6.70** If the purpose of notification is to identify workplaces for inspection, Health NSW argued that it would be best for the regulator – SafeWork NSW – to be able to receive the required data.⁵³⁴
- 6.71** These considerations aside, Dr McAnulty acknowledged that there would unlikely be an adverse outcome from establishing a notification scheme: 'as long as you explain the limitations and caveats for the compilation of the data that avoids adverse effects'.⁵³⁵
- 6.72** As outlined previously in paragraph 6.54, the NSW Government recently announced the establishment of a state-based dust disease register, with silicosis as a notifiable disease for which SafeWork NSW must be notified.

Committee comment

- 6.73** The committee supports the immediate establishment of a dust disease register and mandatory notification scheme in New South Wales, and we are encouraged by recent announcements that a state-based Silicosis Health Register will be established.
- 6.74** The committee believes that this statewide register must be established immediately, and it needs to capture not only diagnosed cases of silicosis but also screening results and investigative reports undertaken for workers exposed to crystalline silica. This will assist physicians in detecting lung changes early.
- 6.75** To facilitate the collection of this information, the committee also supports the implementation of a mandatory notification scheme and supports amendments to public health legislation to bring this to effect. The preferred approach is for specialist physicians to be required to notify, similar to the Queensland model.
- 6.76** While we acknowledge that there are some concerns about non-compliance with mandatory reporting requirements by physicians, it is our view that such a scheme will provide benefits in terms of identification, management and reporting in relation to silica related lung diseases, particularly in the absence of any other comprehensive system.
- 6.77** Therefore, the committee recommends 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.

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.

⁵³⁴ Answers to questions on notice, NSW Health, 31 October 2019, p 3.

⁵³⁵ Evidence, Dr McAnulty, 2 October 2019, p 26.

Industry education and awareness

- 6.78** Key to preventing and minimising exposure to crystalline silica is raising awareness in the industry about the risks of working with manufactured stone and how safety and control measures can be used effectively.
- 6.79** In this review, the committee explored whether further education and awareness is needed, taking into account what work in this area has already been undertaken, and the needs of workers who may be more difficult to reach, for example, installers of manufactured stone products.
- 6.80** The committee noted that this was a key issue identified in the Manufactured Stone Industry Taskforce's report. The Taskforce recognised that within the industry there is 'inconsistent levels of awareness of silica exposure risk and understanding of best practice controls to reduce exposure'.⁵³⁶
- 6.81** Due to this, the Manufactured Stone Industry Taskforce focused on the issue of awareness and education as one of its key priorities. In particular, it focused on evaluating the awareness campaigns that had been conducted by SafeWork NSW as part of the Hazardous Chemicals Strategy (see chapter 1). This included the awareness campaigns run across radio, TV and social media.
- 6.82** The evaluation found that the while 'the communication elements are all working well', elements of the campaign could be strengthened including the link between the social media advertisements and website, and the call to action.⁵³⁷
- 6.83** Despite these awareness campaigns, and other initiatives undertaken by SafeWork NSW, including a symposium it held in May 2019 and various roadshows and safety forums, stakeholders in this inquiry suggested that more work is needed in terms of educating workers in the industry.
- 6.84** The Lung Foundation of Australia and Thoracic Society of Australia and New Zealand recommended that the current campaigns need to be assessed in terms of their effectiveness in delivering key messages, raising awareness and influencing behaviour change. It also noted that Google translate is used on SafeWork's website to increase accessibility for culturally and linguistically diverse communities but that this does not translate the videos.⁵³⁸
- 6.85** There was also some concerns about whether SafeWork's educational strategies are effective at communicating the risks associated with silica exposure and importance of complying with work health and safety measures.
- 6.86** On this, the committee questioned SafeWork NSW as to whether they are being 'hard-hitting' in their messages about the dangers of working with silica. Mr Andrew Gavrielatos stated:

⁵³⁶ SafeWork NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, p 6.

⁵³⁷ SafeWork NSW, *Silica dust – Final report of the Manufactured Stone Industry Taskforce*, p 15.

⁵³⁸ Submission 3, Lung Foundation of Australia and Thoracic Society of Australia and New Zealand, p 4.

I think it is right, sometimes you do need to be a bit more hard-hitting to get the message across to people. We did look at our advertising to do that and our awareness and education campaign, which was a multichannel campaign, actually asked the question, "Which mask will you wear?" showing either PPE or an oxygen mask which people require for health. It was a fairly hard-hitting ad, and ... we have also more recently run similar ads and tried to use a face that might sort of resonate with people, Dr Karl Kruszelnicki. So we are trying to really get that message out there about "which mask will you wear". It is a pretty hard-hitting campaign.⁵³⁹

6.87 However, Mr Andrew Orfanos, President Elect at the Australian Institute of Occupational Hygienists, raised a concern that information is not reaching workers in smaller businesses:

[M]y biggest concern is not the worker that is working for a big company—they have the resources, the money, the extraction systems—I am worried about the smaller micro businesses, the father and son businesses that are subcontracting to a principal and they have to get in. They want to do their work and they are not given that material safety data sheet. No-one is telling them that there is a risk to their health. I can assure you if they knew the real risks associated with this product they would be doing the right thing...⁵⁴⁰

6.88 The Lung Foundation of Australia and Thoracic Society of Australia and New Zealand suggested that there should be consideration given to delivering onsite toolbox talks like those proposed by the Australian Institute of Occupational Hygienists.⁵⁴¹

6.89 A number of other suggestions were also put forward relating to education and awareness. Mr David Solomon from the Master Builders Association contended that silica awareness needs the same attention as other hazards which are the focus of SafeWork, such as falling from heights and scaffolding.⁵⁴²

6.90 He proposed a cloud-based SMS or email notification service that would deliver alerts about the dangers of silica. He suggested that the regulator could send tips on the safe use of silica based products between 2.00 pm and 3.00 pm on a Thursday as most people are usually bored at work at this time.⁵⁴³

6.91 Suncorp also emphasised the importance of education, stating that an Australian wide education program 'will be vital to stem the progression of this emerging risk'. It also suggested that the insights from audits in Queensland and South Australia would be of assistance in developing an education package.⁵⁴⁴

⁵³⁹ Evidence, Mr Gavrielatos, 2 October 2019, p 2.

⁵⁴⁰ Evidence, Mr Andrew Orfanos, President Elect, Australian Institute of Occupational Hygienists, 16 September 2019, p 7.

⁵⁴¹ Submission 3, Lung Foundation of Australia and Thoracic Society of Australia and New Zealand, p 4.

⁵⁴² Evidence, Mr David Solomon, Executive Officer – Safety and Risk, Master Builders Association, 20 September 2019, p 8.

⁵⁴³ Answers to questions on notice, Master Builders Association, 16 October 2019, p 1.

⁵⁴⁴ Submission 2, Suncorp Group Limited, p 2.

- 6.92** Suppliers of manufactured stone products also agreed that increased education is necessary, although the Australian Engineering Stone Advisory Group felt that this was achieved through its proposal for a self-accreditation scheme.
- 6.93** Mr Cullen noted that Caesarstone has increased its education and warnings to fabricators over the last 12 months since the rise in cases of silicosis. Alongside other measures, like the accreditation process and strengthened regulatory enforcement, Mr Cullen suggested that more education is needed to help lift the standards within the industry and ensure workers and employers are adopting safe standards of practice when working with stone products.⁵⁴⁵
- 6.94** CDK Stone also acknowledged the role of education and awareness in the industry, stating that 'the silicosis issues of the 1920s were almost completely eradicated through awareness, education and enforcement of safety measures'. In its view, the increase in popularity of manufactured stone products and limited knowledge and education of safety measures required by stonemasons working with manufactured stone products has contributed to the current increase of silicosis associated illness.⁵⁴⁶

Committee comment

- 6.95** Preventing unnecessary exposure to silica and encouraging compliance with safety and control measures is absolutely critical to responding to the issue of silicosis within the industry.
- 6.96** The committee acknowledges the work being already undertaken by SafeWork NSW in terms of educating workers within the industry about the risks associated with exposure to respirable crystalline silica dust. We acknowledge that these programs are being evaluated, and that more strategies will need to be developed and implemented over the coming years.
- 6.97** We also agree with stakeholders that there needs to be continued focus in this area. Prevention is absolutely critical, and must be part of the government's broader response to silicosis in the industry. It must occur alongside other important measures, including increased regulatory enforcement, the establishment of a register and mandatory notification scheme and improved resources for workers in the industry, including a code of practice.
- 6.98** The committee would encourage SafeWork NSW to consider innovative options that are effective in educating certain workers within the industry, for example, installers who are independent contractors. In this regard, we recommend that SafeWork NSW, when reviewing its education and awareness campaigns, to specifically consider how best to promote safe practices to independent contractors and installers.

⁵⁴⁵ Evidence, Mr David Cullen, Australian Engineered Stone Advisory Group and Managing Director, Caesarstone Australia, 15 November 2019, p 14.

⁵⁴⁶ Submission 15, CDK Stone Pty Ltd, pp 2-3.

Recommendation 13

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.

Further research

- 6.99** One of the themes through the inquiry was the need for further research to better prevent and manage the risks associated with manufactured stone, not only in terms of medical research but also industry related research.
- 6.100** Stakeholders discussed various research that is underway, including research into the adequacy of current health monitoring tests by the University of Newcastle⁵⁴⁷ and research into exposure levels with wet and dry cutting by the University of Wollongong⁵⁴⁸ and University of Western Sydney.⁵⁴⁹
- 6.101** There is also research into the detection, prevention and treatment of silicosis by the Dust Diseases Board. Dr Allsop explained that \$250,000 of the annual budget of \$1.5 million has been set aside to focus specifically on the most effective prevention and screening methodologies for silicosis.⁵⁵⁰
- 6.102** The Australian Institute of Occupational Hygienists also told the committee that, as outlined previously, the NSW Centre for Work Health and Safety intends on engaging a research partner to help develop a respirable crystalline silica sensor that will provide real time feedback to workers who are at risk of exposure.⁵⁵¹
- 6.103** Aside from this, stakeholders called for more funding to be directed towards research, for example:
- Dr Susan Miles suggested that there be more funding towards research on the composition of manufactured stone products and their link to silicosis,⁵⁵² and secondary exposure⁵⁵³

⁵⁴⁷ Answers to questions on notice, icare, 16 October 2019, p 2.

⁵⁴⁸ Evidence, Ms McCool, 2 October 2019, p 10.

⁵⁴⁹ Evidence, Ms Rose Webb, Deputy Secretary, Better Regulation Division, SafeWork NSW, 11 February 2020, p 32.

⁵⁵⁰ Evidence, Dr Allsop, 20 September 2019, p 27 and p 32.

⁵⁵¹ Submission 4, Australian Institute of Occupational Hygienists, p 8.

⁵⁵² Evidence, Dr Miles, 16 September 2019, p 12.

⁵⁵³ Answers to questions on notice, Lung Foundation of Australia and Thoracic Society of Australia and New Zealand, 25 October 2019, p 1.

- Mr Shearer from the Mine Ventilation Society of Australia stated that there needs to be more research into 'trying to understand the beast', and helping the industry move forward⁵⁵⁴
 - the CFMMEU suggesting there be industry research to develop and promote new low silica products⁵⁵⁵
- 6.104** In addition, in its response to the Manufactured Stone Industry Taskforce's report, the CFMMEU called for state government research to be conducted to gain a better understanding of the nature, extent and effects of silica exposure and dry and wet cutting scenarios, in the context of various control environments.⁵⁵⁶
- 6.105** The committee subsequently received evidence that, in its interim advice to the Commonwealth Health Minister released in December 2019, the National Dust Diseases Taskforce included an early recommendation for a strategic approach to research, including targeted investment in key research activities to improve understanding of the prevention, diagnosis and treatment of silicosis.⁵⁵⁷ The immediate research-related recommendations were to:
- invest in research to investigate the pathogenesis of silicosis, best practice to minimise exposure, and radiological methods for diagnosis
 - coordinate and focus priorities on improved case finding, clinical management and outcomes for individuals.⁵⁵⁸

Committee comment

- 6.106** The committee agrees that more research would be beneficial, not only towards the prevention and treatment of silicosis but also in terms of how control measures can be best used when working with manufactured stone products. In particular, we support more research on issues such as health monitoring, air monitoring and the effectiveness of wet cutting.
- 6.107** Given the Dust Diseases Board and NSW Centre for Work Health and Safety both currently play a role in funding research, we recommend that they both be provided with additional funding for research projects related to the prevention, management and treatment of silicosis. In terms of sourcing additional funding for research projects, the NSW Government should commission icare to scope out possible funding models that would be based on a cost recovery basis from the industry.

⁵⁵⁴ Evidence, Mr Michael Shearer, President, Mine Ventilation Society of Australia, 20 September 2019, p 13.

⁵⁵⁵ *Manufactured Stone Industry Task Force: CFMMEU Final Report*, p 12.

⁵⁵⁶ *Manufactured Stone Industry Task Force: CFMMEU Final Report*, p 15.

⁵⁵⁷ National Dust Disease Taskforce, *Interim Advice to Minister for Health*, December 2019, p 8.

⁵⁵⁸ National Dust Disease Taskforce, *Interim Advice to Minister for Health*, December 2019, p 8.

Recommendation 14

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.

Appendix 1 Submissions

No.	Author
1	Confidential
2	Suncorp Group Limited
3	Lung Foundation Australia and the Thoracic Society of Australia and New Zealand
4	Australian Institute of Occupational Hygienists, Inc.
5	Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU)
6	The Royal Australasian College of Physicians (RACP)
7	Master Builders Association of New South Wales
8	Maurice Blackburn Lawyers
9	Safe Work Australia
10	Australian Lawyers Alliance
11	State Insurance Regulatory Authority (SIRA)
12	The Mine Ventilation Society of Australia
13	Australian Engineered Stone Advisory Group (AESAG)
14	Cosentino Australia Pty Ltd
15	CDK Stone Pty Ltd
16	Stone Ambassador Australia Pty Ltd
17	Laminex

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Monday 16 September 2019 Macquarie Room Parliament House	Mr Martin Jennings	Fellow, Australian Institute of Occupational Hygienists
	Mr Andrew Orfanos	President Elect, Australian Institute of Occupational Hygienists
	Dr Susan Miles	Respiratory, Sleep and General Medicine Physician, Lung Foundation Australia and Thoracic Society of Australian and New Zealand
	Ms Rita Mallia	President, Construction, Construction, Forestry, Maritime, Mining and Energy Union
	Mr Ben Kruse	Legal & Industrial Officer, Construction, Forestry, Maritime, Mining and Energy Union
	Dr Graeme Edwards	Occupational and Environmental Physician, Royal Australasian College of Physicians
	Dr Deborah Yates	Consultant Thoracic Physician and Conjoint Associate Professor at University of New South Wales
	Mr Jonathan Walsh	Principal, Maurice Blackburn Lawyers
	Mr Timothy McGinley	Associate, Maurice Blackburn Lawyers
Ms Joanne Wade	NSW Committee, Australian Lawyers Alliance	
Friday 20 September 2019 Macquarie Room Parliament House	Mr Michael Shearer	President, The Mine Ventilation Society of Australia
	Mr Peter Glover	Director Construction, Master Builders Association
	Mr David Solomon	Executive Officer - Safety and Risk, Master Builders Association
	Mr John Nagle	Chief Executive Officer and Managing Director, icare
	Dr Nick Allsop	Group Executive, Care and Community, icare
	Dr Chris Colquhoun	Chief Medical Officer

Date	Name	Position and Organisation
	Ms Carmel Donnelly	Chief Executive, State Insurance Regulatory Authority
	Mr Darren Parker	Executive Director, State Insurance Regulatory Authority
	Dr Petrina Casey	Director Health Strategy, State Insurance Regulatory Authority
Wednesday 2 October 2019 Macquarie Room Parliament House	Mr Andrew Gavrielatos	Executive Director, Specialist Services, SafeWork NSW
	Mr Peter Dunphy	Acting Deputy Secretary, Better Regulation Division
	Ms Meagan McCool	Director, Hazardous Chemical Facilities and Safety Management Audits
	Dr Jeremy McAnulty	Executive Director, NSW Health
	Dr Richard Broome	Director, Environmental Health Branch, NSW Health
Friday 15 November 2019 Macquarie Room Parliament House	Mr David Cullen	Member, Australian Engineered Stone Advisory Group, and Managing Director, Caesarstone Australia
	Mr Bruce Rayment	Member, Australian Engineered Stone Advisory Group, and Chief Executive Officer, Smartstone Australia Pty Ltd
	Mr Mark Norman	Member, Australian Engineered Stone Advisory Group, and General Manager, Quantum Quartz
Tuesday 11 February 2020 Macquarie Room Parliament House	Mr John Nagle	Chief Executive Officer and Managing Director, icare
	Dr Nick Allsop	Group Executive, Care and Community, icare
	Dr Chris Colquhoun	Chief Medical Officer, icare
	Ms Michelle Baxter	Chief Executive Officer, Safe Work Australia

Date	Name	Position and Organisation
	Ms Amanda Johnston	General Counsel and Branch Manager, Legal Policy Branch, Safe Work Australia
	Ms Jackii Shepherd	Director, Occupational Hygiene Policy, Safe Work Australia
	Ms Rose Webb	Deputy Secretary, Better Regulation Division, SafeWork NSW
	Mr Peter Dunphy	Executive Director, Fair Trading Specialist Services, SafeWork NSW
	Ms Meagan McCool	Director, Hazardous Chemical Facilities and Safety Management Audits, SafeWork NSW

Appendix 3 Minutes

Minutes no. 1

Thursday 30 May 2019

Standing Committee on Law and Justice

Members' Lounge, Parliament House, Sydney, 1.31 pm

1. Members present

Mr Blair, *Chair*

Mr Donnelly, *Deputy Chair*

Mr D'Adam

Mr Fang

Mr Khan

Mr Roberts

Mr Shoebridge

Mrs Ward

2. Tabling of resolution establishing the committee

Chair to table the resolution of the House establishing the committee, which reads as follows:

Appointment

1. Three standing committees are appointed as follows:

- (a) Law and Justice Committee,
- (b) Social Issues Committee, and
- (c) State Development Committee.

Law and Justice Committee

2. The committee may inquire into and report on:

- (a) legal and constitutional issues in New South Wales, including law reform, parliamentary matters, criminal law, administrative law and the justice system, and
- (b) matters concerned with industrial relations and fair trading.

3. For the purposes of section 27 of the State Insurance and Care Governance Act 2015, the committee is the designated Legislative Council committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers' compensation and motor accidents legislation:

- (a) the Workers' Compensation Scheme,
- (b) the Workers' Compensation (Dust Diseases) Scheme,
- (c) the Motor Accidents Scheme, and
- (d) the Motor Accidents (Lifetime Care and Support) Scheme.

4. In exercising the supervisory function outlined in paragraph 3, the committee:

- (a) does not have the authority to investigate a particular compensation claim, and
- (b) must report to the House in relation to the operation of each of the schemes at least every two years every Parliament.

Referral of inquiries

7. A committee:
 - (a) is to inquire into and report on any matter relevant to the functions of the committee which is referred to the committee by resolution of the House,
 - (b) may inquire into and report on any matter relevant to the functions of the committee which is referred by a Minister of the Crown, and
 - (c) may inquire into and report on any annual report or petition relevant to the functions of the committee which has been laid upon the Table of the Legislative Council.
8. Whenever a committee resolves to inquire into a matter, under paragraph 7(b) or 7(c), the terms of reference or the resolution is to be reported to the House on the next sitting day.

Powers

9. The committee has power to make visits of inspection within New South Wales and, with the approval of the President, elsewhere in Australia and outside Australia.

Membership

10. Each committee is to consist of eight members, comprising:
 - (a) four government members,
 - (b) two opposition members, and
 - (c) two crossbench members.

Chair and Deputy Chair

11. (a) The Leader of the Government is to nominate in writing to the Clerk of the House the Chair of each committee.
(b) The Leader of the Opposition is to nominate in writing to the Clerk of the House the Deputy Chair of each committee.

Quorum

12. The quorum of a committee is three members, of whom two must be government members and one a non-government member.

Sub-committees

13. A committee has the power to appoint sub-committees.

Conduct of committee proceedings

14. Unless the committee decides otherwise:
 - (a) submissions to inquiries are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration,
 - (b) attachments to submissions are to remain confidential,
 - (c) the Chair's proposed witness list is to be circulated to provide members with an opportunity to amend the list, with the witness list agreed to by email, unless a member requests the Chair to convene a meeting to resolve any disagreement,
 - (d) transcripts of evidence taken at public hearings are to be published,
 - (e) supplementary questions are to be lodged with the Committee Clerk within two days, excluding Saturday and Sunday, following the receipt of the hearing transcript, with witnesses requested to

return answers to questions on notice and supplementary questions within 21 calendar days of the date on which questions are forwarded to the witness, and

- (f) answers to questions on notice and supplementary questions are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration.

3. Committee Chair and Deputy Chair

The committee noted that the following members were nominated by the Leader of the Government and the Leader of the Opposition as Chair and Deputy Chair of the Standing Committee on Law and Justice:

- Mr Blair (Chair)
- Mr Donnelly (Deputy Chair).

4. Conduct of committee proceedings – Media

Resolved, on the motion of Mr Shoebridge: That unless the committee decides otherwise, the following procedures are to apply for the life of the committee:

- the committee authorise the filming, broadcasting, webcasting and still photography of its public proceedings, in accordance with the resolution of the Legislative Council of 18 October 2007
- the committee webcast its public proceedings via the Parliament's website, where technically possible
- committee members use social media and electronic devices during committee proceedings unobtrusively, to avoid distraction to other committee members and witnesses
- media statements on behalf of the committee be made only by the Chair.

5. Correspondence

Received:

- 6 February 2019 – Email from an employee of Ausgrid, to committee, in relation to parking fines to electrical network provider vehicles when undertaking maintenance of the electrical network
- 4 February 2019 – Email from a practicing advocate at Nashik Maharashtra, to committee, in relation to the Conciliation Act 1996
- 20 February 2019 – Letter from an individual to the Law and Justice Committee, seeking an investigation of the Executive Director and Registrar of the Supreme Court and the Attorney General .

Sent:

- 26 February 2019 – Letter from Mr David Blunt, Clerk of the Parliaments, to the Hon Don Harwin MLC, Leader of the Government in the Legislative Council, requesting a government response to the report of the 2018 review of the Dust Diseases Scheme
- 26 February 2019 – Letter from Mr David Blunt, Clerk of the Parliaments, to the Hon Don Harwin MLC, Leader of the Government in the Legislative Council, requesting a government response to the report of the 2018 review of the Lifetime Care and Support Scheme
- 1 March 2019 – Letter from Clerk Assistant – Committees responding to the individual who wrote to the Law and Justice Committee, seeking an investigation of the Executive Director and Registrar of the Supreme Court and the Attorney General.

Resolved, on the motion of Mr Shoebridge: That the following correspondence be kept confidential, as per the recommendation of the secretariat, as it contains identifying and/or sensitive information:

- 20 February 2019 – Letter from an individual to the Law and Justice Committee, seeking an investigation of the Executive Director and Registrar of the Supreme Court and the Attorney General
- 1 March 2019 – Letter from Clerk Assistant – Committees responding to the individual who wrote to the Law and Justice Committee, seeking an investigation of the Executive Director and Registrar of the Supreme Court and the Attorney General.

6. Legacy report of 56th Parliament

The committee noted the Legacy Report detailing the committee's work in the previous Parliament.

7. Oversight reviews and timeframes

The committee discussed timeframes for the next reviews of statutory schemes, specifically considering Recommendation 2 of its 2018 Review of the Dust Diseases scheme:

That the Standing Committee on Law and Justice's next review of the Workers Compensation (Dust Diseases) Scheme focus on silica dust and silicosis, particularly in the manufactured stone industry.

Resolved, on the motion of Ms Ward: That the committee's next review of the Workers Compensation (Dust Diseases) Scheme focus on silica dust and silicosis, particularly in the manufactured stone industry, and open for submissions at the beginning of July 2019.

Resolved, on the motion of Ms Ward: That the committee write to icare, ccing the Hon Victor Dominello MP, Minister for Customer Service, seeking an update on the establishment of a dust diseases register, acknowledging that the committee has not yet received the government response to the report on the 2018 review of the dust diseases scheme, and advising that it will commence its call for submissions for the 2019 review of the dust diseases scheme in early July.

8. Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019**8.1 Terms of reference**

The Committee noted the terms of reference for the inquiry as referred by the House to inquire and report into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019.

8.2 Proposed timeline

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

- submission closing date of 30 June 2019
- the Chair liaise with committee members regarding the timing and location of hearings
- table report by end August.

The committee discussed the need to carefully manage stakeholder expectations about the purpose and scope of the inquiry.

The committee noted that the secretariat will liaise with the chair to develop then circulate for comment proposed wording to be included in the call for submissions and on the inquiry website.

8.3 Advertising

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

8.4 Stakeholders

The Chair tabled a proposed stakeholder list. The Committee noted that the secretariat will circulate a revised list, with members to provide any further additions early next week.

9. Publication of minutes of the first meeting

Resolved, on the motion of Mr Fang: That the committee publish the minutes of the first meeting on the committee's webpage, subject to the draft minutes being circulated to members for agreement.

10. Other business

Resolved, on the motion of Mr Shoebridge: That the secretariat provide to the committee proposed timeframes for the workers compensation, motor accidents and lifetime care and support reviews.

11. Adjournment

The committee adjourned at 1.56 pm, *sine die*.

Merrin Thompson
Committee Clerk

Minutes no. 2

Wednesday 5 June 2019

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney, 10.01 am

1. Members present

Mr Blair, *Chair*

Mr Donnelly, *Deputy Chair*

Mr D'Adam

Mr Fang

Mr Khan

Mr Roberts

Mr Shoebridge

Mrs Ward

2. Draft minutes

The committee noted that draft minutes no. 1 were confirmed via email on 4 June 2019, as per a previous resolution of the committee.

3. Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019**3.1 Wording to be included in the call for submissions and on the inquiry website**

The committee noted that on 6 June 2019 it adopted via email wording developed by the secretariat in liaison with the Chair for inclusion in the call for submissions and on the inquiry website, as per a resolution on 30 May 2019.

3.2 Informal private briefing with family members in Bowraville

Resolved, on the motion of Mrs Ward: That:

- The committee conduct an informal private briefing (with catering) in Bowraville with two to three representatives of each family group, where no formal evidence is taken, for up to 2 hours, for the purpose of explaining the legal focus of the inquiry
- The meeting take place at the Pioneer Community Hall in Bowraville, subject to availability
- The visit to Bowraville take place on 17, 24, or 26 June 2018, with the date to be determined following consultation with the committee
- A representative of the Aboriginal Health Clinic and/or Jumbunna Institute for Indigenous Education and Research be invited to support attendees.

3.3 Resources

Resolved, on the motion of Mr Shoebridge: That the secretariat:

(a) Prepare a short briefing paper addressing:

- the legal background to the bill, including double jeopardy law in New South Wales and Australia
- timeline and outcome of court decisions
- any known cases other than Bowraville

- UK model for double jeopardy law
 - publication documenting relevant UK cases
- (b) Distribute cultural awareness resources to assist communication with Aboriginal people.

3.4 Public hearing

Resolved, on the motion of Mr Khan: That the committee hold a public hearing on 9 or 10 July 2019, subject to the availability of members.

4. Oversight reviews

The committee noted that:

- both the 2018 Review of the Workers Compensation Scheme and 2018 Review of the Compulsory Third Party Scheme reports were tabled on 12 February 2019 and the government responses are due 12 August 2019
- both the 2018 Review of the Lifetime Care and Support Scheme and 2018 Review of the Dust Diseases Scheme reports were tabled on 26 February 2019 and the government responses are due on 26 August 2019.

Having previously resolved to commence the 2019 review of the Dust Diseases Scheme in July 2019, the committee discussed its approach to and timeframes for the next round of other oversight reviews.

Resolved, on the motion of Mr Shoebridge: That the following be adopted for the next oversight reviews:

2019 Review of the Dust Diseases Scheme	<ul style="list-style-type: none"> • Submissions open early July 2019 and close 12 August 2019 • 1-2 hearings days early September 2019 • table by early December 2019
2020 Review of the Lifetime Care and Support Scheme and Compulsory Third Party Scheme, in one combined report	Commence January 2020
2020 Review of the Workers Compensation Scheme	Commence June 2020

5. Other business

Resolved, on the motion of Mr Shoebridge: That the committee request that the government response to the 2018 review of the Dust Diseases Scheme be provided early, in light of its timeframe for the 2019 review of the scheme.

6. Adjournment

The committee adjourned at 10.30 am, *sine die*.

Merrin Thompson
Committee Clerk

Minutes no. 4

Monday 24 June 2019

Standing Committee on Law and Justice

Pioneer Community Centre, Bowraville at 10.45 am

1. MembersMr Blair, *Chair*Mr Donnelly, *Deputy Chair*

Mr D'Adam

Mr Khan

Mr Roberts

Mr Shoebridge

Mrs Ward

2. Apologies

Mr Fang

3. Correspondence***Received:***

- 21 June 2019 – Email exchange between secretariat and Assistant Commissioner Mick Willing, Counter Terrorism and Special Tactics Command, NSW Police Force, regarding the attendance of Detective Chief Inspector Gary Jubelin as support person at the meeting with family representatives in Bowraville on 24 June 2019.

4. Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019**4.1 Private briefing and tour of key sites in Bowraville**

The committee received a private briefing from Detective Chief Inspector Gary Jubelin, NSW Police Force, with Detective Sergeant Gerry Bowden and Ms Bianca Comina, NSW Police Force, also present.

Resolved, on the motion of Mr Donnelly: That Detective Chief Inspector Jubelin, Detective Sergeant Bowden and Ms Comina accompany the committee on a tour of key sites in Bowraville.

4.2 Informal private briefing with family representatives

The committee held an informal private briefing with family representatives of Clinton Speedy-Duroux, Evelyn Greenup and Colleen Walker-Craig, in order to explain the inquiry purpose and process. The attendees were:

Family members

- Billy Greenup
- Clarice Greenup
- Natasha Greenup
- Rebecca Stadhams
- Robert Dunn
- Michelle Jarret
- Craig Jarrett
- Penny Stadhams
- Thomas Duroux
- Margie Buchanan
- Paula Craig
- Muriel Craig Junior
- Colleen Kelly
- Alison Stanbrook

- Gavin Stanbrook

Support persons

- Detective Chief Inspector Gary Jubelin, NSW Police Force
- Mr Craig Longman, Senior Researcher and Head of Legal Strategies, Jumbunna Institute for Indigenous Education and Research
- Associate Professor Pauline Clague, Jumbunna Institute for Indigenous Education and Research
- Ms Alison Whittaker, Research Fellow, Jumbunna Institute for Indigenous Education and Research

Others

- Detective Sergeant Gerry Bowden, NSW Police Force
- Ms Bianca Comina NSW Police Force
- Barry Toohey.

5. Draft minutes

Resolved, on the motion of Mrs Ward: That draft minutes no. 3 be confirmed.

6. Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019**6.1 Review of section 102 of the *Crimes (Appeal and Review) Act 2001* conducted by Hon James Wood AO QC**

The committee noted that submissions to the Wood review of Section 102 of the *Crimes (Appeal and Review) Act 2001* are not publicly available online.

Resolved, on the motion of Mrs Ward: That the committee write to the District Court and Supreme Court inviting them to provide a copy of their respective submissions to the Wood review and any additional comments they wish to make in relation the committee's inquiry.

7. 2019 Review of the Dust Diseases Scheme**7.1 Terms of reference**

Resolved, on the motion of Mr Shoebridge: That the 2019 Review of the Dust Diseases Scheme focus on the response to silicosis in the manufactured stone industry in New South Wales.

Resolved, on the motion of Mr Khan: That the Chair write to Minister Dominello, further to previous correspondence, to advise that the committee has now resolved that the focus of the 2019 review of the dust diseases scheme be on the response to silicosis in the manufactured stone industry in New South Wales.

8. Inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019

The committee discussed access to the report and evidence from Operation Acacia and other related documents.

Resolved, on the motion of Mr Khan: That the Chair write to ICAC to request a copy of:

- the Operation Acacia report
- ***
- transcripts of public hearings in Operation Acacia
- a list of exhibits in Operation Acacia
- minutes/other obtainable documents related to the Jerry Plains community meeting of 28 July 2009, referenced in the Operation Acacia report.

Consideration of whether the secretariat should prepare a briefing paper was deferred until the next meeting.

9. Adjournment

The committee adjourned at 3.20 pm until Wednesday 24 July 2019 (public hearing for inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019).

Merrin Thompson
Committee Clerk

Minutes no. 5

Wednesday 24 July 2019

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney at 8.55 am

1. Members

Mr Blair, *Chair*

Mr Donnelly, *Deputy Chair*

Mr D'Adam

Mr Fang

Mr Roberts

Mr Shoebridge

Mrs Ward (until approximately 12.30 pm)

2. Apologies

Mr Khan

3. Previous minutes

Resolved on the motion of Mr Donnelly: That draft minutes no. 4 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 28 June 2019 – Letter from the Hon John Ajaka MLC, President and Procedure Committee Chair, to Chair, regarding an inquiry into the broadcast of proceedings resolution
- 1 July 2019 – Letter from Mr Stephen Rushton SC, Acting Chief Commissioner, Independent Commission Against Corruption, to Chair, responding to the committee's request for documents related to the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019
- 3 July 2019 – Letter from Hon Lynda Voltz MP – correspondence sent on behalf of Ms Lillian Ikoro regarding a motor vehicle accident in Parramatta
- 4 July 2019 – Letter from Justice D Price AM, President, The Dust Diseases Tribunal of New South Wales – notifying the committee that the Tribunal does not wish to make a submission to the dust diseases review
- 5 July 2019 – Letter from the Hon Dominic Perrottet MP, Treasurer, to the Clerk of the Parliaments, enclosing the NSW Government response to the 2018 review of the Dust Diseases scheme and 2018 review of the Lifetime Care and Support Scheme
- 9 July 2019 – Letter from Hon TF Bathurst SC, Chief Justice of New South Wales, indicating that he will not be providing input into the inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019, and attaching a letter to Hon James Wood AO QC's review of Section 102 of the *Crimes (Appeal and Review) Act 2001 (NSW)*
- 11 July 2019 – Email from Mr Craig Longman, Head of Legal Strategies and Senior Researcher, Jumbunna Institute for Indigenous Education and Research, regarding the report on key messages from the committee's meeting with family members in Bowraville on 24 June 2019

- 16 July 2019 – Letter from Mr Stephen Rushton SC, Acting Chief Commissioner, Independent Commission Against Corruption, to Chair, relating to the status of Operation Acacia documents provided to the committee
- 18 July 2019 – Letter from Justice D Price AM, Chief Judge of the District Court of NSW, to Chair, regarding the inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019, and attaching a letter to Hon James Wood AO QC's review of Section 102 of the *Crimes (Appeal and Review) Act 2001 (NSW)*.

Resolved on the motion of Mrs Ward: That the letter from Mr Stephen Rushton SC, Acting Chief Commissioner, Independent Commission Against Corruption, to Chair, relating to the status of Operation Acacia documents provided to the committee, dated 16 July 2019, be kept confidential at this stage.

Resolved on the motion of Mr Donnelly:

- That the letter from Justice D Price AM, Chief Judge of the District Court of NSW, to Chair, regarding the inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019, and attaching a letter to Hon James Wood AO QC's review of Section 102 of the Crimes (Appeal and Review) Act 2001 (NSW), be kept confidential
- That the secretariat inform the Attorney General's Office of having received the letter from Judge Price AM regarding the inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019, and its status as confidential.

Sent:

- 7 June 2019 – Letter from Chair to the Hon Don Harwin MLC, Leader of the Government in the Legislative Council, requesting an earlier response to the committee's recommendations in the 2018 review of the Dust Diseases scheme
- 7 June 2019 – Letter from Chair to Mr John Nagle, CEO and Managing Director, icare, requesting an update on the establishment of a dust diseases register
- 27 June 2019 – Letter from Chair to Acting Chief Commissioner, Independent Commission Against Corruption, requesting documents related to Operation Acacia for the inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019
- 27 June 2019 – Letter from Chair to the Honourable Justice D M Price AM, District Court of NSW, relating to the inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019
- 27 June 2019 – Letter from Chair to the Chief Justice of the Supreme Court of NSW, relating to the inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019
- 27 June 2019 – Letter from Chair to the Hon Victor Dominello MP, Minister for Customer Service, regarding the focus of the 2019 review of the dust diseases scheme being on the response to silicosis in the manufactured stone industry
- 2 July 2019 – Letter from Chair to Assistant Commissioner Mick Willing, NSW Police Force, thanking him for facilitating attendance of Detective Chief Inspector Gary Jubelin and others at the meeting in Bowraville on 24 June 2019
- 2 July 2019 – Letter from Chair to Mr Gavin Stanbrook, thanking him and family members for attending the meeting in Bowraville on 24 June 2019
- 2 July 2019 – Letter from Chair to Mr Thomas Duroux, thanking him and family members for attending the meeting in Bowraville on 24 June 2019
- 2 July 2019 – Letter from Chair to Ms Michelle Jarrett, thanking her and family members for attending the meeting in Bowraville on 24 June 2019.

The committee noted its resolution adopted on 19 June 2019: That unless a new issue arises, all correspondence received from a member of the public known to the committee remain confidential with no action taken.

5. Inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019

5.1 Public submissions

The following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 3, 6, 7, 10 and 11.

5.2 Partially confidential submissions

The following submissions were partially published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 4 and 5.

Resolved, on the motion of Mr Shoebridge: That the committee keep the following information confidential, as per the request of the author: names and/or identifying and sensitive information in submission nos. 4 and 5.

Resolved, on the motion of Mr Shoebridge:

- That the committee authorise the publication of submission nos. 2, 8 and 9, with the exception of identifying and/or sensitive information which are to remain confidential, as per the recommendation of the secretariat.
- That the committee authorise the publication of submission no. 1, with the exception of sensitive information which is to remain confidential, as per the request of the author.

5.3 ICAC documents related to Operation Acacia

The committee noted that ICAC has provided documents related to Operation Acacia and provided some clarification as to the status of those documents in their recent letter.

Resolved, on the motion of Mr Fang: That:

- all of the documents received from ICAC relating to Operation Acacia be kept confidential
- the Chair write to the Office of the Director of Public Prosecutions to clarify whether it has any concerns about potential publication of documents related to Operation Acacia, and that this letter be kept confidential.

5.4 Hearing date

The committee noted that the hearing will take place on 9 August.

6. 2019 Review of the Dust Diseases Scheme

6.1 Submissions

The committee noted that submissions opened at the beginning of July and close on 12 August 2019.

6.2 Hearing dates

The committee noted that two hearing dates, 16 and 20 September 2019, were confirmed via email.

6.3 Pre-hearing questions for SIRA and icare

Resolved, on the motion of Mr Shoebridge: That as with previous reviews, the committee request the State Insurance Regulatory Authority and icare respond in writing to pre-hearing questions before the hearing date.

7. Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019

7.1 Public submissions

The following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-6, 9, 12-16, 21, 23, 24 and 25.

7.2 Partially confidential submissions

The following submissions were partially published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 7, 8, 10, 11, 17, 18, 20 and 22.

Resolved, on the motion of Mr Shoebridge: That the committee keep the following information confidential, as per the request of the author: names and/or identifying and sensitive information in submissions nos. 7, 8, 10, 11, 17, 18, 20 and 22.

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no. 19, with the exception of identifying and/or sensitive information which is to remain confidential, as per the request of the author.

7.3 Answers to questions on notice

The committee noted that as the inquiry report is to be tabled on 30 August 2019, the due date for answers to questions on notice needs to be much shorter than the standard 21 days.

Resolved, on the motion of Mr D'Adam: That witnesses be requested to return answers to questions on notice and supplementary questions within seven days of the date on which the questions are forwarded to the witness.

7.4 Public hearing

The committee noted that it resolved via email:

- to accept the Chair's proposed list of witnesses
- that representatives of the Jumbunna Institute for Indigenous Education and Research be invited to give evidence at both the start and end of the hearing day.

Witnesses, the public and the media were admitted.

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

The following witnesses were sworn and examined:

- Distinguished Professor Larissa Behrendt, Professor of Law, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney
- Mr Craig Longman, Head, Legal Strategies and Senior Researcher, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Kathrina Lo, Deputy Secretary, Law Reform and Legal Services Division, Department of Justice
- Ms Larisa Michalko, Director, Criminal Law Specialist, Law Reform and Legal Services Division, Department of Justice
- Mr Mark Follett, Director, Law Enforcement and Crime Team, Law Reform and Legal Services Division, Department of Justice
- Acting Assistant Commissioner Stuart Smith, Commander, State Crime Command, NSW Police Force.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Peter McGrath SC, Acting Director of Public Prosecutions, Office of the Director of Public Prosecutions
- Ms Johanna Pheils, Deputy Solicitor for Public Prosecutions (Legal), Office of the Director of Public Prosecutions.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Gabrielle Bashir SC, Junior Vice President and Co-Chair, Criminal Law Committee, NSW Bar Association
- Mr Michael McHugh SC, Senior Vice President, NSW Bar Association.

The evidence concluded and the witnesses withdrew.

Mrs Ward left the meeting.

The following witness was sworn and examined:

- Professor David Hamer, Sydney Law School, University of Sydney.
The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Ms Belinda Rigg SC, Senior Public Defender, The Public Defenders and Legal Aid NSW.
The evidence concluded and the witness withdrew.

The following witnesses were re-examined on their former oaths:

- Distinguished Professor Larissa Behrendt, Professor of Law, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney
- Mr Craig Longman, Head, Legal Strategies and Senior Researcher, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney.

The Chair made a closing statement about the conduct of the hearing, in which he noted the uniqueness and complexity of the issues being examined in the inquiry. In keeping with the committee's role to examine in detail the implications of the bill, the Chair noted that the committee challenged all witnesses on their own views and those of other stakeholders, and that no line of questioning from any member should be taken to indicate the conclusions of the committee.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.07 pm.

The media and the public withdrew.

7.5 Report of key messages from family members at the meeting in Bowraville, 24 June 2019

The committee noted that it resolved via email to publish the report on key messages from family members at the meeting in Bowraville on 24 June 2019.

7.6 Approach to draft report

The committee discussed its approach to the inquiry report.

Resolved, on the motion of Mr Fang: That the secretariat make a confidential audio recording of the discussion, for the purposes of preparing the inquiry report.

Resolved, on the motion of Mr Roberts: That when forwarding questions on notice to Acting Assistant Commissioner Smith, NSW Police Force, the secretariat request that he confirm that the 470 unsolved cases referred to in his evidence are all homicide cases, and provide information on the numbers of serious child sexual assault and other life sentence cases where a conviction has not been obtained.

Resolved, on the motion of Mr Donnelly: That the Chair write to the Judicial Commission of NSW to seek information on recent updates to its Bench Books and other initiatives to improve cultural sensitivity to Indigenous people within the court system.

7.7 Public submission

Resolved, on the motion of Mr Donnelly: That the committee authorise the publication of submission no. 27.

7.8 Partially confidential submissions

Resolved, on the motion of Mr Donnelly: That the committee authorise the publication of submission nos. 26, 28 and 29, with the exception of identifying and/or sensitive information which is to remain confidential, as per the recommendation of the secretariat.

8. Adjournment

The committee adjourned at 4.58 pm until 9 August 2019 (public hearing for the inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019).

Merrin Thompson
Committee Clerk

Minutes no. 7

Friday 9 August 2019

Standing Committee on Law and Justice

Preston-Stanley Room, Parliament House, Sydney at 9.50 am

1. MembersMr Blair, *Chair*Mr Donnelly, *Deputy Chair*

Mr D'Adam

Mr Fang

Mr Farlow (substituting for Mrs Ward)

Mr Khan

Mr Roberts

Mr Shoebridge

2. Apologies

Mrs Ward

3. Draft minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 5 and 6 be confirmed.

4. Correspondence

The committee noted the following correspondence:

Received:

- 31 July 2019 – Letter from the Hon Natasha Maclaren-Jones MLC, Government Whip, to Chair, advising that the Hon Scott Farlow MLC will be substituting for the Hon Natalie Ward MLC at the meeting on 9 August 2019
- 31 July 2019 - Email from Mr Adam Raskall, Head of Engagement, icare, to secretariat, inviting the committee to visit the new medical centre that provides testing for silicosis
- 30 July 2019 – Letter from Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, to Chair, offering to provide a briefing to the committee on its regulatory role
- 1 August 2019 – Letter from Mr Peter McGrath SC, Acting Director of the Office of Public Prosecutions, to the Chair, regarding the potential publication of material that may be adverse to any accused persons in trials arising from Operations Acacia and Jasper
- ***
- 1 August 2019 – Email from Mr Andrew Poole to the secretariat, declining the committee's invitation to appear as a witness at the hearing on 9 August 2019
- 1 August 2019 – Email from Mr Craig Ransley to the secretariat, declining the committee's invitation to appear as a witness at the hearing on 9 August 2019
- 3 August 2019 – Email from Dr Barry Gordon, NuCoal shareholder, declining the committee's invitation to appear as a witness at the hearing on 9 August 2019
- 5 August 2019 – Email from the Hon Mark Buttigieg MLC, Opposition Whip, to secretariat, advising that the Hon Daniel Mookhey will be a participating member on the committee's 2019 review of the dust diseases scheme for the duration of the inquiry
- 6 August 2019 – Email from Mr Rod Doyle, NuCoal shareholder, advising that his wife Pauline declines the invitation to appear as a witness at the hearing on 9 August 2019
- 6 August 2019 – Letter from Mr Tim Reardon, Secretary, Department of Premier and Cabinet, to the Chair, declining the committee's invitation to appear as a witness at the hearing on 9 August 2019, and attaching graphs on NuCoal's share prices
- ***

Resolved, on the motion of Mr Khan: That the letter from Mr Peter McGrath SC, Acting Director of the Office of Public Prosecutions, to the Chair, regarding the potential publication of material that may be adverse to any accused persons in trials arising from Operations Acacia and Jasper, be kept confidential.

Sent:

- ***
- 1 August 2019 – Letter from Chair to Mr Craig Ransley, regarding an invitation to give evidence at the hearing
- 1 August 2019 – Letter from Chair to Mr Andrew Poole, regarding an invitation to give evidence at the hearing
- ***
- 1 August 2019 – Letter from Chair to Mr Stephen Rushton SC, Acting Chief Commissioner, Independent Commission Against Corruption, regarding an invitation to give evidence at the hearing
- 1 August 2019 – Letter from Chair to Mr Tim Reardon, Secretary, Department of Premier and Cabinet, regarding an invitation to give evidence at the hearing
- 1 August 2019 – Letter from Chair to Mr Jim Betts, Secretary, Department of Planning, Industry and Environment, regarding an invitation to give evidence at the hearing
- 30 July 2019 - Letter from Chair to Mr Ernest Schmitt AO PSM, Chief Executive, Judicial Commission of NSW, seeking information on the Commission's initiatives to improve cultural sensitivity towards Indigenous people
- Letter from secretariat to Mr Peter McGrath SC, Acting Director of Public Prosecutions, seeking publication status of documents provided by ICAC in relation to Operation Acacia.

5. 2019 Review of the Dust Diseases Scheme

5.1 Provision of documents to participating member

Resolved, on the motion of Mr Donnelly: That the Hon Daniel Mookhey MLC, who has advised the committee that he intends to participate for the duration of the inquiry into 2019 Review of the Dust Diseases Scheme, be provided with copies of inquiry related documents.

5.2 Invitation to visit new silicosis testing centre

Resolved, on the motion of Mr Fang: That the committee visit icare's new silicosis testing centre in Sydney, on a date to be canvassed by the secretariat.

6. Oversight reviews and role of SIRA

Resolved, on the motion of Mr Fang: That the committee have an informal briefing with SIRA about its regulatory role and the independent review of the nominal insurer currently being undertaken, on a date to be canvassed by the secretariat.

7. Inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019

7.1 Public submissions

The following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 13, 16-21 and 25.

7.2 Partially confidential submissions

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of:

- submission nos. 9a and 14, with the exception of identifying and/or sensitive information which are to remain confidential, as per the recommendation of the secretariat
- submission nos. 15 and 22, with the exception of identifying and/or sensitive information which are to remain confidential, as per the request of the author or identified by the secretariat.

- submission no. 12, with the exception of the section with potential adverse mention, as recommended by the secretariat.

7.3 Confidential submissions

Resolved, on the motion of Mr Fang: That the committee keep

- submission no. 23 confidential, as per the request of the author.
- submission nos. 19 and 24 confidential, as per the recommendation of the secretariat.

7.4 Attachments to submissions

The committee noted that various attachments had been distributed.

7.5 ICAC documents related to Operation Acacia

Resolved, on the motion of Mr Khan: That the committee keep confidential all material provided by the Independent Commission Against Corruption.

7.6 Approach to questioning

In light of the correspondence received from the Office of the Director of Public Prosecutions, the Chair discussed the committee's approach to questioning witnesses.

7.7 Briefing paper

Resolved, on the motion of Mr Shoebridge: That the committee keep the briefing paper confidential, as per the recommendation of the secretariat, as it contains sensitive information.

8. Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019

8.1 Public submissions

The following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 21a and 25a.

8.2 Answers to questions on notice and supplementary questions

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:

- Department of Justice, received 5 August 2019
- Jumbunna Institute for Indigenous Education and Research, received 5 August 2019
- Professor David Hamer, received 5 August 2019
- NSW Bar Association, received 5 August 2019
- Office of Public Prosecutions, received 7 August 2019
- NSW Police Force, received 6 August 2019.

Resolved, on the motion of Mr Shoebridge: That the secretariat request further clarification in relation to the data provided by the Office of Public Prosecutions.

8.3 Correspondence from Judge Price

Resolved, on the motion of Mr Shoebridge: That the correspondence from Judge Price be kept confidential and not provided to the Attorney General.

8.4 Approach to draft report

The committee discussed its approach to the double jeopardy bill inquiry report.

9. Inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019

9.1 Public hearing

Witnesses, the public and the media were admitted.

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

The following witnesses were sworn and examined:

- Mr Gordon Galt, Chairman, NuCoal Resources
- Mr Michael Davies, Non-Executive Director, NuCoal Resources
- Mr Glen Lewis, Non-Executive Director, NuCoal Resources.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Darrell Lantry, shareholder
- Mrs Michelle Lantry, shareholder
- Mr Rodney Doyle, shareholder.

The evidence concluded and the witnesses withdrew.

The media and the public withdrew.

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

- RBS Morgans Report – NuCoal – 12 May 2012.
- Mr Doyle Shareholder profile – tendered by Mr Rodney Doyle

9.2 Further activity

The committee discussed meeting in the future to consider further activity related to this inquiry.

Resolved, on the motion of Mr Roberts: That the Chair write to the Department of Foreign Affairs and Trade to request copies of recent correspondence provided to them from the US Trade Representative Ambassador Robert Lighthizer in relation to this matter.

10. Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019

10.1 Informing Bowraville family members of report tabling

Resolved, on the motion of Mr Fang: That the Bowraville family members and representatives from Jumbunna be invited to meet with the committee the day the report is tabled.

11. Next meeting

Monday 16 September 2019 (2019 Review of the Dust Diseases Scheme public hearing)

Tina Higgins
Committee Clerk

Minutes no. 8

Wednesday 28 August 2019

Standing Committee on Law and Justice

McKell Room, Parliament House, Sydney, 9.05 am

1. Members presentMr Blair, *Chair*Mr Donnelly, *Deputy Chair*Mr D'Adam (*from 9.15 am*)

Mr Fang

Mr Roberts

Mr Shoebridge

Mrs Ward

2. Draft minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 7 be confirmed.

3. Correspondence

The committee noted the following item of correspondence:

Received:

- 31 July 2019 – Letter from individual to Chair, regarding the 2019 review of the dust diseases scheme
- 20 August 2019 – Email from Mr Steven Dyokas, Deputy Economic Counselor, US Embassy Canberra, to Chair, regarding US investor concerns related to the cancellation of exploration licence 7270, attaching letter from Karl Ehlers, Assistant US Trade Representative for Southeast Asia and the Pacific, Executive Office of the President, Office of the United States Trade Representative to Greg Wilcock, Department of Foreign Affairs and Trade
- 9 August 2019 – Letter from Mr Ernest Schmatt AO PSM, Chief Executive, Judicial Commission of New South Wales, to Chair, responding to committee's request for information on the Commission's initiatives to improve cultural sensitivity towards Indigenous people.

Sent:

- 19 August 2019 – Letter from the Chair to Ms Patricia Holmes, Assistant Secretary, Department of Foreign Affairs and Trade, regarding representations made by the US Trade Representative Ambassador relevant to the cancellation of exploration licence 7270
- ***

The Committee noted that it previously resolved via email that the Letter from Mr Ernest Schmatt AO PSM, Judicial Commission, to the Chair, received 9 August 2019, be published.

4. 2019 Review of the Dust Diseases Scheme**4.1 Public submissions**

The following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 2-10.

4.2 Confidential submission

Resolved on the motion of Mr Fang: That the committee keep submission no. 1 confidential, as per the request of the author.

4.3 Visit to icare's silicosis testing centre

Resolved on the motion of Ms Ward: That the committee visit icare's new silicosis testing centre on 16 September 2019.

5. Oversight role

5.1 Informal briefing

Resolved, on the motion of Mr Shoebridge: That the committee defer consideration of icare's invitation to provide an informal briefing on its role until after the budget estimates hearings.

6. Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019

6.1 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:

- Office of the Director of Public Prosecutions, received 12 August 2019
- Additional information, NSW Police Force, received 13 August 2019
- Addendum, NSW Bar Association, received 14 August 2019.

6.2 Consideration of Chair's draft report

The Chair submitted his draft report entitled '*Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019*' which, having been previously circulated, was taken as being read.

Mr D'Adam joined the meeting.

Resolved, on the motion of Mr Shoebridge:

- that paragraph 1.33 be amended by inserting 'from those primarily legal stakeholders that he consulted with', after 'strong opposition'.
- that the following new paragraph be inserted after the quote following paragraph 1.33:

"This review is timely given the recent legal proceedings."

Resolved, on the motion of Mr Shoebridge: That the heading above paragraph 2.13 be amended by omitting 'The legal fraternity's perspective' and inserting instead 'Concerns about the Bill from legal agencies and organisations'.

Mr Shoebridge moved: That paragraph 2.13 be amended by omitting the first sentence:

'Members of the legal fraternity were of one voice in their opposition to the Bill.'

Question put.

The committee divided.

Ayes: Mr Shoebridge.

Noes: Mr Blair, Mr Donnelly, Mr D'Adam, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That the first sentence in paragraph 2.13 be amended by inserting at the start, "The overwhelming majority of".

Resolved, on the motion of Mr Shoebridge: That paragraph 2.13 be amended by inserting 'Jumbunna and Professor David Hamer supported the direction of the reform.' after 'unchanged'.

Mr Shoebridge moved: That the heading above paragraph 2.83 and the first sentence in 2.83 be amended by omitting 'Other hurdles' and inserting instead 'checks and balances'.

Question put and negatived.

Resolved, on the motion of Mr Shoebridge: That the final sentence in paragraph 2.100 be omitted:

"While the legal fraternity were of one voice in opposing the Bill on the most fundamental of principles, even those participants who supported the objectives of the Bill and the principles underpinning it had concerns about its detail."

And the following sentence inserted instead:

'While there was opposition to the Bill among many in the legal community, there were also those who supported the objectives and principles in it, but had alternative proposals for the detail of how these might be achieved.'

Resolved, on the motion of Mr Shoebridge: That the last sentence in paragraph 2.102 be amended by omitting '— and we are disappointed that we have not been able to find a resolution for them' after 'fighting spirit' and inserting instead ', despite all the challenges.'

Mr Shoebridge moved: That the second sentence of paragraph 2.106 be amended by omitting 'widespread' after 'there was'.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.106 be amended by inserting at the end:

'Indeed the initial 2006 reforms in New South Wales were supported in the Parliament, based in some significant part, on the Bowraville cases. This is a matter to be considered in responding to the Bill and other potential law reforms, but it is not determinative of the matter.'

Mr Shoebridge moved: That the first sentence of paragraph 2.107 be amended by omitting 'This dilemma could potentially be overcome if', and inserting instead 'We also note the evidence to the committee that'.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That the last sentence in paragraph 2.108 be amended by omitting 'highly' before 'probable that this group exists'.

Resolved, on the motion of Mr Shoebridge: That a new paragraph be inserted after paragraph 2.109:

'On balance, while the committee does not believe the Bill as drafted should proceed, we will consider the potential other options later in this report.'

Resolved, on the motion of Mr Shoebridge: That the heading above paragraph 3.42 be amended by omitting 'Other legal perspectives' and inserting instead 'Alternative approaches to finality'.

Resolved, on the motion of Mr Shoebridge: That the first sentence in paragraph 3.42 be amended by omitting 'legal fraternity's concerns' after 'responded to' and inserting instead 'concerns from the legal fraternity'.

Resolved, on the motion of Mr Shoebridge: That the heading above paragraph 3.59 be amended by omitting 'The legal fraternity's perspectives' and inserting instead 'Concerns about retrospectivity'.

Resolved, on the motion of Mr Shoebridge: That the heading above paragraph 3.66 be amended by omitting 'Other legal perspectives' and inserting instead 'Arguments for retrospective laws'.

Resolved, on the motion of Mr Shoebridge: That the heading above paragraph 3.80 be amended by omitting 'The legal fraternity's perspectives' and inserting instead 'Applying proposed changes to convictions'.

Resolved, on the motion of Mr Shoebridge: That the heading above paragraph 3.84 be amended by omitting 'Other legal perspectives' and inserting instead 'Distinguishing conviction and acquittal appeals'.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 3.117:

'In the course of reviewing the Bill referred to this committee an alternative reform was proposed to achieve the same stated goals as the Bill, but through an alternative form of wording. This proposal, which has the support of the NSW Police Force amongst others, was brought by Jumbunna.'

Mr Shoebridge moved: That the following new paragraphs be inserted after the new paragraph following 3.117:

While there was a great deal of evidence from certain stakeholders that any change to the laws of double jeopardy would cause a significant erosion to the principle of finality, this position was contested by evidence of both Professor Hamer and Jumbunna and the submissions from the Bowraville families. It is

true that any opening of the exception to double jeopardy would provide a further avenue to review an acquittal and this would have the effect of reducing finality in a very limited number of cases.

In this regard the committee notes the large number of checks and balances that would remain in the system even if Jumbunna's proposed reforms were implemented. They include:

- [list all the elements in the CARA including the consent of the Attorney General or DPP, the interests of justice, compelling and fresh etc.]

We also note that the question of finality is only one of a number of, sometimes competing, values or principles in the criminal justice system. Other principles that must be considered include the need to provide justice, not just to alleged perpetrators of crimes, but also to victims and survivors of crimes, the ability to correct errors, as well as the need to maintain community confidence in the system.

These considerations can, on occasion, compete with the principle of finality. Indeed they have led in the past to significant legal reforms that have eroded the principle of finality through an array of appeal and review provisions in the criminal justice system, none of which have brought the system into disrepute.'

Mr D'Adam moved: That the motion of Mr Shoebridge be amended by omitting the last two paragraphs.

The committee divided.

Ayes: Mr Blair, Mr Donnelly, Mr D'Adam, Mr Fang, Mr Khan, Mrs Ward.

Noes: Mr Shoebridge, Mr Roberts.

Question resolved in the affirmative.

Mr Khan moved: That the motion of Mr Shoebridge be amended by:

- omitting from the first sentence of the first paragraph 'certain stakeholders' after 'a great deal of evidence from' and inserting instead 'the overwhelming majority of the legal fraternity'
- omitting from the first sentence of the second paragraph 'checks and balances' after 'a large number of' and inserting instead 'hurdles'.

The committee divided.

Ayes: Mr Blair, Mr Donnelly, Mr D'Adam, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Noes: Mr Shoebridge.

Question resolved in the affirmative.

Original question, as amended, put and passed.

Mr Shoebridge moved: That the following new paragraphs be inserted after the new paragraphs following paragraph 3.117:

'We are not persuaded by the evidence of opponents to reform that the changes proposed by Jumbunna would lead to a flood of applications, nor would they significantly alter the fundamentals of the criminal justice system. The proposed reforms are modest, considered and carefully drafted. As numerous submissions pointed out, the 2006 reforms to the law on double jeopardy have not been successfully used on a single occasion. Indeed the Bowraville case of XX remains the only time that they have been considered by the NSW Court of Criminal Appeal.

We are strengthened in our conclusion that the changes would not open floodgates by the experience in the United Kingdom. Despite the UK provisions applying to a significantly broader class of offences, having less checks and balances, a broader definition of what evidence can found an application and applying to a significantly larger population, there have been less than 20 applications made. Further, no witness was able to identify a case that had produced a result that could be cogently criticised as being unjust or inappropriate.'

Mr Khan moved: That the motion of Mr Shoebridge be amended by:

- omitting from the first sentence of the first paragraph 'by the evidence of opponents to reform' after 'persuaded'

- omitting from the first paragraph 'nor would they significantly alter the fundamentals of the criminal justice system. The proposed reforms are modest, considered and carefully drafted.'
- omitting the first sentence of the second paragraph 'We are strengthened in our conclusion that the changes would not open floodgates by the experience in the United Kingdom.' And inserting instead 'The United Kingdom has demonstrated that these changes have not produced a flood of cases.'
- Omitting the final sentence of the second paragraph 'Further, no witness was able to identify a case that had produced a result that could be cogently criticised as being unjust or inappropriate.'

The committee divided.

Ayes: Mr Blair, Mr Donnelly, Mr D'Adam, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Noes: Mr Shoebridge.

Question resolved in the affirmative.

Original question, as amended, put and passed.

Mr Shoebridge moved: That the following new paragraph be inserted after the new paragraphs following paragraph 3.117:

'Given the above, the committee believes it is appropriate for the NSW Government to consider the alternative reform model proposed by Jumbunna. This will necessarily include consideration of its impact beyond the Bowraville case, and will need to address the merits of broadening the exception to double jeopardy, against considerations such as finality and certainty. While any consideration must extend beyond the Bowraville case, given the effluxion of time in the Bowraville matter, and that community's legitimate demand for a prompt response from both the NSW Parliament and the NSW Government, we would urge the Government to respond to this matter with a sense of urgency. If possible, we would be seeking that considered response be delivered in less than the six months usually provided for a Government response to a Committee report.'

Mr Khan moved: That the motion of Mr Shoebridge be amended by omitting all words after 'finality and certainty.'

The committee divided.

Ayes: Mr Blair, Mr Donnelly, Mr D'Adam, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Noes: Mr Shoebridge.

Question resolved in the affirmative.

Original question, as amended, put and passed.

Mr Shoebridge moved: That a new recommendation be inserted following the new paragraphs after 3.117:

'That the NSW Government consider the alternative reform model proposed by the Jumbunna Institute of Indigenous Education and Research and provide any potential legislative response as soon as practically possible.'

Mr Khan moved: That the motion of Mr Shoebridge be amended by omitting 'and provide any potential legislative response as soon as practically possible'.

The committee divided.

Ayes: Mr Blair, Mr Donnelly, Mr D'Adam, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Noes: Mr Shoebridge.

Question resolved in the affirmative.

Original question, as amended, put and passed.

Mr Roberts moved: 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 supplementary questions, 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 supplementary questions, 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 by 10.00 am Thursday 29 August 2019;
- h) That the report be tabled on Friday 30 August 2019.

6.3 Meeting with Bowraville families on 30 August 2019

Mr Shoebridge moved: That representatives of Jumbunna Institute for Indigenous Education and Research, Mr Gary Jubelin and a representative of the Attorney General be invited to attend the committee's meeting with Bowraville families after the report is tabled on 30 August 2019.

7. Adjournment

The committee adjourned at 10.30 am until 1.00 pm Friday 30 August 2019 (meeting with Bowraville families).

Merrin Thompson
Committee Clerk

Minutes no. 10

Monday 16 September 2019
Standing Committee on Law and Justice
Macquarie Room, Parliament House, Sydney at 10.00 am

1. Members

Mr Donnelly, *Deputy Chair*
Mr D'Adam
Mr Fang
Mr Khan (*from 11:30am until 2.45pm*)
Mr Mookhey (*participating member for the 2019 review of the dust diseases scheme, until 2.45pm*)
Mr Roberts
Mr Shoebridge
Mrs Ward (*from 11:30am until 3.20pm*)
Mr Ben Franklin (*substituting for Mrs Ward from 3:20pm until 3:45pm*)

2. Apologies

Mr Blair, *Chair*

3. Chair

The committee noted that Mr Donnelly was Chair in Mr Blair's absence.

4. 2019 Review of the Dust Diseases Scheme

4.1 Site visit

The committee visited icare's new silicosis testing centre at 115 Pitt Street, Sydney, from 10.15 am to 11 am. The committee met with representatives of icare for a short presentation regarding the screening service.

4.2 Public hearing

The hearing commenced at 11.30 am.

Witnesses, the public and the media were admitted.

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

The following witnesses were sworn and examined:

- Mr Martin Jennings, Fellow, Australian Institute of Occupational Hygienists
- Mr Andrew Orfanos, President Elect, Australian Institute of Occupational Hygienists

Mr Andrew Orfanos tendered the following documents:

- Du Pont Material Safety Data Sheet, regarding Zodiac Quartz Surfaces, dated 13 Aug 2010
- Article entitled 'Silica Hazards from Engineered Stone Countertops', authored by Karen Worthington, dated 11 Mar 2014
- Fact Sheet – Respiratory Protective Equipment (RPE): Facial Hair and Face Masks.
- Factsheet - Essentials for Stonemasons – Controlling Exposures to prevent occupational lung disease in the construction industry
- Factsheet - Managers Toolkit – Silica Dust- Working with Engineered Stone.
- Factsheet – Worker Health Protection for Construction.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Dr Susan Miles, Lung Foundation Australia and Thoracic Society of Australian and New Zealand

The evidence concluded and the witness withdrew.

The public and media withdrew.

The committee had a short adjournment.

5. Draft minutes

Resolved, on the motion of Mr Shoebridge: That draft minutes no. 8 and 9 be confirmed.

6. Correspondence

The committee noted the following correspondence:

Received:

- 29 August 2019 – Letter from Mr Paul Schofield, Acting Assistant Secretary, Trade and Investment Law Branch, Department of Foreign Affairs and Trade, to Chair, responding to a letter of the committee relating to the inquiry into the Mining Amendment (Compensation for Cancellation of Exploration) Licence Bill 2019.

- 31 July 2019 – Letter from individual to committee, regarding the 2019 review of the Dust Diseases scheme, his confidential submission and correspondence to the committee in the last review of the scheme.
- 31 July 2019 – Letter from Mr Michael Coutts-Trotter, Secretary, Department of Communities and Justice, to Chair, advising that the department will not be making a submission to the 2019 Review of the Dust Diseases Scheme.
- 16 September 2019 – Email from Mr Adam Raskall, Head of Engagement, icare, to secretariat, enclosing presentation titled 'Our journey so far – September 2019'
- 16 September 2019 – Letter from Hon Natasha Maclaren-Jones MLC, Government Whip, to Director, advising that the Hon Ben Franklin MLC will be substituting for the Hon Trevor Khan MLC for part of the hearing on 16 September 2019.

Resolved on the motion of Mr Shoebridge: That the icare presentation entitled 'Our journey so far – September 2019' be published.

Sent:

- 3 September 2019 – Email from secretariat to Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, enclosing pre-hearing questions from the committee for the 2019 review of the Dust Diseases scheme
- 3 September 2019 – Email from secretariat to Ms Clemency Morony, Head of Ministerial and Parliamentary Support, icare, enclosing pre-hearing questions from the committee for the 2019 review of the Dust Diseases scheme.
- 5 September 2019 – Email from secretariat to Mr Andrew Gavrialeto, Executive Director, Safework NSW enclosing pre-hearing questions from the committee for the 2019 review of the Dust Diseases scheme.

7. 2019 Review of the Dust Diseases Scheme

7.1 Public submissions

The following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 11 and 12.

7.2 Public hearing – continued

The hearing commenced again at 1.15pm.

Witnesses, the public and the media were admitted.

The following witnesses were sworn and examined:

- Ms Rita Mallia, President, Construction, Forestry, Maritime, Mining and Energy Union
 - Mr Ben Kruse, Legal & Industrial Officer, Construction, Forestry, Maritime, Mining and Energy Union.
- Mrs Ward left the meeting.

Ms Rita Mallia tendered the following document:

- ABC News article entitled 'Silicosis death of Anthony White sparks calls for action to address nationwide epidemic', dated 13 March 2019.

Mr Ben Kruse tendered the following document:

- Extract from an icare report titled 'icare Medical Assessment Panel', undated.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Graeme Edwards, Royal Australasian College of Physicians

- Dr Deborah Yates, Consultant Thoracic Physician and Conjoint Associate Professor at University of New South Wales.

The evidence concluded and the witnesses withdrew.

Mr Khan and Mr Mookhey left the meeting.

Mr Franklin joined the meeting.

The following witnesses were sworn and examined:

- Mr Jonathan Walsh, Principal, Maurice Blackburn Lawyers
- Mr Timothy McGinley, Associate, Maurice Blackburn Lawyers
- Ms Joanne Wade, NSW Committee, Australian Lawyers Alliance.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3.45 pm.

The public and media withdrew.

7.3 Publication of tendered documents

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

- Du Pont Material Safety Data Sheet, regarding Zodiaq Quartz Surfaces, dated 13 Aug 2010
- Article entitled 'Silica Hazards from Engineered Stone Countertops', authored by Karen Worthington, dated 11 Mar 2014, tendered by Mr Andrew Orfanos
- Fact Sheet – Respiratory Protective Equipment (RPE): Facial Hair and Face Masks, , tendered by Mr Andrew Orfanos
- Factsheet - Essentials for Stonemasons – Controlling Exposures to prevent occupational lung disease in the construction industry, tendered by Mr Andrew Orfanos
- Factsheet - Managers Toolkit – Silica Dust- Working with Engineered Stone, tendered by Mr Andrew Orfanos
- Factsheet – Worker Health Protection for Construction, tendered by Mr Andrew Orfanos.

Mr Shoebridge tendered the following document:

- Final Report – Silica Dust, Safework NSW, Recommendation 1: First Review into the Dust Diseases Scheme, Manufactured Stone Industry Taskforce, dated July 2019.

8. Next meeting

Friday 20 September 2019 (public hearing for the 2019 review of the dust diseases scheme).

Tina Higgins
Committee Clerk

Minutes no. 11

Friday 20 September 2019
 Standing Committee on Law and Justice
 Macquarie Room, Parliament House, Sydney at 10.15 am

1. Members:

Mr Donnelly, *Deputy Chair*
 Mr D'Adam
 Mr Fang (*from 10.30am until 11.25am*)
 Mr Khan (*from 10.30am until 12.15pm*)
 Mr Roberts
 Mr Shoebridge (*from 2.30pm*)
 Mrs Ward (*from 2.30pm*)
 Mr Ben Franklin (*substituting for Mrs Ward from 10.30am until 12.15pm*)

2. Apologies

Mr Shoebridge (*from 10.30am until 12.15pm*)

3. Correspondence

The committee noted the following items of correspondence:

Received

- 4 September 2019 – Letter from Mr John McGuigan, Director, Cascade Coal, to Chair, attaching a Federal Court judgment in relation to an appeal case involving the Australian Competition and Consumer Commission and Cascade Coal
- 20 September 2019 – Email from Natasha Maclaren-Jones MLC, Government Whip, to Director legislative Council Standing Committee on Law and Justice advising that the Hon Ben Franklin MLC will be substituting for the Hon Natalie Ward MLC for the 2019 review of the Dust Disease scheme hearing on the 20 September 2019 from 10.30am to 12.15pm.

4. Inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019**4.1 Answers to questions on notice and additional information**

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

- Answers to questions on notice (Attachment A) and additional comments (Attachment C) from NuCoal, received 6 and 9 September 2019
- Additional information from Mr Rodney Doyle, received 9 September 2019.

4.2 Answers to questions on notice – partially confidential

Resolved on the motion of Mr Fang: That the committee authorise the publication of answers to questions on notice and the attachment from Mr Darrell and Mrs Michelle Lantry, with the exception of identifying and sensitive information which are to remain confidential, as per the request of the author.

5. Publication of Manufactured Stone Industry Taskforce Report

Resolved, on the motion of Mr Khan: That the committee authorise the publication of the Manufactured Stone Industry Taskforce report tendered by Mr Shoebridge on 16 September 2019

6. 2019 Review of the Dust Diseases Scheme

6.1 Public hearing

The hearing commenced at 10.30 am.

Witnesses, the public and the media were admitted.

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

The following witness was sworn and examined:

- Mr Michael Shearer, President, The Mine Ventilation Society of Australia.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Peter Glover, Director Construction, Master Builders Association
- Mr David Solomon, Executive Officer - Safety and Risk, Master Builders Association.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr John Nagle, Chief Executive Officer and Managing Director, icare
- Dr Nick Allsop, Group Executive, Care and Community, icare
- Dr Chris Colquhoun, Chief Medical Officer, icare
- Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority
- Mr Darren Parker, Executive Director, State Insurance Regulatory Authority
- Dr Petrina Casey, Director Health Strategy, State Insurance Regulatory Authority.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.05 pm.

The public and media withdrew.

6.2 Further hearings

Resolved, on the motion of Mr Shoebridge: That:

- the secretariat, in consultation with the Chair, canvas the availability of members for a further hearing date
- representatives from the NSW Department of Health be invited to appear at the next hearing
- the Chair write to SafeWork NSW, asking them to reconsider the invitation of the committee to attend a public hearing to give evidence, noting that the committee may consider issuing a summons.

Tina Higgins

Clerk to the Committee

Minutes no. 12

Wednesday 2 October 2019

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney at 8.46 am

1. Members present

Mr Blair, *Chair*

Mr Donnelly, *Deputy Chair*

Mr D'Adam

Mr Fang

Mr Khan

Mr Roberts

Mr Shoebridge

Mrs Ward

2. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 10 and 11 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 30 September 2019 – Email from Mr David Solomon, Master Builders Association of NSW, to Chair, regarding the submission made to SafeWork Australia during the silica Workplace Exposure Standard Review process, and enclosing a copy of the submission.
- 27 September 2019 – Letter from Mr Andrew Gavrielatos, Executive Director, Specialist Services, SafeWork NSW, to Chair, accepting the committee's invitation to appear at the hearing on 2 October 2019 for the 2019 Review of the Dust Diseases Scheme.
- 26 September 2019 – Letter from Mr Glenn King, Secretary, Department of Customer Service, to Chair, regarding SafeWork NSW's involvement in the 2019 Review of the Dust Diseases Scheme.
- 25 September 2019 – Correspondence from Office of the Executive Directors, SafeWork NSW, to secretariat, providing additional responses to written questions and other relevant documents for the 2019 Review of the Dust Diseases Scheme.

Sent

- 26 September 2019 – Letter from Chair to Mr Andrew Gavrielatos, Executive Director, SafeWork NSW, regarding an invitation to appear at the hearing on 2 October 2019 for the 2019 Review of the Dust Diseases Scheme.

Resolved, on the motion of Mr Khan: That the additional responses to written questions and other relevant documents received from SafeWork NSW on 25 September 2019 for the 2019 Review of the Dust Diseases Scheme be published.

4. 2019 Review of the Dust Diseases Scheme**4.1 Public hearing**

The hearing commenced at 9:00 am.

Witnesses, the public and the media were admitted.

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

The following witnesses were sworn and examined:

- Mr Andrew Gavrielatos, Executive Director, Specialist Services, SafeWork NSW
- Mr Peter Dunphy, Acting Deputy Secretary, Better Regulation Division
- Ms Meagan McCool, Director, Hazardous Chemical Facilities and Safety Management Audits.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Jeremy McAnulty, Executive Director, NSW Health
- Dr Richard Broome, Director, Environmental Health Branch, NSW Health.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 11:13 am.

The public and media withdrew.

5. Other business

Resolved, on the motion of Mr Shoebridge: That:

- the Final Manufactured Stone Industry Taskforce Report, as provided to the committee by Mr Glenn King, Secretary, Department of Customer Service, on 26 September 2019, be published
- Chair write to SafeWork NSW to request clarification as to how each copy of the Final Report of the Manufactured Stone Industry Taskforce it has received differs, noting that different versions have been provided during the inquiry.

Resolved, on the motion of Mr Shoebridge: That representatives from the Australian Engineered Stone Industry Group (AESIG) and the four main stone suppliers be invited to provide written submissions to the committee within 14 days, and subject to their submissions, potentially be invited to give evidence at a future hearing.

6. Adjournment

The committee adjourned at 11:25 am, until 21 October 2019 (report deliberative for the inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019)

Tina Higgins

Clerk to the Committee

Minutes no. 13

Monday 21 October 2019

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney at 2.06 pm

1. Members present

Mr Fang, *Chair*

Ms Cusack

Mr D'Adam

Mr Khan

Mr Moselmane (substituting for Mr Donnelly)

Mr Roberts

Mr Shoebridge (until 4.10 pm)

Ms Ward

2. Committee membership

The committee noted that the Hon Wes Fang MLC replaced the Hon Niall Blair MLC as Chair from 17 October 2019.

The Committee noted that the Hon Catherine Cusack MLC replaced the Hon Niall Blair MLC as a member of the committee on 17 October 2019.

3. Previous minutes

Resolved, on the motion of Mr Khan: That draft minutes no. 12 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence:

Received

- 18 October 2019 – Email from Mr Daniel Noll, Managing Solicitor, Appellate Litigation and Legal Resources 2, Office of the Director of Public Prosecutions, to the secretariat, providing further advice about the status of material from ICAC.
- 11 October 2019 – Email from Ms Kate Scott-Murphy, Manager, Advocacy and Media, Faculties of Clinical Radiology and Radiation Oncology, The Royal Australian and New Zealand College of Radiologists, to committee, regarding its position statement on the imaging of occupational lung diseases including silicosis.
- 8 October 2019 – Letter from Mr Andrew Gavrielatos, Executive Director Specialist Services, SafeWork NSW, to Chair, regarding the different versions of the Manufactured Stone Industry Taskforce report.
- 7 August 2019 – Letter from Mr Jim Betts, Secretary, Department of Planning, Industry & Environment, to the Chair, declining the committee's invitation to appear as a witness at the hearing on 9 August 2019.

Sent

- 9 October 2019 – Letter from Chair to the Australian Industry Stone Group, inviting them to make a submission to the 2019 review of the dust diseases scheme (*attached*)
- 9 October 2019 – Letter from Chair to Mr Mark Norman, General Manager, Quantum Quartz, inviting them to make a submission to the 2019 review of the dust diseases scheme
- 9 October 2019 – Letter from Chair to Mr Bruce Rayment, Chief Executive Officer HVG, inviting Smartstone to make a submission to the 2019 review of the dust diseases scheme
- 9 October 2019 – Letter from Chair to Mr David Cullen, Caesarstone, inviting them to make a submission to the 2019 review of the dust diseases scheme
- 2 October 2019 – Letter from Chair to Mr Andrew Gavrielatos, Executive Director Specialist Services, SafeWork NSW, requesting clarification on the different versions of the Manufactured Stone Industry Taskforce report
- 10 July 2019 – Letter from Chair to Mr Stephen Rushton SC, Acting Chief Commissioner, Independent Commission Against Corruption, seeking clarification on the publication status of documents relating to Operation Acacia for the inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019.

Resolved on the motion of Mr Shoebridge: That the committee keep confidential the following correspondence:

- 18 October 2019 – Email from Mr Daniel Noll, Managing Solicitor, Appellate Litigation and Legal Resources 2, Office of the Director of Public Prosecutions, to the secretariat, providing further advice about the publication of material from ICAC.
- 16 July 2019 – Letter from Mr Stephen Rushton SC, Acting Chief Commissioner, Independent Commission Against Corruption, to Chair, relating to the status of Operation Acacia documents provided to the committee.

- 1 July 2019 – Letter from Mr Stephen Rushton SC, Acting Chief Commissioner, Independent Commission Against Corruption, to Chair, responding to the committee's request for documents related to the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019.

5. 2019 review of the dust diseases scheme

5.1 Manufacturer contribution to inquiry

The secretariat briefed the committee on the involvement of manufacturers in the inquiry to date.

5.2 Answers to questions on notice

Resolved, on the motion of Mr Shoebridge: That the committee publish the following answers to questions on notice and supplementary questions from:

- Mr Ben Kruse, CFMEU, received 14 October 2019
- Mr Michael Shearer, Mine Ventilation Society of Australia, received 14 October 2019, including the additional document entitled 'Respirable Crystalline Silica and Occupational Health Issues, Australian Institute of Occupational Hygienists
- Mr Jonathan Walsh, Maurice Blackburn Lawyers, received 14 October 2019
- Mr David Solomon, Certified Management System Specialist, Executive Officer Safety and Risk, Master Builders Association, received 16 October 2019
- icare, received 16 October 2019.

5.3 Reporting date

Resolved, on the motion of Mr Shoebridge: That the report for the 2019 review of the dust diseases scheme be tabled by 18 December 2019.

6. Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019

6.1 Consideration of Chair's draft report

The Chair submitted his draft report entitled Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Khan: That a new heading, 'Events following Allocation of EL 7270', be inserted before paragraph 1.15.

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 1.15:

'On 16 April 2013 Mr Glen Lewis, Director of NuCoal, gave evidence to ICAC. The transcript reveals the following evidence:

Counsel Assisting: I want to move to a different topic, Mr Lewis. You're aware that from about mid 2009 there was public controversy which you were aware of concerning the circumstances of the grant of the Exploration Licence to Doyles Creek Mining?---

Lewis: Certainly numerous media articles, yes.

Counsel Assisting: And you would have been aware of those at about the time that they were being published and reported upon?

Lewis: Yes.

Counsel Assisting: Given your role in the company?

Lewis: Correct.

Counsel Assisting: To place some of it in time if the witness could be shown volume 19. Sorry, if you could go to page 5922, Mr Lewis?---

Lewis: Yes.

Counsel Assisting: And you'll see there are various media reports including those referred to, in relation to 2E on 20 July 2009 concerning that controversy?

Lewis: Yes.

Counsel Assisting: And there's a whole series of entries, I won't take you through them all but 5931, the two references to ABC Newcastle at about the same date?

Lewis: Yes.

Counsel Assisting: And comments that were being made by Duncan Gay in Parliament?

Lewis: Correct.

Counsel Assisting: And as you say you're aware of these media reports at about this time of July 2009?

Lewis: Yes.'

[FOOTNOTE: Independent Commission Against Corruption, Public Hearing – Operation Indus, Jasper and Acacia, Transcript of proceedings, 16 April 2013, p 6550.]

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 1.15:

'During mid to late 2009 a number of changes of directorships of DCM occurred. On 29 June 2009 Glen Lewis became a director of DCM. This was followed by the cessation as a director of John Maitland on 10 July 2009. This director was instrumental in the granting of EL 7270.' [FOOTNOTE: High Court of Australia, NuCoal Resources Ltd v State of New South Wales, No. S138 of 2014, Plaintiff's chronology, 22 October 2014.]

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 1.15:

'The committee has been assisted in understanding the chronology of events by reference to, amongst other documents, the Chronology filed on behalf of the plaintiffs NuCoal in proceedings brought against the NSW Government relating to the cancellation of EL7270. The chronology forms Appendix 1 to the report.'

Mr Khan moved: That the following new paragraph be inserted after paragraph 1.15:

'On 28 July 2009 a meeting occurred between representatives of DCM and members of the Jerry Plains Community. Amongst those to attend the meeting was Mr Glen Lewis. In the Report of the ICAC entitled "Operations Jasper and Acacia – Addressing Outstanding Questions" the Commission noted:

A Jerrys Plains Community meeting was also held on 28 July 2009, for which DCM prepared sample questions and responses for delivery by Glen Lewis (the NuCoal managing director) and others in NuCoal. The document containing this sample included reference to "ICAC" issues.'

[FOOTNOTE: Independent Commission Against Corruption, *Operations Jasper and Acacia – Addressing outstanding questions – ICAC Report*, December 2013, p 16.]

Question put.

The committee divided.

Ayes: Ms Cusack, Mr D'Adam, Mr Fang, Mr Moselmane, Mr Shoebridge, Mrs Ward.

Noes: Mr Roberts.

Question resolved in the affirmative.

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 1.15:

'In or around August 2009 Taurus Resources Fund No. 1 shares in DCM. This was followed on 15 October 2009 by the appointment of Gordon Galt and Michael Davies, both directors of Taurus, as directors of DCM. The shares in DCM, held by Taurus Resources Fund No. 1 subsequently exchanged for shares in NuCoal when NuCoal listed on the Australian Stock Exchange.'

[FOOTNOTE: Evidence, 9 August 2019, p 4; High Court of Australia, NuCoal Resources Ltd v State of New South Wales, No. S138 of 2014, Plaintiff's chronology, 22 October 2014.]

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 1.15:

'On 23 November 2009 NuCoal (then known as Supersorb Environmental NL) entered into an option to purchase agreement with DCM. This was followed by the resignation of one of the original directors, Craig Ransley. This then left Andrew Poole as the only continuing director of DCM.'

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 1.16:

'NuCoal's Chronology states that following the acquisition by NuCoal of DCM the directors of both NuCoal and DCM then being: Gordon Galt, Glen Lewis, Michael Davies, Andrew Poole, and Michael Chester.'

Resolved, on the motion of Mr Khan: That the following new paragraphs be inserted after paragraph 1.16:

'Mr Glen Lewis was asked about the procedure for listing of NuCoal on the stock exchange in his evidence before ICAC on 16 April 2013. The transcript of evidence reveals this:

Counsel Assisting: Are you aware as to whether or not one of the reasons for listing in Perth was to try and keep the matter away from the Sydney press?

Lewis: Partially, correct.

Counsel Assisting: And you've dealt with investors since the reverse acquisition?

Lewis: Yes.

Counsel Assisting: And they've also raised with you concerns about the circumstances in which the Exploration was granted before making their investments?

Lewis: People have always asked what John Maitland's involvement was, yes.'

[FOOTNOTE: Independent Commission Against Corruption, Public Hearing – Operation Indus, Jasper and Acacia, Transcript of proceedings, 16 April 2013, p 6553.]

Mr Lewis gave a number of other reasons why the listing was conducted in Perth.

[FOOTNOTE: see Independent Commission Against Corruption, Public Hearing – Operation Indus, Jasper and Acacia, Transcript of proceedings, 16 April 2013, p 6555.]

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 1.18:

'It should be noted that following the listing of NuCoal there were significant share transactions involving a number of the original promoters and investors in DCM. The ICAC in its report entitled "Operation Acacia" observed:

In early 2010, DCM was listed on the Australian Securities Exchange (ASX) through its acquisition by NuCoal Resources NL. That listing valued the EL over the Doyles Creek area at approximately \$100 million. Most of the original shareholders of DCM have since realised much of their investments for very large sums of money. Mr Maitland, for example, outlaid about \$165,000 to acquire his shares. By December 2011, his investment was worth about \$15 million. A table summarising the profits made by the original shareholders of DCM is set out in Appendix 4.'

[FOOTNOTE: Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013, p 12.]

Resolved, on the motion of Mr Khan: That the following new paragraph and figure be inserted after paragraph 1.18:

'The summary of profits of the original DCM Shareholders, as identified by ICAC, are set out in the table below.'



Appendix 4: Summary of profits of original DCM shareholders

Summary of financial information				
Shareholder	A Initial Investment	B Net Profit made @ 31/12/11 (from sales of share)	C Market value of un sold shares @ 31/12/2011	D Total Net Profit (B + C)
Jonca Investments P/L (John Maitland)	\$165,623.00	\$5,985,526.26	\$8,924,206.59	\$14,909,732.85
Nera Ransley (wife of Craig Ransley)	\$318,017.28	\$14,887,364.05	\$-	\$14,887,364.05
Pooles Australia (Andrew Poole)	\$364,648.00	\$5,385,366.48	\$13,083,007.95	\$18,468,374.43
Maxine Poole	\$400.00	\$-	\$32,625.86	\$32,625.86
James Stevenson	\$65,964.00	\$3,144,325.95	\$-	\$3,144,325.95
James Stevenson and Elizabeth Pinnock as Trustees for the Stevenson Pinnock super fund	\$56,938.00	\$2,608,442.00	\$-	\$2,608,442.00
Micjud Pty Ltd (Michael Chester)	\$23,339.12	\$435,092.88	\$595,227.42	\$1,030,320.30
Kimberly Chisholm - Lenark Pty Ltd	\$70,019.80	\$6,753,836.15	\$-	\$6,753,836.15
Lawrence Ireland - Climb Super Pty Ltd	\$36,212.00	\$1,353,849.00	\$140,213.00	\$1,494,062.00
Michael Abela	\$25.00	\$1,367.00	\$-	\$1,367.00
Paul Dickson	\$25.00	\$-	\$2,087.00	\$2,087.00
Ricketts Point Investment P/L	\$6,214.00	\$-	\$394,454.00	\$394,454.00
Tuxon Pty Ltd (Robert Hargraves)	\$1,335.00	\$73,839.00	\$-	\$73,839.00
Stacey Noonan	\$16,806.00	\$1,425,698.19	\$-	\$1,425,698.19
Vincent Martin	\$-	\$417,647.00	\$-	\$417,647.00
Valzan Pty Ltd	\$65,344.00	\$2,780,382.00	\$-	\$2,780,382.00
Top Plan Properties P/L (Kenneth Mackinnon)	\$8,333.00	\$213,190.00	\$348,300.00	\$561,490.00
1) Baysoni (Glen Lewis) Shareholding 1	\$100,000.80	\$1,267,310.04	\$2,392,819.11	\$3,660,129.15
2) Baysoni (Glen Lewis) Shareholding 2	\$99,999.36	\$1,267,311.48	\$2,392,734.87	\$3,660,046.35
Jeffrey Roderick Williams	\$93,360.36	\$3,847,315.00	\$1,431,000.00	\$5,278,315.00
Jessica Triakis	\$46,680.68	\$3,164,732.00	\$-	\$3,164,732.00
TOTAL	\$1,539,284.40	\$55,012,594.48	\$29,736,675.80	\$84,749,270.28

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Resolved, on the motion of Mr Khan: That a new chapter, 'The Second ICAC Report: Addressing Outstanding Questions', be inserted after paragraph 1.29.

Resolved, on the motion of Mr Khan: That the following new paragraphs be inserted after paragraph 1.29:

'On 23 November 2011, both Houses of Parliament referred a series of questions to the Commission.

- (1) What were the circumstances surrounding the application for and allocation of EL 7270 to DCM?
- (2) What were the circumstances surrounding the making of profits, if any, by the shareholders of NuCoal Resources NL (the proprietor of DCM)?
- (3) Whether recommendations should be made to the NSW Government with respect to licences or leases under the Mining Act over the Doyles Creek area.
- (4) Whether the NSW Government should commence legal proceedings, or take any other action, against any individual or company in relation to the circumstances surrounding the allocation of EL 7270.
- (5) Whether to recommend that any action be taken by the NSW Government with respect to amending the Mining Act.'

[FOOTNOTE: Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013, p 5.]

Resolved, on the motion of Mr Khan: That the following new paragraphs be inserted after paragraph 1.30:

"The Commission, in reaching its conclusions, made a number of specific observations regarding the acquisition of DCM by NuCoal, the knowledge of the individuals involved, and the implications of that knowledge upon the transaction. It is appropriate that those observations be repeated in full in this report.

The views that the Commission so expressed to Counsel Advising largely were based on the following points made by Counsel Assisting, which the Commission accepts. These points are of particular relevance to the position of NuCoal:

a. EL 7270 was obtained by DCM and is still held by it. The EL is not transferrable. The position of NuCoal is not comparable to that of a bona fide purchaser for value and without notice. NuCoal is merely a shareholder of DCM.

b. Moreover, at the relevant times each of Mr Maitland, Craig Ransley and Andrew Poole were directors of DCM. Their conduct and knowledge are to be attributed to it. In addition, at the time of the acquisition by NuCoal, both Mr Chester and Andrew Poole became directors of NuCoal. They were aware of significant circumstances pertaining to the improper grant.

c. A change in shareholding in a company should not immunise the company from the consequences of its improper conduct or that of its directors. The consequences of improper transactions entered into by a company cannot be avoided merely because its shares have been subsequently traded.

d. The prospectus issued for the purposes of the reverse acquisition of DCM by NuCoal was lodged with the Australian Securities and Investments Commission on 2 December 2009. There was notorious public controversy from at least mid-2009 in relation to the circumstances of the granting of EL 7270 – in particular having regard to the relationship between Mr Maitland and Mr Macdonald, which was reflected in media coverage at the time. A Jerrys Plains community meeting was also held on 28 July 2009, for which DCM prepared sample questions and responses for delivery by Glen Lewis (the NuCoal managing director) and others in NuCoal. The document containing this sample included reference to "ICAC" issues. Those issues were dealt with at the meeting. Thus, before the backdoor listing, there was widespread controversy calling into question the circumstances of the granting of EL 7270, including that it may have been granted by Mr Macdonald to his "mate" Mr Maitland. Indeed, a concerted effort was made to publicly position the company so that it was removed from Mr Maitland in an effort to improve perception issues.

e. NuCoal acquired DCM with knowledge of the detail of the public controversy referred to in (d) above and the risky nature of the acquisition. For the reasons set out in (d), the investors in NuCoal must have acquired their shares in that company with an awareness of those risks. Those risks must have been reflected in the share price of NuCoal such that the price at which investors purchased their shares took account of the uncertainties.

f. Mr Lewis agreed that, from mid-2009 on, he dealt constantly with the public controversy concerning the circumstances of the granting of EL 7270, including throughout 2010 and beyond. Mr Lewis agreed that by the time of the reverse acquisition there was widespread public controversy. He dealt with potential investors at the time of the reverse acquisition and they raised questions with him about the controversy concerning the circumstances in which EL 7270 had been granted.

g. The reverse acquisition prospectus also emphasised the uncertainties associated with investing in NuCoal. It emphasised that the shares offered under the prospectus should be regarded as speculative, that investors should be aware that they may lose some or all of their investment and that prospective investors should make their own assessment of the likely risks. A number of specific risks were outlined, which included that DCM might not be able to acquire or might lose title to EL 7270 if conditions attached to licences were changed or not complied with.

h. The following exchange took place with Mr Lewis at the public inquiry:

MR SHEARER [junior Counsel Assisting the Commission]: *So given what we've just been discussing, Mr Lewis, I take it you'd accept that investment from the time of the reverse acquisition onwards has occurred under the shadow of the controversy concerning the circumstance of the grant of the Exploration Licence?--Correct.*

THE COMMISSIONER: *Sorry, can I just ask one question on that please, Mr Shearer? Mr Lewis, I take the shadow was the risk of something sinister being discovered in the course of this investigation?-- That'd be correct, yes.*

And the reason why there has been an effect on the share price of NuCoal is that by reason of the, of the Commission's investigation there is a risk of this – there is a risk of corruption being exposed?--By the nature of ICAC yes, I, I agree, yes.

I'm not suggesting that corruption occurred I just want to make it clear, I'm suggesting that the shadow involved the risk that the Commission might uncover corruption?-- Correct, it certainly creates uncertainty in the market.

And that has occurred since the float?--My best recollection, and I'll be fairly sure it's accurate, is around March 2010.

...

Mr Lewis, the questions about the way in which the Exploration Licence was granted to Doyles Creek had already been raised in the press before the float or is that right?-- They, they had, correct. Almost, I'd be fairly confident January 2009 fairly much straight after the announcement of the EL award.

...

MR SHEARER: *And I've shown you references where that was taking place as from July 2009?-- Correct.*

And you were dealing with the community on the topic in about July 2009 too?-- Correct.

- i. The same is true of any moneys that NuCoal has expended on exploration and other activities associated with Doyles Creek. Those moneys have been expended with eyes wide open to the uncertainties, risks and possibilities.

[FOOTNOTE: Independent Commission Against Corruption, *Operations Jasper and Acacia – Addressing outstanding questions – ICAC Report*, December 2013, pp 16-17.]

Resolved, on the motion of Mr Khan: That the following new committee comment be inserted after paragraph 1.31:

'Committee comment

The Committee accepts the observations and conclusions made by the ICAC referred to above. Specifically, the directors of both DCM and NuCoal, prior to the public listing were alive to the public controversy surrounding the granting of EL7270. Additionally, in searching for investors, the directors were the subject of questioning surrounding the grant process.

Additionally, it should be noted that the prospectus made clear that the investment in NuCoal as "speculative" and that investors risked the possibility of losing all money they invested. The committee accepts that it is not uncommon for a prospectus to contain significant disclaimers.

Whilst some may consider this is sufficient to rule out any consideration of compensation for investors, the committee is mindful that the ICAC did recommend that any expungement of the of EL7270 *could* (emphasis added) be "accompanied by a power to compensate any innocent persons affected....to the extent considered appropriate". The following chapters of this report will consider that issue.'

Resolved, on the motion of Mr Khan: That a new chapter, 'Events Following the Second ICAC Report', be inserted before paragraph 1.32.

Resolved on the motion of Mr Khan: That paragraph 1.32 be amended by omitting 'This section' and inserting instead 'This chapter'.

Mr D'Adam moved: That paragraph 2.100 be omitted: 'On balance, the committee found compelling the arguments that NuCoal and its shareholders are innocent parties. NuCoal and its shareholders were not party to the negotiations engaged when EL 7270 was granted to Doyles Creek Mining, nor did NuCoal exist as an entity when the licence was allocated.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Moselmane, Mr Shoebridge.

Noes: Ms Cusack, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That paragraph 2.100 be amended by:

- omitting 'the committee found compelling the arguments that NuCoal and its shareholders are innocent parties' and inserting instead 'the committee accepts the arguments that some of the shareholders of NuCoal who participated in the public listing, or subsequently acquired shares, are innocent parties.'
- omitting 'NuCoal and its shareholders were not party to the negotiations engaged when EL 7270 was granted to Doyles Creek Mining, nor did NuCoal exist as an entity when the licence was allocated.'

Resolved, on the motion of Mr D'Adam: That paragraph 2.100 be amended by inserting at the end: 'The committee found that the directors of NuCoal were either aware or should have been aware of the public controversy surrounding the granting of the EL 7270 to Doyles Creek Mining at the time the company was publicly listed.'

Resolved, on the motion of Mr Khan: That paragraph 2.101 be amended by omitting 'that affected stakeholders' and inserting instead 'that any affected innocent stakeholders'.

Mr D'Adam moved: That paragraph 2.101 be amended by omitting 'The committee notes in particular the effect this licence cancellation has had on overseas investors and on perceptions of Australia as a secure investment environment.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Moselmane, Mr Shoebridge.

Noes: Ms Cusack, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Question resolved in the negative.

Mr Shoebridge moved: That paragraph 2.101 be amended by omitting 'The committee notes in particular the effect this licence cancellation has had on overseas investors and on perceptions of Australia as a secure investment environment.' and inserting instead 'The committee notes these matters are the subject of ongoing discussions between the US Trade Representative and the Australian Government concerning US investors.'

Question put.

The committee divided.

Ayes: Ms Cusack, Mr D'Adam, Mr Fang, Mr Khan, Mr Moselmane, Mr Shoebridge, Mrs Ward.

Noes: Mr Roberts.

Question resolved in the affirmative.

Mr D'Adam moved: That paragraph 2.102 be omitted: 'To this end, the committee is supportive of some form of compensation to affected stakeholders, including NuCoal and its shareholders.', and the following paragraph be inserted instead:

'The committee found that the share price for NuCoal Resources was adversely affected, at numerous stages, by the public controversy over the granting of EL7270 and the ICAC inquiry that followed. The volatility in the share price reflected an appraisal by the market of the relative risk posed by the controversy at critical stages. The committee notes that all investment in shares carries some level of risk and that NuCoal investors were alerted to this risk in the company's prospectus.'

Mr Shoebridge moved: That the motion of Mr D'Adam be amended by inserting at the end: 'As noted above, we do not rule out the existence of shareholders who purchased in good faith without any knowledge of the controversy. On the evidence before us, we could not draw a firm conclusion on how to determine any such class of shareholders.'

Amendment of Mr Shoebridge put.

The committee divided.

Ayes: Ms Cusack, Mr Fang, Mr Khan, Mr Roberts, Mr Shoebridge, Mrs Ward.

Noes: Mr D'Adam, Mr Moselmane.

Amendment of Mr Shoebridge resolved in the affirmative.

Mr Khan moved: That the motion of Mr D'Adam be further amended by omitting 'The committee notes that all investment in shares carries some level of risk and that NuCoal investors were alerted to this risk in the company's prospectus.'

Amendment of Mr Khan put.

The committee divided.

Ayes: Ms Cusack, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Noes: Mr D'Adam, Mr Moselmane, Mr Shoebridge.

Amendment of Mr Khan resolved in the affirmative.

Original question of Mr D'Adam, as amended, put and passed.

Resolved, on the motion of Mr D'Adam: That paragraph 2.103 be omitted: 'However, the committee must equally acknowledge that there are some significant outstanding issues which the committee could not determine.' and the following new paragraph be inserted instead:

'The committee acknowledges that there are a number of significant outstanding issues that it felt it could not determine.'

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 2.104:

'The Committee expresses its concern about any proposal that leaves it to a third party to make important policy decisions on behalf of the Government. Equally, it is inappropriate for the Bill in its current form to proceed without a clear understanding of the extent of the liability this may create for the Government, and the people of New South Wales.'

Resolved, on the motion of Mr D'Adam: That:

- paragraph 2.105 be omitted: 'That aside, the committee recommends that the Bill proceed, and that these outstanding matters be addressed by the government, where appropriate.' and the following paragraph be inserted instead:

'The committee recommends that the Bill not proceed and that any outstanding matters be addressed by the government, where appropriate.'

- Recommendation 1 be omitted: 'That the Bill proceed to be considered by the Legislative Council, subject to the NSW Government addressing outstanding matters raised during this inquiry, where appropriate.' and the following new recommendation be inserted instead:

'That the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019 not proceed in its current form'.

Mr Shoebridge left the meeting.

Mr D'Adam moved: That the following new recommendation be inserted after Recommendation 1:

'Recommendation 2

That the NSW Government address the outstanding matters raised during this inquiry, where appropriate.'

Mr Khan moved: That the motion of Mr D'Adam be amended by inserting ', including the issue of compensation for innocent shareholders' after 'where appropriate'.

Amendment of Mr Khan put.

The committee divided.

Ayes: Ms Cusack, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Noes: Mr D'Adam, Mr Moselmane.

Amendment of Mr Khan resolved in the affirmative.

Original question of Mr D'Adam, as amended, put.

The committee divided.

Ayes: Ms Cusack, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Noes: Mr D'Adam, Mr Moselmane.

Original question of Mr D'Adam, as amended, resolved in the affirmative.

Mr D'Adam moved: That paragraph 2.106 be omitted: 'Although the focus of this inquiry has been on the cancellation of EL 7270 over Doyles Creek, and the impact of this on NuCoal and its shareholders, the committee acknowledges that other exploration licences have been cancelled under similar circumstances. In particular, we note the cancellation of licences over Mount Penny and Glendon Brook, and acknowledge that Cascade Coal and its shareholders may be similarly affected by these cancellations. In addressing the outstanding matters raised during this inquiry, the committee encourages the NSW Government to also consider the affected stakeholders of these cancelled exploration licences.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Moselmane.

Noes: Ms Cusack, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Question resolved in the negative.

Mr Khan moved: That paragraph 2.106 be amended by:

- omitting 'under similar circumstances. In particular, we note the cancellation of licences over Mount Penny and Glendon Brook, and acknowledge that Cascade Coal and its shareholders may be similarly affected by these cancellations.
- Inserting 'other' before 'cancelled exploration licences.'

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Noes: Mr D'Adam, Mr Moselmana.

Question resolved in the affirmative.

Resolved, on the motion of Mr Khan: That:

The draft report, as amended, be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be kept confidential, unless otherwise published by the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

That the report be tabled on Wednesday 30 October 2019.

6.2 Material used in the final report

The committee noted the most recent correspondence received from the Office of Public Prosecutions regarding the publication of material that may be adverse to any accused persons in trials arising from Operations Acacia and Jasper.

Resolved, on the motion of Mr Khan: That the committee publish the following material for use in the final report:

- Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013 – chapters 1 and 2, and Appendix 4.
- Independent Commission Against Corruption, *Operations Jasper and Acacia – Addressing outstanding questions – ICAC Report*, December 2013 – chapter 1 and pages 16-17.
- Independent Commission Against Corruption, Public Hearing – Operation Indus, Jasper and Acacia, Transcript of proceedings, 16 April 2013, pages 6550, 6553 and 6555.
- High Court of Australia, *NuCoal Resources Ltd v State of New South Wales*, Plaintiff's chronology, 22 October 2014.

7. Adjournment

The committee adjourned at 4.20 pm, *sine die*.

Tina Higgins
Clerk to the Committee

Minutes no. 14

Friday 15 November 2019

Standing Committee on Law and Justice

Jubilee Room, Parliament House, Sydney at 9.48 am

1. Members presentMr Fang, *Chair*Mr Donnelly, *Deputy Chair*Mr Amato (*substituting for Ms Ward*)

Mr D'Adam

Mr Khan (from 10.13 am)

Mr Mookhey (*participating*) (from 9.51 am)

Mr Shoebridge (from 10.06 am)

2. Apologies

Mr Roberts

3. Previous minutes

Resolved, on the motion of Mr D'Adam: That draft minutes no. 13 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 6 November 2019 – Email from Ms Allison Haworth, Special Counsel, Carter Newell Lawyers, to secretariat, advising that Cosentino declines to give evidence at a hearing but will provide a written submission to the 2019 review of the dust diseases scheme.
- 4 November 2019 – Letter from the Hon Natasha Maclaren- Jones MLC to secretariat, advising that the Hon Lou Amato MLC will be substituting for the Hon Natalie Ward during the hearing on 15 November 2019.
- 24 October 2019 – Email from Ms Abbey Wilkinson to committee, regarding the workers compensation scheme, including an attachment outlining details of her case.
- 17 October 2019 – Email from Mr David Cullen, Managing Director, Caesarstone Australia, to secretariat, providing a submission for the 2019 review of the dust diseases scheme, on behalf of the Australian Engineered Stone Advisory Group (AESAG).
- 16 October 2019 – Email from Mr Yigal Rozman, to committee, regarding silicosis cases in Israel, relevant to the 2019 review of the dust diseases scheme.

Sent

- 30 October 2019 – Email from secretariat to Mr David Cullen, Caesarstone Australia, inviting representatives from the Australian Engineered Stone Advisory Group (AESAG) to give evidence at a hearing.
- 30 October 2019 – Email from secretariat to Ms Allison Haworth, Special Counsel, Carter Newell Lawyers, inviting representatives from Cosentino to give evidence at a hearing.
- 17 October 2019 – Letter from Chair to Mr Con Papadakis, Cosentino, inviting them to make a submission to the 2019 review of the dust diseases scheme.

Resolved, on the motion of Mr D'Adam: That the email and attachment from Ms Abbey Wilkinson be kept confidential, due to identifying/sensitive information.

5. 2019 Review of the Dust Diseases Scheme

5.1 Submissions

The following submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission no.13 (Australian Engineered Stone Advisory Group).

The committee noted that Cosentino will provide a written submission by 29 November 2019.

5.2 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were previously published:

- Dr Graeme Edwards, received 18 October 2019
- Dr Susan Miles, received 22 and 24 October 2019 (including all research articles provided)
- Dr Deborah Yates, received 11 October 2019
- Health NSW, received 31 October 2019 (including attachment referred to as 'Tab A')
- SafeWork NSW, received 31 October 2019 (including three sample improvement notices).

Resolved, on the motion of Mr D'Adam: That the committee publish the answers to questions on notice from SIRA, except for the contact details for a union official, as outlined in their response to question 3.

Resolved, on the motion of Mr Donnelly: That the committee publish the sample prohibition notice provided by SafeWork NSW on 31 October 2019, except for identifying information as recommended by the secretariat.

5.3 Transcript clarification

Resolved, on the motion of Mr D'Adam: That the committee publish the letter from Dr Miles regarding clarifications to the evidence she provided on 16 September 2019.

5.4 Timeframe for answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Amato: That answers to questions taken on notice and supplementary questions arising from the hearing on 15 November be provided within 7 days of receipt.

5.5 Public hearing

The hearing commenced at 10.00 am.

Witnesses, the public and the media were admitted.

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

The following witnesses were sworn and examined:

- Mr David Cullen, Managing Director, Caesarstone Australia
- Mr Bruce Rayment, Chief Executive Officer, Smartstone Australia Pty Ltd
- Mr Mark Norman, General Manager, Quantum Quartz

The evidence concluded and the witness withdrew.

The public hearing concluded at 11.33 pm.

The public and media withdrew.

5.6 Publication of tendered documents

Resolved, on the motion of Mr D'Adam: That the committee accept and publish the following document tendered by Mr Shoebridge:

- Mordechai Kramer, Paul Blanc, Elisabeth Fireman, Anat Amital, Alexander Guber, Nader Abdul Rahman and David Shitrit, 'Artificial Stone Silicosis – Disease Resurgence Among Artificial Stone Workers' (2012), 142, *Best*, pp 419-24.

5.7 Further inquiry activity

Resolved, on the motion of Mr Shoebridge: That the Chair, in consultation with the secretariat, propose a timetable for further inquiry activity, including dates for an additional hearing, the report deliberative and the report tabling, to be circulated to the committee for agreement by email.

Resolved, on the motion of Mr Mookhey: That SafeWork Australia, SafeWork NSW and icare be invited to appear at the additional hearing.

Resolved, on the motion of Mr Shoebridge: That Laminex and CDK Stone be invited to make a submission to the inquiry.

6. Adjournment

The committee adjourned at 11.47 am, *sine die*.

Tina Higgins

Clerk to the Committee

Minutes no. 15

Tuesday 11 February 2020

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney at 9:18 am

1. Members present

Mr Fang, *Chair*

Mr Donnelly, *Deputy Chair*

Ms Cusack

Mr D'Adam

Mr Farraway

Mr Khan

Mr Mookhey (*participating*)

Mr Roberts

Mr Shoebridge

2. Committee membership

The committee noted that the Hon Catherine Cusack MLC replaced the Hon Natalie Ward MLC as a member of the committee on 31 January 2020. Mrs Ward served since 15 May 2019.

3. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 14 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 14 January 2020 – Email from Ms Jackii Shepherd, Director, Occupational Hygiene Policy, Safe Work Australia, to secretariat, confirming Safe Work Australia's attendance at the hearing on 11 February and providing witness details
- 18 December 2019 – Email from Ms Maryann Finlay, Executive Assistant, SafeWork NSW, to secretariat, confirming SafeWork NSW's attendance at the hearing on 11 February and providing witness details
- 13 December 2019 – Letter from Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, to Chair, regarding an update on the review of the nominal insurer for workers compensation

- 9 December 2019 – Email from Mr Gary Isherwood, General Manager, Stone Ambassador to Chair, to secretariat, enclosing a submission to the 2019 review of the dust diseases scheme
- 9 December 2019 – Email from Mr David Cullen, Managing Director, Caesarstone, to secretariat, providing clarification to evidence regarding insurance given at the hearing on 15 November 2019
- 9 December 2019 – Letter from Mr David Cullen, Managing Director, Caesarstone, to Chair, providing clarification to requests for confidentiality concerning some attachments to answers to questions on notice and supplementary questions
- 6 December 2019 – Letter from Mr David Cullen, Managing Director, Caesarstone, to secretariat, providing progress information on the Australian Engineered Stone Advisory Group's (AESAG) application to the Australian Competition and Consumer Commission (ACCC)
- 6 December 2019 – Email from Mr James Woodyatt, Joint Managing Director, CDK Stone Pty Ltd, to secretariat, enclosing a submission to the 2019 review of the dust diseases scheme
- 6 December 2019 – Letter from Ms Clemency Morony, Head of Ministerial and Parliamentary Support, icare, to secretariat, confirming icare's attendance at the hearing on 11 February 2019 and providing witness details
- 2 December 2019 – Letter from Mr David Cullen, Managing Director, Caesarstone, to Chair, providing clarification to evidence regarding warning labels given at the hearing on 15 November 2019
- 24 November 2019 – Email from Mr Bruce Rayment, Chief Executive Officer, Smartstone Australia, to secretariat, regarding sensitive data in relation to supplementary questions.

Sent

- 21 November 2019 – Letter from Chair to Mr Justin Burgess, Executive General, Laminex Australia, inviting Laminex to make a submission to the 2019 review of the dust diseases scheme
- 21 November 2019 – Letter from Chair to Mr Gary Isherwood, General Manager, Stone Ambassador, inviting Stone Ambassador to make a submission to the 2019 review of the dust diseases scheme
- 18 November 2019 – Letter from Chair to Mr David Cullen, Managing Director, Caesarstone (contact for the Australian Engineered Stone Advisory Group), regarding their attendance at the hearing on 15 November 2019 and requesting further information
- 18 November 2019 – Letter from Chair to Mr Nathan Karpenko, State General Manager, CDK Stone, inviting CDK Stone to make a submission to the 2019 review of the dust diseases scheme.

5. 2019 Review of the Dust Diseases Scheme

5.1 Public submissions

The committee noted that submission nos. 14, 15, 16, 17 were published by the Committee Clerk under the authorisation of the resolution appointing the committee.

5.2 Answers to questions on notice and supplementary questions

The committee noted that the following answers were published by the Committee Clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from the Australian Engineered Stone Advisory Group (AESAG), received 3 December 2019.
- answers to supplementary questions from the Australian Engineered Stone Advisory Group, received 2 December 2019.

A number of attachments were provided by the AESAG to their responses to questions on notice and supplementary questions.

The committee deferred consideration of the publication of these attachments.

5.3 Transcript clarifications

Resolved, on the motion of Mr Shoebridge: That the clarifications provided by Mr David Cullen, Caesarstone, on letters dated 2 and 9 December 2019, be published.

5.4 Reporting date

In accordance with the resolution at the last meeting, the committee agreed via email to the following timeline for the inquiry:

- 18 March - report deliberative (from 2 pm)
- 25 March - tabling of report.

Resolved, on the motion of Mr Shoebridge: That the report for the 2019 review of the dust diseases scheme be tabled by 25 March 2020.

5.5 Timeframe for answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Donnelly: That answers to questions on notice and supplementary questions arising from the hearing on 11 February 2020 be provided within seven days of receipt.

5.6 Tendered document

Mr Mookhey tendered the following document obtained from a return to order:

- SafeWork NSW interventions – manufactured stone 131119

5.7 Public hearing

The hearing commenced at 9.31 am.

Witnesses, the public and the media were admitted.

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

The following witnesses were examined on their former oath:

- Mr John Nagle, Chief Executive Officer and Managing Director, icare
- Dr Nick Allsop, Group Executive, Care and Community, icare
- Dr Chris Colquhoun, Chief Medical Officer, icare

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Michelle Baxter, Chief Executive Officer, Safe Work Australia
- Ms Amanda Johnston, General Counsel and Branch Manager, Legal Policy Branch, Safe Work Australia
- Ms Jackii Shepherd, Director, Occupational Hygiene Policy, Safe Work Australia

The evidence concluded and the witnesses withdrew.

The following witnesses were examined on their former oath:

- Mr Peter Dunphy, Executive Director, Fair Trading Specialist Services, SafeWork NSW
- Ms Meagan McCool, Director, Hazardous Chemical Facilities and Safety Management Audits, SafeWork NSW

The following witness was sworn and examined:

- Ms Rose Webb, Deputy Secretary, Better Regulation Division, SafeWork NSW

Ms Webb tendered her opening statement.

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

The public hearing concluded at 1.01 pm.

Ms Cusack left the meeting.

Resolved, on the motion of Mr Mookhey: That the committee publish the tendered document entitled 'SafeWork NSW interventions – manufactured stone 131119'.

The committee noted that the National Dust Diseases Taskforce – Interim Advice to Minister for Health has been handed down.

Resolved, on the motion of Mr Mookhey: That the Chair write to the Australian Competition and Consumer Commission (ACCC) requesting a copy of their decision regarding interim authorisation for the proposed conduct requested by the Australian Engineered Stone Advisory Group (AESAG) in their application for authorisation.

6. Adjournment

The committee adjourned at 1.04 pm, until Wednesday, 18 March 2020 – report deliberative for the 2019 Review of the Dust Diseases Scheme.

Rhia Victorino

Clerk to the Committee

Draft minutes no. 16

Wednesday 18 March 2020

Standing Committee on Law and Justice

McKell Room, Parliament House, Sydney at 2.38 pm

1. Members present

Mr Fang, *Chair*

Mr Donnelly, *Deputy Chair*

Ms Cusack (until 3.35 pm)

Mr Faraway (until 4.34 pm)

Mr Khan

Mr Mookhey (*substituting for Mr D'Adam*)

Mr Roberts

Mr Shoebridge

2. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 15 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 18 March 2020 – Email from Hon Mark Buttigieg MLC advising that the Hon. Daniel Mookhey MLC will be substituting for the Hon. Anthony D'Adam MLC at Law and Justice Committee's deliberative meeting
- 10 March 2020 – Email from Mr David Cullen, Australian Engineered Stone Advisory Group, to secretariat, confirming AESAG's request to keep the Excel list attachment to answers to questions on notice confidential
- 6 March 2020 – Email from individual to committee, regarding the workers compensation scheme
- 4 March 2020 – Email from Mr David Hamer to committee, concerning the Evidence Amendment (Tendency and Coincidence) Bill 2020, and an attachment from the Australian Law Journal
- 27 February 2020 – Email from Louisa Wilson, Analyst, Adjudication, Merger and Authorisation Review Division, Australian Competition & Consumer Commission (ACCC) to secretariat advising that the Australian Engineered Stone Advisory Group (AESAG) withdrew its substantive application for authorisation with the ACCC on 27 February 2020

- 26 February 2020 – Letter from Mark Speakman, Attorney General to Clerk of the Parliaments providing Government response regarding Report 71 on the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019
- 17 February 2020 – Email from Louisa Wilson, Analyst, Adjudication, Merger and Authorisation Review Division, Australian Competition & Consumer Commission (ACCC) to secretariat advising that the Australian Engineered Stone Advisory Group (AESAG) withdrew its application for interim authorisation with the ACCC on 7 February 2020

Sent

- 14 February 2020 – Letter from Chair to Ms Danielle Staltari, Director, Adjudication, Australian Competition and Consumer Commission (ACCC) requesting a copy of ACCC's regarding Australian Engineered Stone Advisory Group (AESAG)'s application for interim authorisation

4. **Inquiry into the Crimes Appeal and Review (Double Jeopardy) Bill 2019 – Government response**
The committee noted that the government response to the report on the Crimes Appeal and Review (Double Jeopardy) Bill 2019 was received on 26 February 2020.

5. **2020 Review of the Workers Compensation Scheme**

Resolved, on the motion of Mr Shoebridge: That the committee commence the 2020 review of the Workers Compensation Scheme and adopt the following timeline/activities:

- Briefing by SIRA and icare – on a date to be confirmed
- Submissions closing date – end of May 2020
- Two hearing dates – on dates to be confirmed
- Table report – by end of October 2020.

5.1 Advertising

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

5.2 Stakeholders

Resolved, on the motion of Mr Khan: That the secretariat circulate to members the Chairs' proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

6. **2019 Review of the Dust Diseases Scheme**

6.1 Answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Khan: That all attachments to the Australian Engineered Stone Advisory Group's answers to questions on notice and supplementary questions be published, except the following:

- Safety data sheets of pigment and resin as part of Attachment 2, as the information has come from third parties
- Research provided as part of Attachment 3, as it concerns a study that is being submitted to a scientific journal and publication could affect the chances of the study being published
- The names and contact details contained in the Excel list of fabricators in Australia, as names and contact details have been provided for businesses and it is confidential commercial information of AESAG members.

6.2 Consideration of the Chair's draft report

The Chair tabled his draft report entitled '2019 Review of the Dust Diseases Scheme: Silicosis in the Manufactured Stone Industry', which, having been previously circulated, was taken as being read.

Chapter 1

Resolved, on the motion of Mr Shoebridge: That paragraph 1.9 be amended by omitting 'signs of' after 'but have no'.

Resolved, on the motion of Mr Mookhey: That all references to 'self-employed workers' be omitted and 'contractors' be inserted instead.

Resolved, on the motion of Mr Shoebridge: That paragraph 1.10 be amended by inserting '*Workers Compensation (Dust Diseases) Act*' before 'legislation'.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 1.15:

"They are managed in accordance with the hierarchy of controls, which first looks at elimination of the risk, then substitution, then what engineering controls can be applied to eliminate or mitigate the risk, and then administrative controls. Personal protective equipment (PPE) is generally considered the last line of control." [FOOTNOTE: Evidence, Mr Michael Shearer, President, Mine Ventilation Society of Australia, 20 September 2019, p 2].

Resolved, on the motion of Mr Shoebridge: That paragraph 1.27 be amended by inserting 'review and monitor policy settings and regulatory controls as well as' before 'determine the contributions'.

Resolved, on the motion of Mr Shoebridge: That paragraph 1.28 be amended by inserting 'prior' before 'reviews of the Dust Diseases Scheme'.

Resolved, on the motion of Mr Shoebridge: That paragraph 1.36 be amended by omitting 'its completion on 30 June 2019' and inserting instead 'it concluded on 30 June 2019'.

Resolved, on the motion of Mr Mookhey: That:

- a) the section heading 'Manufactured Stone Industry Taskforce' be amended by inserting 'New South Wales' at the beginning
- b) paragraph 1.36 be amended by omitting 'Manufactured Stone Industry Taskforce (Taskforce) was established', and inserting instead 'NSW Government established the Manufactured Stone Industry Taskforce (Taskforce)'.

Resolved, on the motion of Mr Shoebridge: That paragraph 1.48 be omitted: 'A set of initial findings that point to areas for further examination were also included in the advice, such as regulation and governance, workplace organisation and culture, resourcing and capability, and research and development.', and the following new paragraph be inserted instead:

"The National Taskforce made a number of critical findings about the actions to date and existing protection measures across the country. This included:

Regulation and Governance – Government interventions undertaken in response to the rise in cases of accelerated silicosis appear to have been inconsistently implemented and monitored, creating an unequal and fragmented level of health protection.

Workforce Organisation and Culture – Culture is an important consideration to address the problems identified. All stakeholders have an important role to shape the attitudes and behaviours required to achieve meaningful change.

Resourcing and Capability – To ensure the health of workers there are opportunities to align and harness the skills and knowledge of industry, workplaces, workers and governments to identify, and control silica dust exposure.

...and

Research and Development – To inform government decision making there is limited information on the development pathway of accelerated silicosis resulting from working with engineered stone, and no identified treatment plan.'

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 1.57:

'In March 2020, SafeWork NSW further advised that there were 12 businesses who had applied for the rebate.' [FOOTNOTE: Portfolio Committee No. 6 – Budget Estimates 2019-2020, Evidence, Ms Megan McCool, Director, Hazardous Chemical Facilities and Safety, SafeWork NSW, 16 March 2020, p 42.]

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 1.58:

'When questioned about the litigation, Mr David Cullen, Australian Engineered Stone Advisory Group and Managing Director, Caesarstone Australia, stated: "Most of the liability will sit with workers compensation in reality. There will be some liability from manufacturers, potentially, but that has to go through a process".' [FOOTNOTE: Evidence, Mr David Cullen, Australian Engineered Stone Advisory Group and Managing Director, Caesarstone Australia, 15 November 2019, p 22.]

Chapter 2

Resolved, on the motion of Mr Donnelly: That paragraph 2.3 be amended by omitting 'used within many industries' and inserting instead 'found within many industries'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.21 [p 22] be amended by omitting 'being experienced by stonemasons' and inserting instead 'being experienced by manufactured stone workers'.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.24 [p 22] be amended by omitting ', which may commence in early 2021,' and inserting instead ' in 2021'.

Resolved on the motion of Mr Donnelly: That paragraph 2.50 [p 28] be amended by omitting 'get a full picture' and inserting instead 'get a complete picture'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.50 [p 28] be amended by inserting at the end: 'It is the committee's view that the limitations and gaps in the information and data is of particular concern. Complete, accurate and up-to-date information and data is fundamental in enabling work health and safety threats to be properly addressed in a timely way.'

Resolved, on the motion of Mr Donnelly: That paragraph 2.54 [p 28] be amended by omitting 'we hope that our report' and inserting instead 'we expect that our report'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.54 [p 28] be amended by omitting 'help to' before 'spur New South Wales further'.

Resolved, on the motion of Mr Shoebridge: That all references to 'false positive' be omitted and 'false negative' be inserted instead.

Chapter 3

Resolved, on the motion of Mr Donnelly: That paragraph 3.46 be amended by inserting at the end: 'The committee notes that the term "stonemason" is too narrow in its application. The correct term to be used, to ensure the appropriate capture of persons engaged in the manufactured stone industry is "manufactured stone worker". This term is intended to include suppliers, fabricators and installers of manufactured stone.'

Resolved, on the motion of Mr Donnelly: That paragraph 3.47 be amended by omitting 'one-off' before 'free screening service'.

Resolved, on the motion of Mr Mookhey: That:

- a) paragraph 3.47 be amended by inserting at the end: 'Thereafter exiting and new workers in the manufactured stone industry must be tested regularly.'
- b) Recommendation 2 be omitted: 'That the NSW Government provide a one-off free health screening service to all stonemasons within the manufactured stone industry.', and the following new recommendation be inserted instead:

'That icare provide a free screening service for all workers within the manufactured stone industry. This service will be offered and actively promoted over the next 12 months. Thereafter exiting and new workers in the manufactured stone industry must be tested regularly.'

Resolved, on the motion of Mr Shoebridge: That the following new paragraph and recommendation be inserted after Recommendation 2:

'We accept the evidence from the radiologists that low dose high resolution CT scanning is the preferred diagnostic measure for any person who has had significant exposure to silica dust from manufactured stone. As such we believe that the regulations should change to provide that low dose high resolution CT scanning, and not a chest x-ray, be the standard diagnostic tool for any such person.'

Recommendation X

'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.'

Mr Donnelly moved: That:

- a) paragraph 3.63 be omitted: 'Therefore, the committee recommends 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 condition, to ensure workers feel appropriately supported to leave the industry if they wish.', and the following new paragraph be inserted instead:

'Therefore, the committee recommends 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. This support should not be conditional on a specific level of impairment and must be sufficient to ensure workers feel appropriately supported to leave the industry if they choose to.'

- b) Recommendation 3 be omitted: 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.', and that the following new recommendation be inserted instead:

'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. The support should not be conditional on a specific level of impairment and must be sufficient to ensure workers feel appropriately supported to leave the industry if they choose to.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Shoebridge.

Noes: Ms Cusack, Mr Fang, Mr Faraway, Mr Khan, Mr Roberts.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That paragraph 3.74 be amended by omitting 'It is entirely likely' and inserting instead 'It is expected'.

Resolved, on the motion of Mr Donnelly: That paragraph 3.75 be amended by omitting 'Consideration could be given' and inserting instead 'Consideration should be given'.

Resolved, on the motion of Mr Donnelly: That Recommendation 4 be amended by inserting at the end: 'Consideration should be given to imposing a specific levy on the manufactured stone industry.'

Chapter 4

Resolved, on the motion of Mr Donnelly: That paragraph 4.35 be amended by omitting 'stonemasons' and inserting instead 'manufactured stone workers'.

Resolved, on the motion of Mr Donnelly: That paragraph 4.37 be amended by:

- a) omitting 'some of' before 'the outcomes we are now seeing'
- b) inserting 'Work' before 'health and safety standards'.

Ms Cusack left the meeting.

Moved by Mr Shoebridge: That paragraphs 4.37 and 4.38 be amended by omitting:

'The committee is not, however, in a position to make a recommendation about this, given a ban would need to operate at a federal level.

The committee believes that there are other measures which can be taken to improve health and safety standards in the manufactured stone industry. We understand that workers need to be protected, and we believe that some of the initiatives already underway will assist in this regard. This report also makes a number of other recommendations which we believe will help to respond to the silicosis problem within the industry.'

and inserting instead the following new paragraphs:

'Manufactured stone is a relatively new product, first being distributed in the NSW construction sector in or about 2001. There are numerous credible alternatives for it in all aspects of construction. Consistent with the hierarchy of control measures that form the core of work health safety responses in Australia the first response to an identifiable hazard like manufactured stone is, where possible, to remove it from the workplace.

There is no doubt that manufactured stone has certain attributes that make it attractive to use; it is consistent, it is relatively cheap and it provides a relatively low cost high gloss finish that is attractive to certain consumers. However in its time asbestos also had certain attributes that made it attractive. It was low cost, highly fire resistant and easily cut and affixed. However as the full medical and human cost of its use became apparent asbestos was nevertheless eventually banned. This was after initial attempts by the industry to seek safer handling procedures and more restricted uses.

We believe that the committee should learn from this history and with the evidence available to date make the call to ban the use of manufactured stone in NSW. Of course a federal ban would be preferable and we acknowledge that NSW cannot ban its importation or availability in NSW, however we can regulate construction and WHS and under those heads of power a ban is entirely possible.

Recommendation x

That the NSW Government implement a ban on the use of manufactured stone in NSW.'

Question put.

The committee divided.

Ayes: Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farraway, Mr Khan, Mr Mookhey, Mr Roberts.

Question resolved in the negative.

Resolved, on the motion of Mr Mookhey: That paragraph 4.37 be amended by omitting 'need to operate' and inserting instead 'best operate'.

Mr Mookhey moved: That paragraph 4.37 be amended by inserting at the end: 'This should be considered by the Commonwealth.' and adding the following new recommendation:

Recommendation X

That the Commonwealth Government consider implementing a ban on manufactured stone products'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Shoebridge.

Noes: Mr Fang, Mr Farraway, Mr Khan, Mr Roberts.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That paragraph 4.38 be amended by inserting 'work' before 'health and safety standards'.

Resolved, on the motion of Mr Donnelly: That paragraph 4.63 and Recommendation 5 be amended by inserting ', in a comprehensive range of languages' after 'safety data sheets for all manufactured stone products'.

Resolved, on the motion of Mr Shoebridge: That paragraph 4.115 be amended by omitting 'is encouraged by' and inserting instead 'notes'.

Resolved on the motion of Mr Mookhey: That paragraph 4.118 be amended by:

- a) inserting 'a time weighted average of' before '0.02mg/m³'
- b) inserting 'for non-mining industries' after '0.02mg/m³'.

Mr Mookhey left the meeting.

Mr Donnelly moved: That:

- a) paragraph 4.118 be amended by omitting 'as soon as possible' and inserting instead 'immediately'
- b) Recommendation 6 be omitted: 'That the Minister for Better Regulation ensure that steps are taken to further reduce the workplace exposure standard to 0.02mg/m³ as soon as possible, to ensure workers are protected from the harmful effects of silica dust' and the following new recommendation be inserted:

'Recommendation X

That the Minister for Better Regulation take immediate steps to reduce the workplace exposure standard with respect to crystalline silica dust to a time weighted average of 0.02mg/m³ for non-mining industries.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Roberts, Mr Shoebridge.

Noes: Mr Fang, Mr Farraway, Mr Khan.

Question resolved in the negative, on the casting vote of the Chair.

Mr Mookhey joined the meeting.

Resolved, on the motion of Mr Mookhey: That recommendation 6 be amended by:

- a) inserting 'a time weighted average of' before '0.02mg/m³'
- b) inserting 'for non-mining industries' after '0.02mg/m³'.

Resolved, on the motion of Mr Donnelly: That:

- a) paragraph 4.120 be amended by inserting after the first sentence 'Given this, all businesses engaged in the fabrication of manufactured stone will be required to register with SafeWork NSW, and will maintain such registration every 12 months.'
- b) paragraph 4.120 be amended by omitting 'Given that' and inserting instead 'Furthermore'
- c) Recommendation 7 be amended by inserting 'registered with SafeWork NSW, and will maintain such registration every 12 months and are' after 'fabrication sites and employers'.

Mr Shoebridge moved: That recommendation 7 be amended by inserting 'independent' before 'air monitoring'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Shoebridge.

Noes: Mr Fang, Mr Farraway, Mr Khan, Mr Roberts.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That paragraph 4.171 be amended by inserting 'there' before 'has not been a clear'.

Resolved, on the motion of Mr Shoebridge: That paragraph 4.185 be amended by omitting 'that the first line of defence must be to use vacuum extraction or water suppression tools' and inserting instead 'that prior to consideration of PPE, workplaces must as least ensure the use of vacuum extraction or water suppression tools'.

Mr Shoebridge left the meeting.

Mr Donnelly moved: That the following new paragraph and recommendation be inserted after paragraph 4.185:

'However, given the dangerous impact of inhaling silica-related dust and drawing on the submissions and oral evidence to the inquiry, it is clear that much more can be done to ensure that P3 filtering face piece respiratory protection is provided to and is worn by workers in the manufactured stone industry.'

Recommendation X

'That given the dangerous impact of inhaling silica-related dust, SafeWork NSW commence and continue a high profile campaign in the manufactured stone industry to ensure that P3 filtering face piece respiratory protection is provided to and is worn by workers.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Roberts.

Noes: Mr Fang, Mr Farraway, Mr Khan.

Question resolved in the negative, on the casting vote of the Chair.

Mr Shoebridge joined the meeting.

Resolved, on the motion of Mr Shoebridge: That paragraph 4.200 be amended by inserting at the end:

'However the fact that the MBA has equated the safety concerns that arise from manufactured stone with those that arise from asbestos show how much more serious and considered protection measures need to be adopted across the board as contained in other recommendations from this committee.'

Chapter 5

Resolved, on the motion of Mr Donnelly: That paragraph 5.34 be amended by omitting 'manufactured stone sites' and inserting instead 'manufactured stone workplaces'.

Mr Donnelly moved: That the following new paragraph and recommendation be inserted after paragraph 5.36:

'Given the serious impact of crystalline silica dust on workers, the committee supports the establishment of a register for all current and future workers engaged in the manufactured stone industry. This register should be established by the NSW Government as soon as possible.'

Recommendation X

That given the serious impact of crystalline silica dust on workers, the committee supports the establishment of a register for all current and future workers engaged in the manufactured stone industry. This register should be established by the NSW Government as soon as possible.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey and Mr Shoebridge.

Noes: Mr Fang, Mr Faraway, Mr Khan and Mr Roberts.

Question resolved in the negative.

Resolved, on the motion of Mr Mookhey: That the following new paragraph be inserted before paragraph 5.37:

'With the risks associated with exposure to crystalline silica dust, the committee believes that all those working in the manufactured stone industry should complete a recognised portable safety training certificate. This is a matter that should be reviewed closely by SafeWork NSW as a matter of priority'.

Mr Mookhey moved: That the following new paragraph and recommendation be inserted after Recommendation 9:

'Given the known dangers of exposure to crystalline silica dust in the manufactured stone industry, all worksites in the industry must have elected occupational health and safety representatives and committees comprising of a majority of workers.'

Recommendation X

That given the known dangers of exposure to crystalline silica dust in the manufactured stone industry, all worksites in the industry must have elected occupational health and safety representatives and committees comprising of a majority of workers.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey and Mr Shoebridge.

Noes: Mr Fang, Mr Faraway, Mr Khan and Mr Roberts.

Question resolved in the negative.

Mr Donnelly moved: That paragraph 5.37 and Recommendation 9 be amended by:

- a) inserting 'an appropriate level of' after 'that the NSW Government provide'
- b) inserting 'annual' before 'funding to SafeWork NSW'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Roberts and Mr Shoebridge.

Noes: Mr Fang, Mr Faraway and Mr Khan.

Question resolved in the affirmative.

Resolved, on the motion of Mr Shoebridge: That paragraph 5.72 be amended by omitting 'hopes' and inserting instead 'notes'.

Mr Donnelly moved: That paragraph 5.73 be omitted: 'The committee recognises that any self-regulatory proposal implemented by the industry is not the only answer to addressing the issue. It is clear that there

must also be stronger government regulation of the standards, among other initiatives we recommend and/or support in this report' and the following new paragraph be inserted instead:

'The committee does not believe that self-regulation is a satisfactory framework for maintaining and protecting the occupational health and safety of those working in the manufactured stone industry. It is clear to the committee that there is an immediate need for government sponsored legislation and regulation of occupational health and safety for workers in the manufactured stone industry.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Roberts and Mr Shoebridge.

Noes: Mr Fang, Mr Farraway and Mr Khan.

Question resolved in the affirmative.

Chapter 6

Resolved, on the motion of Mr Donnelly: That paragraph 6.12 be amended by omitting 'installers of manufactured stone products' and inserting instead 'suppliers, fabricators and installers of manufactured stone products'.

Resolved, on the motion of Mr Donnelly: That paragraph 6.30 be amended by omitting 'may help' and inserting instead 'will help'.

Resolved, on the motion of Mr Donnelly: That paragraph 6.30 and Recommendation 10 be amended by inserting 'in conjunction with SafeWork NSW' before 'co-ordinate a case finding study'.

Mr Farraway left the meeting.

Mr Mookhey moved: That:

- a) paragraph 6.73 be amended by inserting 'immediate' before 'establishment of a dust disease register'
- b) Recommendation 11 be amended by omitting 'ensure that the new Silicosis Health Register' and inserting instead 'immediately establishes the Silicosis Health Register and ensures that it'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Roberts and Mr Shoebridge.

Noes: Mr Fang and Mr Khan.

Question resolved in the affirmative.

Resolved, on the motion of Mr Donnelly:

- a) that paragraph 6.96 be amended by inserting 'being' after 'acknowledges the work'
- b) that paragraph 6.96 be amended by omitting 'likely' and inserting instead 'need to'
- c) Recommendation 12 be amended by inserting at the end: 'In doing so, SafeWork NSW should consult with suppliers, fabricators, installers and unions involved in the manufactured stone industry.'

Resolved, on the motion of Mr Donnelly: That paragraph 6.107 and Recommendation 13 be amended by inserting at the end 'In terms of sourcing additional funding for research projects, the NSW Government should commission icare to scope out possible funding models that would be based on a cost recovery basis from the industry.'

Resolved, on the motion of Mr Shoebridge: That:

- the draft report [as amended] be the report of the committee and that the committee present the report to the House;

- the transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- That the report be tabled on Tuesday, 24 March 2020.

Resolved, on the motion of Mr Mookhey: That the Chair request that a government response to the report be provided as early as possible, preferably by Friday, 29 May 2020.

7. Adjournment

The committee adjourned at 4.40 pm, *sine die*.

Tina Higgins
Clerk to the Committee

Appendix 4 Dissenting statements

From Mr David Shoebridge MLC, The Greens

This report is a good report and I support each and every one of the recommendations contained in it. It identifies a series of significant deficiencies in the way state and federal governments have been addressing the silicosis health crisis amongst the manufactured stone workforce.

However there is one aspect on which agreement could not be reached and that is the call for an urgent ban on the use of manufactured stone in NSW. On behalf of the Greens I sought to have the committee recommend a ban on the use of manufactured stone in NSW. Unfortunately this was not supported by any other member of the committee.

Manufactured stone is a relatively new product, first being distributed in the NSW construction sector in or about 2001. There are numerous credible alternatives for it in all aspects of construction. Consistent with the hierarchy of control measures that forms the core of work health safety responses in Australia the first response to an identifiable hazard like manufactured stone is, where possible, to remove it from the workplace.

There is no doubt that manufactured stone has certain attributes that make it attractive to use; it is consistent, it is relatively cheap and it provides a relatively low cost high gloss finish that is attractive to certain consumers. In its time asbestos also had certain attributes that made it attractive. It was low cost, highly fire resistant and easily cut and affixed. However as the full medical and human cost of its use became apparent asbestos was nevertheless eventually banned. This was after initial attempts by the industry to seek safer handling procedures and more restricted uses.

I firmly believe we should learn from this history and based on the evidence available to date make the call to ban the use of manufactured stone in NSW. Of course a federal ban would be preferable and I acknowledge that NSW cannot ban its importation or availability in NSW, however we can regulate construction and work health safety matters and under those heads of power a ban is entirely possible.

Every month and year we delay, more workers will be exposed to the risk of deadly silicosis. No shiny benchtop is worth that.

