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STANDING COMMITTEE ON LAW AND JUSTICE

2021 Review of the Dust Diseases Scheme

Report 80

June 2022



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Standing Committee on Law and Justice

2021 Review of the Dust Diseases Scheme

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2021 Review of the Dust Diseases Scheme

“June 2022”.

Chair: Hon. Chris Rath, MLC.



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Table of contents

	Terms of reference	vii
	Committee details	viii
	Chair’s foreword	ix
	Recommendations	xi
	Conduct of inquiry	xiii
Chapter 1	Background	1
	Overview of the Dust Diseases Scheme	1
	Management of the Dust Diseases Scheme	1
	Workplace health and safety legislation	2
	Previous reviews of the Dust Diseases Scheme	2
	The committee's 2017 and 2018 reviews	3
	The committee's 2019 review: silicosis in the manufactured stone industry	4
	Focus of this review	5
	Incidence of silica-related disease	5
	Developments nationally since the 2019 Review	7
	New South Wales	8
	Federal	8
	Other states	9
	Committee comment	11
Chapter 2	Work, health and safety regulatory measures	13
	Overview of 2019 review recommendations	13
	Ban on uncontrolled dry cutting	14
	Workplace exposure standard for silica	16
	Calls for a further reduction to the workplace exposure standard for silica	17
	Is the existing workplace exposure standard being effectively monitored and enforced?	18
	Education and awareness measures	21
	Responsibilities of manufacturers	24
	Product labels and safety data sheets	24
	Call for greater manufacturer responsibility – product stewardship	25
	Compliance monitoring and enforcement	26
	Is the monitoring regime sufficient?	28

	Are all worksites being reached?	28
	Beyond the manufactured stone industry	30
	Is the New South Wales approach sufficient given action taken in other jurisdictions?	31
	Calls to institute a licensing scheme for manufactured stone businesses	32
	Should manufactured stone be banned?	34
	Committee comment	36
Chapter 3	Medical screening, assessment and support	41
	Overview of 2019 review recommendations	41
	Silicosis made a notifiable diseases and establishment of a NSW Dust Diseases Register	42
	Silicosis made a notifiable disease and establishment of a NSW Dust Diseases Register	42
	Case finding study	43
	Health monitoring for workers exposed to silica dust	45
	Method of screening	46
	Has enough been done to identify silicosis cases in the manufactured stone industry?	49
	Access to screening	50
	Silicosis research	53
	Committee comment	56
Chapter 4	Compensation and support	59
	Overview of 2019 review recommendations	59
	Benefits under the scheme for silicosis victims	59
	Vocational education and training	60
	Compensation	62
	Other support services	64
	Broader issues relevant to the Dust Diseases Scheme	65
	Definition of 'dust diseases' under the Act	65
	Awareness of entitlements under the scheme	67
	Financial position of the scheme	67
	Impact of silicosis cases on the financial position of the scheme and recovery from manufacturers	69
	Remediation program	71
	Committee comment	72

Appendix 1	2019 Review of the Dust Diseases Scheme Recommendations	75
Appendix 2	Submissions	77
Appendix 3	Witnesses at hearings	79
Appendix 4	Minutes	81
Appendix 5	Dissenting statement	101

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:
 - (a) Workers' Compensation Scheme
 - (b) Workers' Compensation (Dust Diseases) Scheme
 - (c) Motor Accidents Scheme
 - (d) Motor Accidents (Lifetime Care and Support) Scheme.
2. 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.

The terms of reference were referred to the committee by the Legislative Council on 8 May 2019.¹

¹ *Minutes*, NSW Legislative Council, 8 May 2019, p 95.

Committee details

Committee members

Hon Chris Rath MLC*	Liberal Party	<i>Chair</i>
Hon Greg Donnelly MLC	Australian Labor Party	<i>Deputy Chair</i>
Ms Abigail Boyd MLC***	The Greens	
Hon Mark Buttigieg MLC*****	Australian Labor Party	
Hon Lou Amato MLC**	Liberal Party	
Hon Anthony D'Adam MLC	Australian Labor Party	
Hon Wes Fang MLC****	Liberal Party	
Hon Taylor Martin MLC	Liberal Party	
Hon Rod Roberts MLC	Pauline Hanson's One Nation Party	

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* The Hon Chris Rath MLC replaced the Hon Scott Farlow MLC as a substantive member of the committee from 29 March 2022 and was appointed Chair from that date.

** The Hon Lou Amato MLC replaced the Hon Trevor Khan MLC as a substantive member of the committee from 25 January 2022. The Hon Trevor Khan MLC was a substantive member of the committee to 6 January 2022.

*** Ms Abigail Boyd MLC replaced Mr David Shoebridge MLC as a substantive member of the committee from 22 April 2022. Mr David Shoebridge MLC was a substantive member of the committee to 11 April 2022.

**** The Hon Wes Fang MLC was Chair of the committee until 29 March 2022.

***** The Hon Mark Buttigieg MLC was a participating member from Tuesday 15 February 2022 for the duration of the inquiry.

Secretariat

Peta Leemen, Principal Council Officer

Tina Mrozowska, Administration Officer

Tina Higgins, Director

Chair's foreword

This, the committee's fourth review of the Dust Diseases Scheme, has again focused on silicosis. It follows on from the 2019 review, which focused particularly on silicosis in the manufactured stone industry. The committee ultimately made 14 recommendations in that review, aimed at ensuring workers were protected from silica exposure through improved health and safety measures, and effective health monitoring and supports through the Dust Diseases Scheme.

It is fair to say that some participants in this review were underwhelmed by the Government's response to the 2019 review's recommendations, and the emergence of silicosis in general. Despite these concerns, it is clear that progress has been made, including important measures such as the establishment of a New South Wales dust diseases register, reduction of the workplace exposure standard for silica and introduction of an explicit ban on uncontrolled dry cutting of manufactured stone.

Acknowledging that ideally we would like to see stronger, coordinated action at the national level on this issue, this review has considered areas where New South Wales could strengthen its response. One of our recommendations is for the NSW Government to introduce a licensing scheme, as Victoria has done, to ensure that manufactured stone businesses have in place appropriate controls for working with a potentially dangerous substance. We have also made further recommendations to strengthen the work health and safety framework around silica exposure, including the development and implementation of a compliance strategy by SafeWork NSW, with a more rigorous regime of random on-site inspections at sites where manufactured stone is being installed.

Unfortunately, the committee is still not convinced that we have the full picture of silicosis in New South Wales. We continue to question whether SafeWork NSW has oversight of all manufactured stone workers – both in factories and installation sites – and whether all workers, current and former, have or will be screened appropriately. In this respect, the committee believes that more needs to be done to ensure all current and former workers exposed to silica dust receive health monitoring using methods sensitive enough to detect silicosis. We have made recommendations to improve the availability and quality of health screening of workers, to ensure silicosis cases are identified as early as possible.

For workers who do develop silicosis or other silica related disease, it is imperative that the Dust Diseases Scheme provide adequate legal, financial, physical and mental support. We have recommended a review of the support currently offered to workers with silicosis through the scheme, with the intention of expanding the support and care provided to these workers.

In all, we have made 12 recommendations, and we urge the government to take timely action to implement all of them. It is vital that workers are protected from silicosis, and that we prevent the health, social and economic costs associated with this preventable disease. In this regard, we note our recommendation for the Minister for Small Business and Fair Trading to indicate the NSW Government's support for a ban on manufactured stone should the industry not demonstrate sufficient improvement by 2024, consistent with the National Dust Disease Taskforce's recommendation.

I thank my fellow committee members, many of whom have engaged on this issue over some years. I also thank all stakeholders who gave evidence to the committee, many over successive reviews. I

particularly want to thank the two former stonemasons who shared their personal experience of silicosis with the committee.



Hon Chris Rath MLC
Committee Chair

Recommendations

- Recommendation 1** **36**
 That the NSW Government actively work toward a health-based workplace exposure standard for respirable crystalline silica of 0.02mg/m³, including by advocating for this change at a national level and supporting research that would enable this standard to be effectively measured.
- Recommendation 2** **37**
 That the NSW Government, in consultation with key stakeholders, implement measures to enhance air quality monitoring and reporting in relation to respirable crystalline silica, to ensure that:
- there are clear and appropriate standards in place for air monitoring
 - air monitoring is carried out regularly in workplaces according to relevant standards
 - the results of air monitoring are recorded appropriately
 - the results of air monitoring are reported to SafeWork NSW when the workplace exposure standard is exceeded and immediate regulatory action is taken in response.
- Recommendation 3** **37**
 That the Minister for Small Business and Fair Trading advocate at the national level for a mandated, consistent format for product labels and safety data sheets for manufactured stone products.
- Recommendation 4** **38**
 That SafeWork NSW, across all industries where licensing requirements for silica exposure operate, consult with relevant unions and professional bodies to develop a package of new measures to increase levels of awareness, training and compliance with work, health and safety requirements.
- Recommendation 5** **38**
 That SafeWork NSW develop and implement a compliance strategy directed toward the elimination of dry cutting in the manufactured stone industry, incorporating a more rigorous regime of random on-site inspections at sites where manufactured stone is being installed.
- Recommendation 6** **39**
 That SafeWork NSW investigate the feasibility of implementing an organisational goal of increasing the number of Health and Safety Representatives elected in the manufactured stone industry.
- Recommendation 7** **39**
 That the NSW Government, as a matter of urgency, take necessary steps to establish a licensing scheme for businesses working with manufactured stone in New South Wales that:
- includes a publicly available database of licence holders
 - takes into consideration the feasibility of including provisions for silica control plans that require registration with the regulator of all workers operating within the scope of the control plan including any subcontractors.
- Recommendation 8** **40**
 That the Minister for Small Business and Fair Trading indicate the NSW Government's support for a ban on manufactured stone should the industry not demonstrate sufficient improvement by July 2024, in accordance with the National Dust Disease Taskforce's recommendation.

Recommendation 9

57

That the NSW Government review the approach taken to the medical screening and assessment of workers who are exposed to respirable crystalline silica, to ensure that:

- all workers, former, current and future, exposed to respirable crystalline silica in the manufactured stone industry have been screened using high resolution CT scanning sensitive enough to detect silicosis
- screening services are supportive, accessible and free to workers, and offer a streamlined pathway to treatment and compensation where this is applicable
- there are processes in place to identify and reach all workers exposed to respirable crystalline silica and to follow up on screening or treatment drop-out
- data is collected and reported publicly on the number of individual workers screened, the types of scans performed, and location of silica-related cases.

Recommendation 10

57

That the NSW Government review and improve health monitoring requirements for workers exposed to respirable crystalline silica, by:

- advocating for and supporting the development of national guidance to identify people at risk from respirable crystalline silica exposure and improve the quality, frequency and coverage of health screening assessments for current and former workers, and
- amending the *Work Health and Safety Regulation 2017* to provide certainty on the requirements, which could include amending Schedule 14 to stipulate that high resolution CT scan is the primary method of screening for workers exposed to respirable crystalline silica.

Recommendation 11

73

That the NSW Government conduct an independent review into the adequacy of the legal, financial, physical and mental support provided to workers diagnosed with silicosis, including return to work supports and customer centric case management models, with an intention of expanding the support and care provided to workers.

Recommendation 12

73

That the NSW Government, within this term of Parliament, amend the definition of a 'dust disease' in the *Workers Compensation (Dust Diseases) Act 1942*, in accordance with the outcomes of the Driscoll review.

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 8 May 2019.

The committee received 17 submissions and two supplementary submissions.

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

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

Chapter 1 Background

This chapter provides an overview of the Dust Diseases Scheme and relevant aspects of the work health and safety regulatory framework in New South Wales. It focuses on why the re-emergence of silicosis as an occupational dust disease has become a particular concern for the committee, leading to our 2019 review focused on silicosis in the manufactured stone industry and this follow up review. Finally, the chapter outlines data available on the incidence of silicosis in New South Wales, and developments in New South Wales and nationally to address the re-emergence of silicosis since the previous review.

Overview of the Dust Diseases Scheme

- 1.1** The Workers Compensation (Dust Diseases) Scheme (hereafter 'the Dust Diseases Scheme') is a no-fault scheme, established under the *Workers Compensation (Dust Diseases) Act 1942*, for New South Wales workers who have developed a dust disease from occupational exposure to hazardous dust. The scheme provides participants and their dependants with compensation benefits as well as access to medical, healthcare and related support services. The scheme covers 14 dust diseases listed in Schedule 1 to the *Workers Compensation (Dust Diseases) Act 1942*. Operating costs for the scheme are funded by an employer levy on workers compensation premiums.²

Management of the Dust Diseases Scheme

- 1.2** The Dust Diseases Scheme is administered by icare (Insurance and Care NSW), a public financial corporation governed by an independent board of directions that was established in 2015 to consolidate the state's insurance and care schemes. According to its submission, icare works with past and present workers with dust diseases and their families to provide access to information, personalised care and support. icare has a dedicated stream – Dust Diseases Care – which manages the operations of the scheme.
- 1.3** According to icare figures, the Dust Diseases Scheme is currently paying around \$120 million in entitlements to workers and dependants each year. There are around 1,300 workers currently in the scheme, with about 300 new cases each year, and 3,000 dependants provided with support.³
- 1.4** As part of the Dust Diseases Scheme, icare also funds research, information and education about dust diseases, and provides medical lung screening and health monitoring services to facilitate early detection of occupational hazards and dust exposure.⁴ icare's subsidised screening program conducts over 4,000 tests each year. It has also spent \$8.5 million on research and innovation over the past 5 years.⁵
- 1.5** The State Insurance and Regulatory Authority (SIRA), the state's independent insurance regulator, has a regulatory role in relation to the Dust Diseases Scheme, namely to determine

² Submission 16, icare, p 2.

³ Evidence, Mr Richard Harding, CEO and Managing Director, icare, 18 March 2022, p 37.

⁴ Submission 16, icare, p 16.

⁵ Evidence, Mr Harding, 18 March 2022, p 37.

the contributions payable by insurers to the Workers Compensation (Dust Diseases) Fund, and determine indexation of compensation payments.⁶

Workplace health and safety legislation

- 1.6** The work health and safety (WHS) regulatory framework is relevant in protecting the health, safety and welfare of employees, volunteers and other persons at workplaces. This includes the protection of workers from harmful exposure to silica dust.
- 1.7** SafeWork NSW, now situated within the Better Regulation division of the Department of Customer Service, is the state's work health and safety regulator responsible for enforcing WHS laws in New South Wales. The *Work Health and Safety Act 2011* (WHS Act) and *Work Health and Safety Regulation 2017* (WHS Regulation) provide the regulatory framework for managing risks to workers' health, including those posed by hazardous dusts.⁷
- 1.8** The New South Wales WHS Act and WHS Regulation are based on national model legislation, which has been adopted in all Australian states except Victoria. They are supported by codes of practice in relevant industries which provide guidance to businesses and workers on how to comply with WHS obligations. SafeWork NSW monitors and enforces compliance with the general protections in the Act and regulation, including specific protections for certain dusts such as silica and asbestos, and workplace exposure standards for hazardous chemicals.⁸ SafeWork NSW also works with Safe Work Australia on reforms to enhance the existing legislative framework in relation to dust diseases.⁹

Previous reviews of the Dust Diseases Scheme

- 1.9** The Standing Committee on Law and Justice conducts reviews of the Dust Diseases Scheme at least every two years, in accordance with section 27 of the *State Insurance and Care Governance Act 2015*. To date, the committee has conducted three reviews, in 2017, 2018 and 2019, in addition to an earlier review of the Dust Diseases Board conducted in 2014.¹⁰
- 1.10** In addition to highlighting issues about the operation and performance of the Dust Diseases Scheme, and their impact on workers accessing entitlements under the scheme, the last three reviews of the scheme have highlighted the emerging issue of silicosis in the manufactured stone industry.
- 1.11** As each review has heard, silicosis is a serious, irreversible lung disease that causes permanent disability and can be fatal. Silicosis – along with other silica related health conditions – is caused through inhalation of very small particles of silica dust that are breathed deep into the lungs and, with prolonged contact with lung tissue, cause inflammation and scarring. Each review has also heard that silicosis is a preventable lung disease. Silicosis is one of the oldest known occupational

⁶ Standing Committee on Law and Justice, NSW Legislative Council, *2018 Review of the Dust Diseases Scheme* (2019), p 3.

⁷ Submission 12, SafeWork NSW, p 1.

⁸ Submission 12, SafeWork NSW, p 1.

⁹ Submission 12, SafeWork NSW, p 1.

¹⁰ The committee's previous reports can be found at www.parliament.nsw.gov.au/lawandjustice.

diseases, and was prevalent in Australia in the 1940s to 1960s, particularly among construction and demolition workers, until safer work practices reduced the number of cases. In the mid-2010s, there was a resurgence of silicosis in Australia, with new cases emerging in particular among people working with manufactured stone.¹¹

- 1.12** All three prior reviews of the scheme have made recommendations to the NSW Government to take a far more proactive approach to addressing the work health and safety concerns in that industry that were leading to rising case numbers of silicosis and other silica-related diseases.¹²

The committee's 2017 and 2018 reviews

- 1.13** The first review of the Dust Diseases Scheme, tabled in 2017, noted the re-emergence of silicosis in New South Wales as 'deeply troubling' and called for establishment of a taskforce of industry, regulatory and workforce representatives to review safety standards in the manufactured stone industry and consider regulatory changes necessary to protect workers in that industry. It also highlighted a need for better data collection to understand the incidence of dust diseases, and called for establishment of a national dust diseases data collection system.¹³
- 1.14** In response, the NSW Government noted that it launched a 5 year hazardous chemicals strategy in 2017, the *2017-2022 Hazardous Chemicals and Materials Exposures Baseline and Reduction Strategy* (Hazardous Chemicals Strategy) to protect workers against exposure to crystalline silica, among other hazardous substances. As part of that strategy, a Manufactured Stone Industry Taskforce was convened by SafeWork NSW, including industry, medical professionals and unions and other government agencies. This Taskforce was operational from July 2018 to June 2019, and made a number of recommendations to better protect workers from silica dust exposure.¹⁴
- 1.15** Notwithstanding the work the NSW Government had commenced with its strategy and taskforce, unions gave compelling evidence in the committee's 2018 review that the re-emergence of silicosis constituted an emerging health crisis, given large numbers of Australian workers being exposed to crystalline silica. Medical practitioners and unions highlighted the particular risks associated with the manufactured stone industry, given the high silica content of the product. They pointed out this was a new, rapidly progressive silicosis that was occurring in young people working in the industry, who were frequently from non-English speaking backgrounds and working in small businesses less likely to have health and safety representatives in place. They suggested government action on the silicosis issue lacked the sense of urgency warranted by the seriousness of the issue.¹⁵

¹¹ Royal Australasian College of General Practitioners, *Explainer: What is silicosis*, <https://www1.racgp.org.au/newsgp/clinical/explainer-what-is-silicosis>, accessed 13 May 2022.

¹² For a summary of previous review recommendations, see Standing Committee on Law and Justice, NSW Legislative Council, *2019 Review of the Dust Diseases Scheme: Silicosis in the manufactured stone industry*, (2020), pp 5-6.

¹³ Standing Committee on Law and Justice, NSW Legislative Council, *First Review of the Dust Diseases Scheme* (2017), pp 17-26.

¹⁴ Standing Committee on Law and Justice, *2018 Review of the Dust Diseases Scheme* (2019), pp 13-14.

¹⁵ Standing Committee on Law and Justice, *2018 Review of the Dust Diseases Scheme* (2019), pp 14-15.

- 1.16** Given the seriousness of the concerns about re-emergence of silicosis as an occupational dust disease, especially among workers in the manufactured stone industry, the committee resolved to focus its 2019 review exclusively on the issue.

The committee's 2019 review: silicosis in the manufactured stone industry

- 1.17** In accordance with a specific resolution of the committee, the 2019 Review of the Dust Diseases Scheme closely examined the nature of the recent outbreak of silicosis in New South Wales, including how silicosis was being prevented and managed. The review considered the adequacy of the WHS regulatory framework in preventing the disease, as well as workers compensation arrangements for affected workers. Various issues were canvassed, including:

- screening and medical services and support for affected workers
- safety and control measures to minimise the risk of workers developing silicosis
- the adequacy of compliance monitoring and enforcement activity by the regulator
- measures that could be taken to improve understanding of and address the rise in silicosis in the manufactured stone industry.

- 1.18** The report made 14 recommendations (see Appendix 1) related to:

- the type of and accessibility of health screening provided to workers in the manufactured stone industry
- the support provided through the Dust Diseases Scheme to workers diagnosed with silicosis
- requirements for manufacturers to provide safety information about the manufactured stone products
- the workplace exposure standard for silica dust and requirements for employers to monitor and report results of air monitoring
- proactive screening of workers and capture of data to understand the extent of the silicosis issue
- ensuring safety awareness measures reach all sections of the manufactured stone industry
- providing additional funding for research related to prevention, management and treatment of silicosis.¹⁶

- 1.19** The government response to the 2019 review was tabled on 24 September 2020. Of the 14 recommendations, the government supported six (recommendations 1, 2, 9, 11, 12 and 13), supported in principle seven (recommendations 3, 4, 5, 6, 7, 10 and 14) and rejected one (recommendation 8). Overall, the response outlined a number of specific actions that the NSW Government had taken in relation to the committee's recommendations, including:

- icare providing free screening for all workers within the manufactured stone industry for 12 months

¹⁶ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), pp ix-x.

- the practice of dry cutting being explicitly banned
- silicosis becoming a notifiable medical condition under public health legislation
- evaluation of education, awareness and training programs to ensure safe practices are best promoted to those working within the manufactured stone industry.¹⁷

Focus of this review

- 1.20** Given the committee's ongoing concerns about silicosis and silica related diseases related to the use of manufactured stone, this review has again focused on the government's progress in relation to the prevention, detection and management of silicosis in the manufactured stone industry, including the government's response to the issues and recommendations arising out of our 2019 report.
- 1.21** While the major focus continues to be on the manufactured stone industry, participants in this review have highlighted silicosis as a disease of concern in other industries and occupations, including tunnelling, quarrying, cement, mining and construction.
- 1.22** Before this report turns to the substantive issues arising in the review, it is necessary to consider the extent of the issue, including the number of silicosis cases in New South Wales, and the developments that have taken place in other jurisdictions and nationally since our last report.

Incidence of silica-related disease

- 1.23** Exposure to silica dust can cause a range of health issues. A major focus has been on silicosis, which is specifically included in the Dust Diseases Scheme. Exposure to silica dust can also increase the risk of lung cancer and a range of other diseases. As discussed in our previous review and in Chapter 3 of this report, there have been significant questions raised over whether the data available to icare and SafeWork NSW provide a complete picture of silicosis and silica-related illness in New South Wales.
- 1.24** icare provided a breakdown of new cases of silicosis and silica related dust diseases known to icare for the financial years 2015-16 to 2021-22, as can be seen in Table 1.

Table 1 New cases of silicosis identified by icare 2015-16 to 2021-22

Financial year	Silicosis cases	Silica related cases ¹⁸	Financial year total
2015-16	7	2	9
2016-17	3	3	6
2017-18	5	4	9

¹⁷ Correspondence from the Hon Dominic Perrottet MP to the Clerk of the Parliaments providing government response to the 2019 Review of the Dust Diseases Scheme, 24 September 2020.

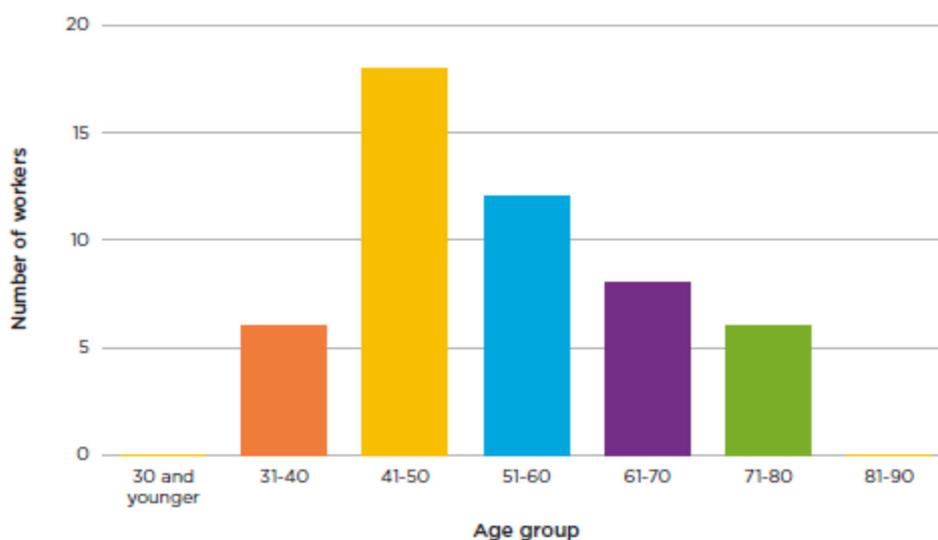
¹⁸ As the data provided by icare did not include a definition of 'silica-related cases', it was unclear whether this covers only conditions included under the Dust Diseases Scheme.

Financial year	Silicosis cases	Silica related cases ¹⁸	Financial year total
2018-19	34	6	40
2019-20	104	3	107
2020-2021	33	4	37
2021-2022 (to 30 September 2021)	5	4	9

Source: Submission 16, icare, p 8.

- 1.25** The number of new silica-related cases reported by icare in 2020-21 (37) was lower than that in the first annual report of the NSW dust disease register, which reported 57 new cases of silicosis cases in that period.¹⁹
- 1.26** The *NSW Dust Disease Register Annual Report 2020-2021* noted the rise in silicosis cases in NSW from an average of 6-9 cases per year between 2015-2018 to 40 in 2018-19 and 107 in 2019-2020. The report linked this rise in identified cases to a targeted workplace health and safety program and greater access to heavily subsidised health monitoring by icare.²⁰
- 1.27** The *NSW Dust Disease Register Annual Report* also highlighted the younger age of workers affected by silicosis, in comparison with other dust diseases. As can be seen in Figure 1, the majority of workers diagnosed with silicosis are between the ages of 40 and 60, meaning they are still of working age. A number of cases have even been diagnosed in workers under 40.

Figure 1 Age of workers diagnosed with silicosis 2020-21



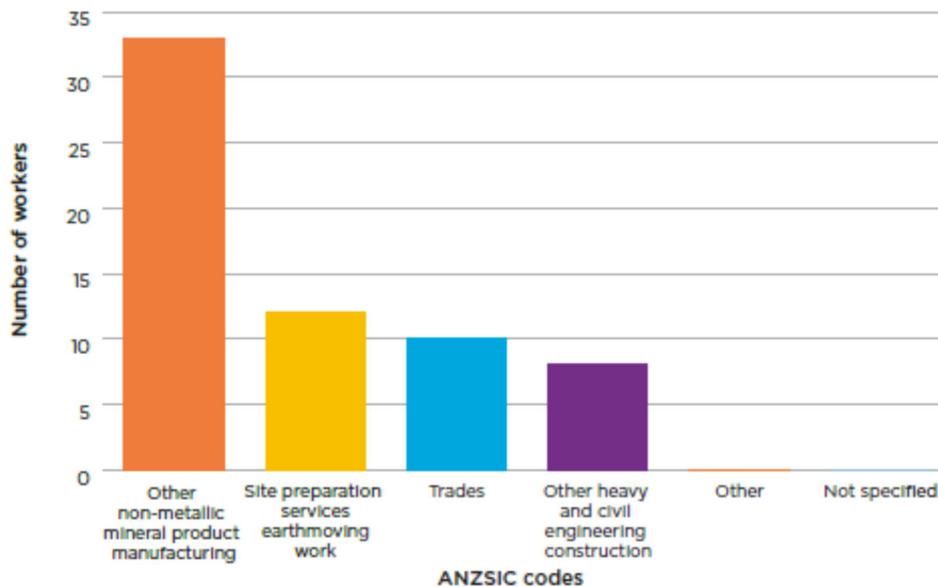
Source: *NSW Dust Diseases Register Annual Report 2020-21*

¹⁹ Submission 12, SafeWork NSW, Attachment 1, *NSW Dust Disease Register Annual Report 2020-2021*, p 6.

²⁰ Submission 12, SafeWork NSW, Attachment 1, *NSW Dust Disease Register Annual Report 2020-2021*, p 8; See also, Evidence, Mr Harding, 18 March 2022, p 37.

- 1.28 Analysis of silicosis cases by occupation shows that the majority of cases occur among stone processors, as can be seen in Figure 2. However, cases from other industries, including construction and trades, accounted for 42 per cent of cases diagnosed in 2020-21, suggesting that the issue is not confined to the manufactured stone industry.²¹
- 1.29 Indeed, workers diagnosed with silicosis came from a range of occupations and industries, including tunnelling, construction, brick manufacturing and concrete cutting, as well as working with manufactured and natural stone.²²
- 1.30 The matter of underreporting of the disease caused by exposure to respiratory crystalline silica was raised in a number of submissions and witnesses to this inquiry. This matter is discussed in more detail in Chapters 2 and 3 of the report.

Figure 2 Workers with silicosis by industry where last exposure is expected to have occurred



Source: *Dust Diseases Register Annual Report 2020-21*, p 13.

Developments nationally since the 2019 Review

- 1.31 As noted in the 2019 review, the re-emergence of silicosis is a national issue. While Australian states and territories are responsible for implementing, regulating and enforcing work health and safety laws in their jurisdictions, most states, including New South Wales, have enacted the model WHS laws, and use model regulation and codes of practice coordinated by Safe Work Australia.

²¹ Submission 12, SafeWork NSW, Attachment 1, *Dust Diseases Register Annual Report 2020-21*, pp 13-14. See also Evidence, Ms Kate Cole OAM, President, Australian Institute of Occupational Hygienists, 16 February 2022, p 23.

²² Submission 16, icare, p 8. See also evidence, Ms Cole, 16 February 2022, p 23.

1.32 In this context, it is worth noting that there continue to be calls from many stakeholders for a nationally consistent response to silicosis. That being said, there have also been calls for New South Wales to consider taking its own action on particular issues, such as on a licencing framework for the manufactured stone industry, largely in part because of the time being taken at the national level to act on certain matters.

1.33 This section now turns to some developments in New South Wales and other jurisdictions since the committee's 2019 report.

New South Wales

1.34 Since the committee's last report, the following developments have taken place:

- silicosis has become a notifiable condition under the *Public Health Act 2010*
- a NSW Dust Disease Register was established
- an explicit ban of uncontrolled dry cutting of manufactured stone containing crystalline silica was put in place
- a revised workplace exposure standard for respirable crystalline silica was implemented.

1.35 Many of these measures are outlined in detail in chapters 2 and 3 of this report, where evidence to this review had reflected on the adequacy of the government's response to the committee's previous recommendations.

Federal

1.36 At a federal level, there has also been some progress, including development of new code of practice, finalisation of the National Dust Diseases Taskforce's report, and a lowering of the workplace exposure standard for respirable crystalline silica.

1.37 In October 2021 Safe Work Australia released a *Model Code of Practice: Managing the risks of respirable crystalline silica from engineered stone in the workplace*.²³ New South Wales formally adopted the model code of practice on 25 February 2022.²⁴ SafeWork NSW described this as a significant development, which the code providing practical guidance on how to effectively manage risks associated with working with engineered stone, thereby minimising the incidence of silica-related diseases.²⁵

1.38 The National Dust Diseases Taskforce's final report was provided to the Commonwealth Minister for Health and Aged care in June 2021. The report argued that reform is urgently required, noting evidence that nearly one in four manufactured stone workers in the industry before 2018 were suffering from silicosis or other silica related dust diseases, and that existing

²³ Safe Work Australia, *Model Code of Practice: Managing the risks of respirable crystalline silica from engineered stone in the workplace*, October 2021, found at: <https://www.safeworkaustralia.gov.au/doc/model-code-practice-managing-risks-respirable-crystalline-silica-engineered-stone-workplace>.

²⁴ Evidence, Mr Anthony Williams, Executive Director, Compliance and Dispute Resolution, Better Regulation Division, NSW Department of Customer Service, 18 March 2022, p 18.

²⁵ Submission 12, SafeWork NSW, p 1.

WHS regulatory frameworks had not effectively protected workers working with engineered stone.²⁶ The report's seven final recommendations focused on:

- strengthening work health and safety measures to protect workers from exposure to respirable crystalline silica and its consequences
- developing national guidance to identify people at risk and improve the quality, frequency and coverage of health screening assessments for current and former workers
- prioritising activities that aim to prevent risk of exposure to crystalline silica
- better supporting workers affected by dust diseases and their families
- better supporting medical, health and other related professionals to improve diagnosis and care of workers affected by silicosis
- strengthening the evidence by taking a strategic national approach to research and development of a national dust diseases registry
- establishing a cross-jurisdictional governance mechanism to improve communication and information sharing, coordinate responses and report on progress.²⁷

1.39 While stopping short of advocating a ban on engineered stone, the National Dust Diseases Taskforce underlined very clearly the seriousness and urgency of the situation, stating that 'the majority of Taskforce members agree that if the measures we have recommended do not achieve the expected significant improvements in worker safety within the next three years, then immediate action must be taken to ban the product'.²⁸

1.40 In its submission to this review, SafeWork NSW noted that it has been involved in preliminary discussions on the implementation of the national taskforce recommendations, including development of a national dust disease register.²⁹

1.41 Another important development at the national level was an agreement by the majority of Work Health and Safety Ministers nationally to reduce the workplace exposure standard for respirable crystalline silica to a time-weighted average over eight hours of 0.05mg/m³. The agreement was made in October 2019, and the new standard came into force in New South Wales on 1 July 2020.³⁰

Other states

1.42 A number of other jurisdictions have already taken important steps to address issues contributing to the rise in silicosis cases and to identify and support workers with silicosis. This section outlines some key developments in Victoria, Queensland, and Western Australia.

²⁶ National Dust Diseases Taskforce, *Final Report to Minister for Health and Aged Care* (June 2021), p 7.

²⁷ National Dust Diseases Taskforce, *Final Report* (2021), pp 11-12.

²⁸ National Dust Diseases Taskforce, *Final Report* (2021), p 8.

²⁹ Submission 12, SafeWork NSW, p 5.

³⁰ Answers to pre-hearing questions, SafeWork NSW, received 8 February 2022, p 2.

Victoria

- 1.43** Victoria is the only Australian jurisdiction not to have implemented the model WHS laws.³¹ In recent years Victoria has taken its own steps to regulate crystalline silica. In 2019, Victoria imposed controls on cutting, grinding or abrasive polishing of engineered stone, including a ban on dry stone cutting. In 2021, Victoria introduced targeted regulations – the Occupational Health and Safety Amendment (Crystalline Silica) regulations 2021 (Vic), which:
- introduced Australia's first licensing regime for engineered stone, including increased manufacturer and supplier duties
 - made permanent Victoria's prohibition on uncontrolled dry cutting of engineered stone; and
 - added additional regulatory oversight of high risk crystalline silica work outside of engineered stone across all industries, including construction and earth resources.³²
- 1.44** Victoria's new regulations mean that, from 15 November 2022, all businesses working with engineered stone must be licensed, and suppliers cannot supply engineered stone to businesses who do not have a licence. To obtain a licence, a business must demonstrate they meet the necessary safety requirements.³³
- 1.45** It should be noted that several participants in this inquiry highlighted Victoria's licensing scheme as a model for New South Wales to follow, in the absence of a national scheme, as discussed in Chapter 2.³⁴
- 1.46** In addition, Victoria has established a silicosis health assessment program lauded by the National Dust Diseases Taskforce as 'best practice', for its person-centred and supportive approach.³⁵ As of 2021, WorkSafe Victoria had partnered with The Alfred Hospital to establish The Alfred Occupational Respiratory Clinic, where eligible workers from the stonemason industry can undergo a comprehensive health assessment and receive a diagnosis – as well as a management plan – the same day.³⁶

Queensland

- 1.47** Our previous review noted that Queensland had taken action to address the emergence of silicosis in advance of other Australian jurisdictions, with a ban on dry cutting, the establishment

³¹ Safe Work Australia website, <https://www.safeworkaustralia.gov.au/law-and-regulation/history-model-whs-laws>, accessed 11 May 2022.

³² Worksafe Victoria website, <https://www.worksafe.vic.gov.au/changes-protect-victorians-working-crystalline-silica>, accessed 28 March 2022; See also answers to pre-hearing questions, SIRA, received 8 February 2022, p 3.

³³ Correspondence from Mr John Merritt, Chair, WorkSafe Victoria to the Chair, received 28 March 2022.

³⁴ For example, Submission 6, Australian Institute of Occupational Hygienists, pp 4, 10; Submission 9 CFMEU Construction and General Division NSW Divisional Branch, pp 8-9, 20; Submission 15, Caesarstone, pp 5-6.

³⁵ National Dust Diseases Taskforce, *Final Report* (2021), pp 38-39.

³⁶ WorkSafe Victoria, media release, 16 September 2021: www.worksafe.vic.gov.au/2021-09/be-silica-smart-and-get-tested-new-clinic, accessed 18 May 2022.

of a notifiable dust disease register and the release of an industry specific code of practice for working with silica, along with progressive screening of stonemasons.³⁷

1.48 Queensland's response to occupational dust exposure was highlighted in the National Dust Diseases Taskforce for its speed and comprehensiveness.³⁸ Stakeholders to this inquiry highlighted various Queensland initiatives which New South Wales could learn from, including:

- Queensland's 2019 code of practice: *Managing respirable crystalline silica dust exposure in the stone benchtop industry*, which set enforceable minimum standards stone benchtop fabricators must meet³⁹
- enforcement activity by the Queensland Office of the Work Health and Safety Prosecutor, such as prosecuting a stone benchtop company for unsafe work practices⁴⁰
- a proactive and effective screening program by WorkSafe Queensland in conjunction with WorkCover, which screened 1,200 stone masons in the state, of which 25 per cent were diagnosed with silica-related disease⁴¹
- a more favourable compensation package for silicosis victims, relative to New South Wales.⁴²

Western Australia

1.49 In January 2021, Western Australia amended its *Occupational Health and Safety Regulation 1996* to require employers to provide low-dose high-resolution CT scan, rather than chest x-ray, to workers in the engineered stone industry as part of their health monitoring.⁴³ As discussed further in Chapter 3, stakeholders to this inquiry have called on New South Wales to amend its WHS regulation in a similar way.

Committee comment

1.50 The last three reviews of this committee have provided a particular focus on the re-emergence of silicosis as an occupational lung disease. While we acknowledge that workers are exposed to silica in other industries, like tunnelling, we remain deeply troubled by the exposure and cases arising in the manufactured stone industry.

1.51 As we continue to hear, silicosis is a serious, irreversible but entirely preventable disease. While we have heard concerns about silicosis in the manufactured stone industry since 2018, action at both the state and federal level has been undeniably slow. While we acknowledge that some important developments have taken place over the last three years or so, such as lowering of

³⁷ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), p 12.

³⁸ National Dust Diseases Taskforce, *Final Report* (2021), p 37.

³⁹ Evidence, Ms Cole, 16 February 2022, p 26; see also: https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0013/32413/managing-respirable-crystalline-silica-dust-exposure-in-the-stone-benchtop-industry-code-of-practice-2019.pdf.

⁴⁰ Submission 9, CFMEU Construction and General Division NSW Divisional Branch, p 7.

⁴¹ Evidence, Mr Jonathan Walsh, Principal, Maurice Blackburn Lawyers, 16 February 2022, p 8.

⁴² Evidence, Mr Walsh, 16 February 2022, p 5.

⁴³ Answers to pre-hearing questions, SIRA, received 8 February 2022, p 3.

the workplace exposure standard and an explicit ban on dry cutting, we cannot help but question whether the government's response to the issues we have raised in the past and our previous recommendations appreciate the seriousness of the issue at hand.

- 1.52** In fact, the committee notes that while many of its previous recommendations were supported in full or supported 'in principle', the actions outlined by government seemed to accord more with business as usual activities, rather than demonstrating any real significant change to meet the intention of our recommendations. As evidence to this review showed (and is covered in the remaining chapters), key stakeholders have been clearly dissatisfied with the government's response to our previous recommendations.
- 1.53** We call upon the government to consider not only the recommendations we outline in this report, but also whether it can and should do more to ensure workers are not being exposed to harmful levels of silica dust. In our view, there is clearly more work to be done in this area, and we hope it happens soon, so that other lives are not taken prematurely and the social, economic and human costs associated with silicosis are avoided.

Chapter 2 Work, health and safety regulatory measures

This chapter focuses on the adequacy of regulatory measures to prevent or minimise exposure to crystalline silica, mostly within the context of the manufactured stone industry. While outlining the progress made against recommendations in our previous review, this chapter also sets out the continuing serious concerns stakeholders expressed in relation to a number of matters, including the workplace exposure standard for silica dust and air monitoring regulations and the adequacy of compliance and enforcement measures. Towards the end, the chapter turns to calls for a licensing scheme for the manufactured stone industry, and ongoing calls for manufactured stone products to be banned, given serious concerns about the extent to which the industry is complying with work, health and safety measures to minimise the risk of silicosis and other silica related health conditions.

Overview of 2019 review recommendations

- 2.1** A number of stakeholders in both this and previous reviews have maintained that silicosis is preventable through effective workplace safety and control measures that prevent or minimise exposure to crystalline silica. The adequacy and effectiveness of the work health and safety regulatory framework in New South Wales is therefore a critical factor in preventing silicosis cases, and the associated human and economic costs.
- 2.2** As noted in Chapter 1, the relevant legislation in New South Wales is the *Work Health and Safety Act 2011* (WHS Act) and *Work Health and Safety Regulation 2017* (WHS Regulation). These laws are administered by SafeWork NSW and are based on national model legislation which has been, except for Victoria, adopted in all states and territories.
- 2.3** As we canvassed in the last report, there are a number of work, health and safety measures that can be taken in the workplace to reduce the risks of workers developing silicosis, such as:
- setting and enforcing an appropriate workplace exposure standard for silica dust
 - monitoring silica dust concentration in the air
 - monitoring worker health in workplaces where silica dust poses a risk
 - use of water to suppress dust (wet rather than dry cutting processes)
 - use of ventilation systems to extract dust
 - use of appropriate respiratory and other personal protective equipment
 - engagement of occupational hygienists and ventilation engineers in workplaces
 - communicating the risks of silica dust exposure through appropriate signage and product information sheets
 - training and awareness raising for businesses and workers in safe work practices around products and materials containing silica.⁴⁴

⁴⁴ Standing Committee on Law and Justice, NSW Legislative Council, *2019 Review of the Dust Diseases Scheme: Silicosis in the manufactured stone industry* (2020), pp 56-74. See also Submission 6, Australian

- 2.4** The committee's 2019 review made six recommendations aimed at strengthening the work health and safety regulatory framework related to silicosis. It included recommendations relating to:
- requirements for product labelling and data safety sheets for manufactured stone products (Recommendation 6)
 - the workplace exposure standard for silica dust (Recommendation 7)
 - registration of manufactured stone fabrication sites and requirements for air quality monitoring (Recommendation 8)
 - banning the practice of dry cutting of manufactured stone (Recommendation 9)
 - SafeWork NSW resourcing to monitor and enforce work health and safety standards at manufactured stone worksites (Recommendation 10)
 - SafeWork NSW education and awareness campaigns around safety in the manufactured stone industry (Recommendation 13).
- 2.5** Each of the following sections in this chapter will outline progress made in relation to these recommendations, along with stakeholder views on whether the progress has been adequate or not, and what further measures could be taken.
- 2.6** Relevant to these recommendations, and as noted in Chapter 1, SafeWork Australia released a national model Code of Practice in 2021, *Managing the risks of respirable crystalline silica from engineered stone in the workplace*. This code provides more specific guidance than the WHS Regulation on how to manage the risks associated with working with engineered stone and minimise the incidence of silica-related disease in the workplace.⁴⁵
- 2.7** In evidence, SafeWork NSW representatives informed the committee that New South Wales has now adopted the model code, which came into effect in New South Wales on 25 February 2022. It advised that SafeWork NSW will be rolling it out to industry through an education webinar, checklists and translated resources.⁴⁶

Ban on uncontrolled dry cutting

- 2.8** In 2019, the committee recommended that the NSW Government immediately introduce an explicit ban on the dry cutting of manufactured stone (this was recommendation 9).⁴⁷ This was based on evidence highlighting the benefits of 'wet' cutting to manage the risks of exposure to crystalline silica.

Institute of Occupational Hygienists, p 3; Submission 8, Mr Martin Jennings, pp 12-15; Submission 11, Australian Mine Ventilation Society, pp 2-6.

⁴⁵ Submission 12, SafeWork NSW, p 1.

⁴⁶ Evidence, Mr Anthony Williams, Executive Director, Compliance and Dispute Resolution, Better Regulation Division, NSW Department of Customer Service, SafeWork NSW, 18 March 2022, p 18.

⁴⁷ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), Recommendation 9, p 75.

- 2.9** In response to this recommendation the NSW Government advised that it had amended the WHS Regulation to ban the practice of dry cutting of manufactured stone, effective from 1 July 2020. According to the government response, it is now an offence to direct or allow a worker to cut, grind, drill or polish manufactured stone containing crystalline silica with a power tool unless the worker is using personal protective equipment and additional controls are in place.⁴⁸
- 2.10** SafeWork NSW noted that dry processing of manufactured stone was already prohibited under the general prohibitions in the WHS Act, although it stated that the new prohibition in the regulation makes it 'even plainer to workplaces and businesses that this practice is prohibited'. Further, SafeWork NSW noted that, in addition to issuing notices about this practice, it can also issue on-the-spot fines, with two on-the-spot fines for uncontrolled dry processing having been issued since the new regulation came into force.⁴⁹
- 2.11** Stakeholders to this inquiry broadly welcomed the ban on the dry cutting of manufactured stone, although some felt that the ban does not go far enough in preventing silica related diseases.
- 2.12** The Australian Institute of Occupational Hygienists submitted that dry-cutting of other quartz containing products across many other industries also results in exposures above the workplace exposure standard, and should therefore be equally banned in those industries.⁵⁰
- 2.13** Other stakeholders suggested there is room for improvement in terms of education, compliance monitoring and enforcement. Based on anecdotal evidence from its clients, Maurice Blackburn Lawyers submitted that dry cutting of manufactured stone continues, particularly on-site during installation of the product.⁵¹ The law firm, along with other stakeholders, suggested further education and awareness raising about the ban is necessary.⁵²
- 2.14** Some stakeholders also highlighted a need for greater compliance monitoring and enforcement, including occupational hygienists, medical practitioners and unions.⁵³ The Construction, Forestry, Maritime, Mining and Energy Union, NSW General Division (CFMEU) also expressed concerns about whether the ban on dry cutting was effective, when, by November 2021, only two on-the-spot fines had been issued by SafeWork NSW.⁵⁴
- 2.15** Evidence from former stone masons was mixed on whether dry cutting still occurs, and whether wet cutting adequately reduces the risk of silicosis. Former stone mason, Mr Andrew Klohk, told the committee that the factory where he had last worked had now stopped dry cutting in the factory, although he was aware that dry cutting was being undertaken at installation sites.⁵⁵

⁴⁸ Correspondence from the Hon Dominic Perrottet MP to the Clerk of the Parliaments providing government response to the 2019 Review of the Dust Diseases Scheme, 24 September 2020, p 5.

⁴⁹ Submission 12, SafeWork NSW, p 4.

⁵⁰ Submission 6, Australian Institute of Occupational Hygienists, p 11.

⁵¹ Submission 13, Maurice Blackburn Lawyers, p 7.

⁵² Submission 13, Maurice Blackburn Lawyers, p 7; Submission 4, Royal Australasian College of Physicians, pp 10-11; Submission 8, Mr Martin Jennings, pp 5-7.

⁵³ For example, Submission 6, Australian Institute of Occupational Hygienists; Submission 9, CFMEU Construction and General Division NSW Divisional Branch; Submission 8, Mr Martin Jennings, pp 5-7; Submission 4, Royal Australasian College of Physicians, pp 10-11.

⁵⁴ Submission 9, CFMEU Construction and General Division NSW Divisional Branch, p 7.

⁵⁵ Evidence, Mr Andrew Klohk, Former stone mason and silicosis sufferer, 18 March 2022, p 4.

Mr Kenneth Parker, also a former stonemason, said that he contracted silicosis despite being a wet polisher, and the damage to his lungs was possible because silica dust is still in the water vapour.⁵⁶ He stated: 'From what I have been told, it just means you are breathing in finer dust particles in the water. That is why it has done so much damage inside'.⁵⁷

- 2.16** Both former stone masons also pointed out the difficulty wet cutting causes to workers trying to wear glasses or facemasks, suggesting workers are less likely to use personal protective equipment while wet-cutting.⁵⁸

Workplace exposure standard for silica

- 2.17** In our previous review, there were also significant concerns about the adequacy of the workplace exposure standard for respirable crystalline silica and whether it was protecting workers from harmful levels of exposure to silica dust. At the time that review started, the workplace exposure standard for crystalline silica was 0.1mg/m³. Safe Work Australia was undertaking a review, which initially recommended a reduction to 0.02mg/m³, however by a majority decision of members, it recommended a reduction to an eight-hour time-weighted average of 0.05mg/m³ in December 2019.⁵⁹
- 2.18** Based on evidence from medical practitioners, and noting Safe Work Australia had initially recommended for the level to be set at 0.02mg/m³ on the basis of expert evidence, our committee expressed the view that the move to 0.05mg/m³ was inadequate.⁶⁰ The committee therefore recommended that the workplace exposure standard for crystalline silica be lowered to 0.02mg/m³ for non-mining industries as soon as possible (this was Recommendation 7).⁶¹
- 2.19** The government response supported this recommendation 'in principle', but noted limitations with the ability to measure or enforce a standard of 0.02mg/m³. The NSW Government advised that, in December 2019, a majority of Australian Work Health and Safety Ministers agreed to lower the exposure standard for silica to a time-weighted average over 8 hours of 0.05 mg/m³, which commenced in New South Wales on 1 July 2020.⁶² It also noted that a period of time should be allowed to consider the effectiveness of this new standard before any decision is made to reduce it further.⁶³
- 2.20** SafeWork NSW's submission to this review pointed out that the 0.05mg/m³ standard halved the previous permissible exposure standard of 0.1mg/m³. It said that, since the new standard took effect, SafeWork NSW has identified 37 worksites where control measures could not be

⁵⁶ Evidence, Mr Kenneth Parker, Former stone mason and silicosis sufferer, 18 March 2022, p 8.

⁵⁷ Evidence, Mr Parker, 18 March 2022, p 4.

⁵⁸ Evidence, Mr Klohk and Mr Parker, 18 March 2022, p 8.

⁵⁹ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), p 56.

⁶⁰ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), pp 65-66.

⁶¹ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), Recommendation 7, p 66.

⁶² Government response to the 2019 Review of the Dust Diseases Scheme, p 4; Answers to pre-hearing questions, SafeWork NSW, received 8 February 2022, p 2.

⁶³ Government response to the 2019 Review of the Dust Diseases Scheme p 4; Answers to pre-hearing questions, SafeWork NSW, received 8 February 2022, p 2.

confirmed as meeting the new exposure standard, and notices were issued as a result. Of these, 25 were in the manufactured stone industry, and 12 in construction.⁶⁴

Calls for a further reduction to the workplace exposure standard for silica

- 2.21** While recognising that the reduction of the workplace exposure standard to 0.05mg/m³ represents a step forward, there were still concerns that this is not a 'safe' standard medically speaking, but a workable compromise that can be more effectively measured and enforced.
- 2.22** Health experts continued to advocate for a further reduction to the workplace exposure standard for respirable crystalline silica to 0.02mg/m³ measured over an 8 hour period.⁶⁵ This review heard from leading physicians that:
- there is good evidence a health-based standard would be 0.02mg/m³⁶⁶
 - silicosis is a disease produced by cumulative exposure, with small doses over many years increasing the likelihood of diseases occurring⁶⁷
 - while you cannot get to zero risk, the cumulative risk to a worker of developing lung disease at exposures of at a level of 0.05mg/m³ over a lifetime is much higher than when the level is at 0.02mg/m³⁶⁸
 - an exposure standard of 0.025mg/m³ has been identified as reducing the risk of lung cancer to an acceptably low level.⁶⁹
- 2.23** Worker representatives welcomed the new standard of 0.05mg/m³ as an 'interim move', but some also continued to call for a lower standard, noting that 0.02mg/m³ is a health based standard representing international best practice.⁷⁰ Maurice Blackburn Lawyers encouraged this committee to advocate for the 0.02mg/m³ to be set as the national benchmark, and also to extend this beyond non-mining industries.⁷¹
- 2.24** Other stakeholders, while not disputing the merit of a lower workplace exposure standard from a health perspective, highlighted the challenge of accurately measuring exposures below 0.05mg/m³, and suggested that setting a lower standard would not automatically change work practices. Mr Michael Shearer, President, Australian Mine Ventilation Society, explained that in his experience from the mining and tunnel sector, lowering the exposure standard will not

⁶⁴ Submission 12, SafeWork NSW, p 4.

⁶⁵ For example, Submission 5, Cancer Council and Lung Foundation Australia, p 2.

⁶⁶ Evidence, Professor Tim Driscoll, University of Sydney, Cancer Council's Chair of the Occupational and Environmental Cancer Committee; 16 February 2022, p 42.

⁶⁷ Evidence, Associate Professor Deborah Yates, Respiratory Physician, Department of Thoracic Medicine at St Vincent's Hospital Sydney and Conjoint Professor at UNSW; Representative, Royal Australasian College of Physicians and Thoracic Society of Australia and New Zealand, 16 February 2022, p 40.

⁶⁸ Evidence, Professor Driscoll, 16 February 2022, pp 45-46.

⁶⁹ Submission 5, Cancer Council and Lung Foundation Australia, p 2.

⁷⁰ For example, Submission 13, Maurice Blackburn Lawyers, p 6; Evidence, Mr Ben Kruse, Legal/Industrial Officer, CFMEU Construction, 16 February 2022, p 10.

⁷¹ Submission 13, Maurice Blackburn Lawyers, p 6.

change much if the industry is not supported through training, codes of practice or guidelines, to raise awareness of industry obligations.⁷²

- 2.25** Some even suggested a lower standard could hinder compliance and enforcement activities, if the standard is not accurately measurable. For example, Ms Kate Cole, President, Australian Institute of Occupational Hygienists, suggested the workplace exposure standard needs to be set at a level that can be accurately measured and enforced.⁷³ The Australian Institute of Occupational Hygienists suggested that 'to enforce the law, regulators must be confident that the measurements are accurate and reliably consistent and robust enough to withstand the challenge and scrutiny in court', and suggested there may be too much uncertainty in measurements around the 0.02mg/m³ level.⁷⁴
- 2.26** Conversely, Professor Tim Driscoll, University of Sydney, and the Cancer Council and Lung Foundation, submitted that there is evidence the proposed exposure limit of 0.2mg/m³ can be measured, and suggested that research to enable new sampling and analytical techniques should be funded as a matter of priority if that is the impediment to lowering the workplace exposure standard.⁷⁵
- 2.27** SafeWork NSW advised that New South Wales is part of ongoing national discussions on whether a further reduction in the workplace exposure standard is possible.⁷⁶ It also reported that ongoing efforts are being made in Australia and worldwide to improve the ability to test for silica dust at lower levels, such as 0.02mg/m³.⁷⁷ It noted there is work by TestSafe lab showing that currently analysis to levels below 0.05mg/m³ presents technical and commercial challenges. However, it also noted that TestSafe researchers have expressed confidence that further research and development of new sampling and analysis technologies may offer increased sensitivity that allows further lowering of the exposure standard in future.⁷⁸

Is the existing workplace exposure standard being effectively monitored and enforced?

- 2.28** Regardless of what level the workplace exposure standard is set, a workplace exposure standard does not in itself protect workers unless actual controls are in place to ensure workers are not exposed to dangerous levels of dust. In both this and the previous review, some stakeholders have maintained that an effective regulatory and compliance regime to ensure workplaces monitor and report on silica dust concentrations will have a greater impact on worker safety than the exact level at which the workplace exposure standard is set.⁷⁹

⁷² Evidence, Mr Michael Shearer, President, Australian Mine Ventilation Society, pp 26-27.

⁷³ Evidence, Ms Kate Cole, President, Australian Institute of Occupational Hygienists, 16 February 2022, p 24; Submission 6, Australian Institute of Occupational Hygienists, p 8.

⁷⁴ Submission 6, Australian Institute of Occupational Hygienists, p 8.

⁷⁵ Submission 5, Cancer Council and Lung Foundation Australia, p 2; Evidence, Professor Driscoll, 16 February 2022, p 42.

⁷⁶ Answers to pre-hearing questions, SafeWork NSW, received 8 February 2022, p 2.

⁷⁷ Evidence, Mr Williams, 18 March 2022, p 18.

⁷⁸ Answers to pre-hearing questions, SafeWork NSW, received 8 February 2022, p 3.

⁷⁹ Evidence, Ms Cole, 16 February 2022, p 24; Evidence, Dr Graeme Edwards, Senior Consulting Physician, Occupational and Environmental Medicine, Representative Royal Australasian College of Physicians, 16 February 2022, p 40.

- 2.29** One vital control is regular monitoring that measures the concentration of dust in the air. The committee has been concerned that the obligations on employers to regularly monitor the air for excessive silica dust levels were not clear enough, and that infrequent SafeWork NSW inspection visits were insufficient to ensure businesses were carrying out air monitoring as required. In the 2019 review, this committee recommended that the NSW Government require all manufactured stone fabrication sites and employers to register with SafeWork NSW, and to conduct regular air monitoring and provide the results of this monitoring to SafeWork NSW (this was Recommendation 8).
- 2.30** The NSW Government responded that it did not support this recommendation, as SafeWork NSW was aware of, and had visited, all manufactured stone fabrication sites in New South Wales. It indicated support for Safe Work Australia's development of a model *Code of Practice* for the manufactured stone industry, which would provide guidance on the health and safety duties at manufactured stone sites, including existing obligations to conduct air monitoring. The NSW Government also noted that SafeWork NSW would continue, under its existing strategy, to conduct educational, compliance and enforcement activities to ensure 'that [employers] at manufactured stone fabrication sites are fulfilling their work health and safety duties, including air monitoring where appropriate'.⁸⁰
- 2.31** SafeWork NSW advised the committee that air monitoring is covered under clauses 49-50 of the WHS Regulation, and that further specific guidance for the engineered stone industry is found in the new *Code of Practice*, which took effect in New South Wales on 25 February 2022. SafeWork NSW stated that air monitoring reports must be provided to a SafeWork Inspector on request, and to a registered medical practitioner carrying out or supervising health monitoring.⁸¹

Compliance with air monitoring requirements

- 2.32** Clause 49 of the WHS Regulation provides that an employer must ensure no person at a workplace is exposed to a substance in an airborne concentration that exceeds the standard. Compliance monitoring conducted by SafeWork NSW showed 37 businesses, including 25 in the manufactured stone industry were unable to demonstrate compliance with the new workplace exposure standard for silica.⁸²
- 2.33** Stakeholders, in both this review and the 2019 review, raised concerns that the manufactured stone industry is 'notorious' for non-compliance with WHS regulations, including obligations to monitor for silica dust exposure.⁸³ Mr Ben Kruse, Legal/Industrial Officer, CFMEU, calculated from SafeWork data that 16 per cent of businesses were found to be non-compliant with the new standard, in what he described as 'an extraordinary level of non-compliance'.⁸⁴ The Cancer Council and Lung Foundation submitted that the failure of some businesses to even meet the 0.05mg/m³ standard shows a need for greater levels of enforcement.⁸⁵

⁸⁰ Government response to the 2019 Review of the Dust Diseases Scheme, 24 September 2020, p 4.

⁸¹ Answers to supplementary questions, SafeWork NSW, received 27 April 2022, pp 5-6.

⁸² Submission 12, SafeWork NSW, p 4.

⁸³ For example, evidence, Associate Professor Yates, p 39.

⁸⁴ Evidence, Mr Kruse, 16 February 2022, p 10.

⁸⁵ Submission 5, Cancer Council and Lung Foundation Australia, p 3.

- 2.34** As discussed below, unions also questioned the adequacy of SafeWork NSW's inspection program to monitor whether the workplace exposure standard is adhered to. One issue is that, anecdotally at least, poor safety practices continue at installation, as opposed to fabrication sites, which several witnesses suggested are being overlooked by SafeWork's compliance monitoring program.⁸⁶ This is considered further from paragraph 2.67 below.
- 2.35** Clause 50 of the WHS Regulation states that it is the duty of employers to carry out air monitoring if it is necessary to determine whether there is a risk to health, to record and keep results of air monitoring for 30 years, and make air monitoring results readily accessible to the persons at the workplace exposed.
- 2.36** Ms Kate Cole, President, Australian Institute of Occupational Hygienists, noted that other states have more prescriptive requirements around air monitoring than are in place in New South Wales. She suggested it would be useful to have similar standards, including stipulations of how frequently air monitoring should be done, by whom, and the methods used, so as to ensure that it is done by certified occupational hygienists according to appropriate standardised methods.⁸⁷ The Australian Institute of Occupational Hygienists also called for a code of practice to address the competencies of those who undertake air monitoring for respirable crystalline silica, along with the process and interpretation of air monitoring and testing efficacy of on-site dust control mechanisms.⁸⁸
- 2.37** Ms Cole suggested that stronger requirements to monitor air, as well as to report and act on the results of air monitoring, would help improve actual compliance with the workplace exposure standard and reduce silicosis cases.⁸⁹ She drew a comparison with asbestos reporting, for which there is a requirement to report to SafeWork NSW when air monitoring finds concentrations exceeding the standard. Currently, even when an occupational hygienist conducts air monitoring for silica and finds a result above the workplace exposure standard, Ms Cole note that they are not required to report to anyone except the employer.⁹⁰
- 2.38** Mr Martin Jennings, Certified Occupational Hygienist, similarly called for more data to be collected centrally on the results of air monitoring, to enable better tracking of the silicosis outbreak, by enabling assessment of where workers are being exposed, as opposed to the dust disease register, which he noted will only pick up cases once diagnosed.⁹¹
- 2.39** The lack of transparency over whether employers are carrying out their duty to monitor air, and where unsafe levels of exposure have occurred, is what led this committee in 2019 to recommend that manufactured stone businesses be required to register and report results of air monitoring with SafeWork NSW (refer to recommendation 8).

⁸⁶ For example, evidence, Mr Kruse, 16 February 2022, p 9; Evidence, Professor Driscoll, 16 February 2022, p 42

⁸⁷ Evidence, Ms Cole, 16 February 2022, p 26; see also Submission 6, Australian Institute of Occupational Hygienists, p 8.

⁸⁸ Submission 6, Australian Institute of Occupational Hygienists, p 4.

⁸⁹ Evidence, Ms Cole, 16 February 2022, pp 24-28.

⁹⁰ Evidence, Ms Cole, 16 February 2022, p 25.

⁹¹ Submission 8, Mr Martin Jennings, p 8.

Air monitoring in other industries

- 2.40** Broadening the focus from the manufactured stone industry, the Australian Workers' Union called for greater focus on ensuring that there is adequate monitoring of air quality in tunnels, in particular. The Union reported that its delegates and health and safety representatives have regularly found examples of poor air quality in tunnels.⁹²
- 2.41** Highlighting a power imbalance between workers and industry, the Australian Workers' Union called for health and safety representatives to be given the same rights as SafeWork inspectors in addressing silica dust exposure in the workplace, including the power to prosecute employers directly for non-compliance with safety benchmarks such as the workplace exposure standards. According to the Australian Workers' Union, this would assist the regulator, who is often resource constrained and unable to attend most sites to carry out audits to enforce compliance with WHS laws.⁹³

Improved technology for air monitoring

- 2.42** The committee heard there are some important technological developments that could potentially improve real-time monitoring of air quality, enabling issues causing exposures above the workplace exposure standard to be addressed. SafeWork NSW officials advised the committee that the Centre for Work Health and Safety has engaged Trolex Nome Australia to develop a crystalline silica sensor that can provide real-time feedback to workers at risk of exposure, to a standard of 0.05mg/m³. They said a device is planned to be commercially available in June 2022, and a wearable device anticipated to be market-ready by June 2023.⁹⁴
- 2.43** Stakeholders pointed out the benefits that a cheap, wearable device to monitor individual exposure in real time would bring.⁹⁵ Mr Martin Jennings, Occupational Hygienist, noted that a real-time silica dust monitor would not only allow monitoring of intense short term exposure, but also enable employers to rapidly assess the effectiveness of controls and use the monitor as a training tool.⁹⁶

Education and awareness measures

- 2.44** The committee's 2019 review noted that raising awareness in the industry about the risks of working with manufactured stone and necessary safety and control measures is key to protecting worker safety. Stakeholders to that review acknowledged that SafeWork NSW had conducted some campaigns as part of its Hazardous Chemicals Strategy, but raised concerns that the messages were not reaching or changing behavior of all parts of the industry, particularly small businesses and independent contractors working in the installation of manufactured stone. The committee ultimately recommended that SafeWork NSW, when reviewing its education and awareness campaigns, specifically consider how best to promote safe practices to independent

⁹² Submission 2, Australian Workers' Union, pp 11-12.

⁹³ Submission 2, Australian Workers' Union, pp 11-12.

⁹⁴ Evidence, Mr Williams, 18 March 2022, p 19.

⁹⁵ Evidence, Ms Natasha Flores, Industrial Officer, Work Health and Safety and Workers Compensation, Unions NSW, 16 February 2022, p 22; Submission 6, Australian Institute of Occupational Hygienists, p 10.

⁹⁶ Submission 8, Mr Martin Jennings, p 14.

contractors and installers in the manufactured stone industry, and that, in so doing, SafeWork NSW should consult with suppliers, fabricators, installers and unions involved in the manufactured stone industry (see Recommendation 13).⁹⁷

2.45 The NSW Government supported this recommendation, noting it 'recognises and supports the promotion of safe practices for workers in the manufactured stone industry, including independent contractors and installers.' It further noted that SafeWork NSW conducts pre- and post-evaluations for all awareness campaigns. With regard to reaching installers, the NSW Government stated that 'While the majority of fabricators also perform installation work and are already caught by SafeWork NSW reviews, SafeWork NSW will specifically include independent contractors and installers in the manufactured stone industry in future evaluations'.⁹⁸

2.46 In its submission to this review, Safework NSW advised that it has undertaken a range of initiatives to educate businesses and workers on how to work safely with silica-containing products, including:

- video safety alerts
- delivery of a silica symposium
- development of safety resources in languages other than English
- provision of a safety rebate specific to the manufactured stone industry for silica safety equipment
- support for a national campaign seeking to educate businesses on the risk to workers of occupational lung disease
- reviewing draft national Units of Competency for working with materials containing silica
- engaging with the engineered stone industry on the new model Code of Practice.⁹⁹

2.47 Despite these activities, several stakeholders still suggested there are significant improvements required in terms of education and training. For example, Ms Natasha Flores, Industrial Officer, Work Health and Safety and Workers Compensation, Unions NSW, noted a large proportion of workers from non-English speaking backgrounds who still may not understand the dangers in working with manufactured stone products.¹⁰⁰ Mr Martin Jennings highlighted a lack of awareness about specific dangers of engineered stone in the industry, coupled with other factors leading to cases of silicosis.¹⁰¹

2.48 The Royal Australasian College of Physicians questioned whether SafeWork's education campaign is reaching the target audience of independent contractors and installers, noting that

⁹⁷ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), pp 110-113, Recommendation 13, p 113.

⁹⁸ Government response to the 2019 Review of the Dust Diseases Scheme, 24 September 2020, p 7.

⁹⁹ Submission 12, SafeWork NSW, pp 2-3.

¹⁰⁰ Evidence, Ms Flores, 16 February 2022, p 18.

¹⁰¹ Submission 8, Mr Martin Jennings, p 4.

they can be very difficult to identify, and there is not information publicly available to help identify what measures SafeWork has in place to reach these audiences.¹⁰²

- 2.49** The Royal Australasian College of Physicians stressed the importance of every worker and business having access to appropriate educational resources and advice including online information, training courses, web based training and expert advice where appropriate. It suggested that one of the benefits of a licensing scheme (discussed below from paragraph 2.94) would be to facilitate better education and training, by ensuring all employees in businesses using manufactured stone would be appropriately trained in its safe use.¹⁰³
- 2.50** The Construction, Forestry, Maritime, Mining and Energy Union, Construction and General Division, NSW Divisional Branch (CFMEU) argued for a greater focus on training within the sector to raise awareness of risk from silica dust. The CFMEU noted that section 19(3)(f) of the WHS Act places a general duty on businesses to provide training, instruction and supervision to protect persons from risks to their health and safety arising from their work, but this is 'buried amongst a range of other general duties in section 19 of the Act'. The CFMEU argued that there is a silicosis 'crisis' requiring specific training to be mandated for all workers exposed to silica dust.¹⁰⁴
- 2.51** The CFMEU also noted that the recent Victorian regulation requires that any employee likely to be exposed to high risk crystalline silica is given information, instruction and training in the health risks, proper control measures and how the control measures are to be implemented.¹⁰⁵ It suggested similar regulations are needed in New South Wales, with compulsory, nationally accredited training to be provided by businesses.¹⁰⁶
- 2.52** Union representatives expressed some concerns that SafeWork NSW has not engaged with unions in the education effort, particularly when it comes to reaching out to workers from non-English speaking backgrounds. Mr Ben Kruse, Legal/Policy Officer, CFMEU, said that SafeWork NSW had not consulted with the union for several years, despite it having high levels of engagement with workers in the industry, and having health and safety representatives who speak community languages.¹⁰⁷ Maurice Blackburn Lawyers also highlighted the need to engage with unions at an industry-wide level, although it also noted that much of the work is 'cottage industry' in nature meaning direct union engagement can be thin.¹⁰⁸
- 2.53** Mr David Cullen, General Manager, Caesarstone Asia Pacific, a supplier of manufactured stone products, pointed to the work manufacturers have done to educate the industry. He said that Caesarstone has appointed a full-time environmental health and safety person to work closely with industry, and in 2021 launched an online training program, 'Master of Stone', aimed at

¹⁰² Submission 4, Royal Australasian College of Physicians, p 13.

¹⁰³ Submission 4, Royal Australasian College of Physicians, p 3.

¹⁰⁴ Submission 9, CFMEU Construction and General Division NSW Divisional Branch, p 12.

¹⁰⁵ Submission 9, CFMEU Construction and General Division NSW Divisional Branch, p 12.

¹⁰⁶ Submission 9, CFMEU Construction and General Division NSW Divisional Branch, p 12.

¹⁰⁷ Evidence, Mr Kruse, 16 February 2022, p 14.

¹⁰⁸ Submission 13, Maurice Blackburn Lawyers, p 8.

employees and fabrication businesses and a safety program including a good practice guide for fabricators.¹⁰⁹

Responsibilities of manufacturers

2.54 Another concern that arose in our previous review related to whether manufacturers and suppliers were providing adequate information about the hazards of working with manufactured stone, particularly in the form of product labels and safety data sheets. In this review, some stakeholders have called for manufactures to take more responsibility for the risks associated with their products.

Product labels and safety data sheets

2.55 In our previous reports, the committee noted that while some manufacturers were providing warnings and data sheets, there was not a standardised, easily recognisable format, and many stakeholders were concerned they were inadequate to inform workers on the frontline of the risks and proper controls for handling manufactured stone.¹¹⁰

2.56 As a result, our committee recommended that the NSW Government introduce a mandatory requirement for manufacturers to affix standard warning labels, and provide safety data sheets in a comprehensive range of languages with all manufactured stone products (this was recommendation 6).¹¹¹

2.57 The NSW Government response, while accepting this recommendation 'in principle', referred to Safe Work Australia's development of a national model *Code of Practice*, and suggested Safe Work Australia should consider whether the *Code of Practice* should include requirements about warning labels and safety data sheets, or whether this would be better placed in the model WHS Regulation.¹¹²

2.58 The now-released *Code of Practice* states that designers, manufacturers, importers and suppliers must give adequate information to users about safety risks and appropriate controls for handling manufactured stone, and notes that this information 'can' be provided in the form of a label, product information sheet or safety data sheet. However, it explicitly stops short of making it obligatory to provide this information in the form of a safety data sheet, noting 'it is considered good practice to make them available', and: 'If requested, designers, manufacturers, importers and suppliers must, so far as is reasonably practicable, give relevant information to users, and provide any amendments or updates to this information'.¹¹³

¹⁰⁹ Evidence, Mr David Cullen, Managing Director, Caesarstone Asia Pacific, Representative, Australian Engineered Stone Advisory Group, 16 February 2022, p 50.

¹¹⁰ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), pp 51-55.

¹¹¹ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), Recommendation 6, p 55.

¹¹² Government response to the 2019 Review of the Dust Diseases Scheme, 24 September 2020, p 4.

¹¹³ Safe Work Australia, Model Code of Practice, *Managing the risks of respirable crystalline silica from engineered stone in the workplace*, pp 17-18.

- 2.59** Several stakeholders to this inquiry questioned the adequacy of safety data provided by suppliers, and whether workers would take sufficient notice of the information and warnings that are supplied.
- 2.60** The Australian Institute of Occupational Hygienists called for more comprehensive and standardised safety data requirements to be placed on stone manufacturers and suppliers. It noted research by its members showing significant variability in crystalline silica content of manufactured stone relative to what is reported on safety data sheets, and that there have been potentially toxic mineral constituents present but not reported in the safety data sheets. It suggested there should be a requirement to include information in safety data sheets about the potential for working with the stone to generate carcinogenic dusts. It noted the importance of providing this information in a range of languages, to be accessible to workers from non-English speaking backgrounds.¹¹⁴
- 2.61** Mr Martin Jennings, Certified Occupational Hygienist, submitted that, while information provided by stone manufacturers and suppliers has improved in quality in the latter part of the last decade, safety data sheets are still far from being a uniform, acceptable standard, and many do not provide fabricators with the information required to handle the product safely. He listed a number of faults, including:
- not providing information on the serious, potentially fatal nature of accelerated silicosis
 - not providing information on Australian legislation or standards
 - not providing adequate information on engineering controls to ensure levels of dust are kept below the exposure standard
 - recommending respiratory protection that was inadequate for the purpose, and
 - not advising of the necessity of exposed workers having regular health surveillance.¹¹⁵

Call for greater manufacturer responsibility – product stewardship

- 2.62** A number of stakeholders suggested manufacturers should be taking greater responsibility for the health risks associated with the product.
- 2.63** In both this and the last review, several witnesses noted that stone manufacturers have known about silicosis risks internationally well before silicosis cases started to arise in Australia. Mr Martin Jennings highlighted cases in Spain from 2010-11 where stone manufacturers were prosecuted for failing to provide adequate information to fabricators.¹¹⁶
- 2.64** Mr Jennings advocated for the establishment of a product stewardship scheme, to give manufacturers and suppliers a greater responsibility over the life of their product, which would include a duty to provide information about the product that enables users to handle it appropriately.¹¹⁷

¹¹⁴ Submission 6, Australian Institute of Occupational Hygienists, p 7.

¹¹⁵ Submission 8, Mr Martin Jennings, p 16.

¹¹⁶ Submission 8, Mr Martin Jennings, p 18 and Supplementary Submission 8a, Mr Martin Jennings.

¹¹⁷ Submission 8, Mr Martin Jennings, pp 20-21.

- 2.65** Manufacturers giving evidence to this inquiry highlighted measures they have undertaken in Australia to promote safe fabrication practices. Caesarstone, for example, noted a number of initiatives it has taken to make information on safe handling available to fabricators. It also noted the role of the Australian Engineered Stone Advisory Group, comprised of key suppliers of engineered stone products, which was established to respond to the occupational risks of silicosis for stonemasons who fabricate engineered stone without appropriate safety measures in place.¹¹⁸
- 2.66** Caesarstone and Smartstone, a distributor of manufactured stone, consistently expressed the view that manufactured stone is safe if handled appropriately, and what is needed is a nationally consistent regulatory framework, which could include a licensing scheme.¹¹⁹

Compliance monitoring and enforcement

- 2.67** An ongoing concern for stakeholders is that there is insufficient compliance and enforcement of existing regulations, with unsafe work practices continuing, leading to preventable silica related illnesses and deaths. As the Australian Mine Ventilation Society noted, compliance monitoring and enforcement of standards by the regulator is a critical part of the WHS framework.¹²⁰
- 2.68** In 2019 the committee heard concerning evidence about poor levels of compliance with existing control measures in the manufactured stone industry, and the health and safety standards being practiced at manufactured stone workplaces, both at factories and at installation. While acknowledging recent work by SafeWork NSW to lift compliance rates in the industry, our committee recommended that additional funding be provided to SafeWork NSW to strengthen its regulatory enforcement and monitoring of health and safety standards within the manufactured stone industry (this was Recommendation 10).¹²¹
- 2.69** The NSW Government supported this recommendation 'in principle', stating that SafeWork NSW uses its existing resources to regulate the manufactured stone industry and enforce New South Wales' health and safety laws, and that SafeWork NSW's capacity to undertake its role as a work health and safety regulator 'is regularly reviewed and enhanced as appropriate'.¹²²
- 2.70** In this review, SafeWork NSW again noted its ongoing workplace visit program focused on crystalline silica, which commenced in 2018 and is due to run until 2022. SafeWork NSW provided the following details for the number of visits and improvement notices undertaken as part of the program:

¹¹⁸ Submission 15, Caesarstone, pp 1-2.

¹¹⁹ Submission 15 Caesarstone, pp 3-6; Submission 17, Smartstone, pp 2-4.

¹²⁰ For example, Submission 11, Australian Mine Ventilation Society, p 6.

¹²¹ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), Recommendation 10, p 88.

¹²² Government response to the 2019 Review of the Dust Diseases Scheme, 24 September 2020, p 5.

Table 2 SafeWork NSW visits to manufactured stone (fabrication) sites 2018-2021

Round One (completed by 30 June 2019)	<ul style="list-style-type: none"> - 246 sites - 639 visits - 656 improvement notices issued (80% relating to silica) - 43 prohibition notices issued
Round Two (Underway – figures to 31 December 2021)	<ul style="list-style-type: none"> - 255 sites - 318 visits - 274 silica-related improvement notices issued - 7 prohibition notices issued - 2 on-the-spot fines issued for uncontrolled dry cutting - 24 businesses that could not be confirmed as meeting the new workplace exposure standard of 0.05mg/m³.

Source: Submission 12, SafeWork NSW, p 3; Evidence, 18 March 2022, pp 19-20.

- 2.71** In total, SafeWork NSW advised it has conducted 6,319 business interactions under the Hazardous Chemicals Strategy, including 1,530 silica-related workplace visits. Of these, 874 related to manufactured stone, 566 to construction and 90 to other silica-exposed industries.¹²³
- 2.72** SafeWork NSW advised that, to 30 September 2021, it had issued 1024 improvement notices and 41 prohibition notices for uncontrolled exposure to silica dust, including 36 prohibition notices for controlled dry processing (25 of these in the manufactured stone industry).¹²⁴
- 2.73** SafeWork NSW also reported that it had so far issued 2 on-the-spot fines for dry cutting of manufactured stone, both at fabrication sites, with the fines being \$3,600.¹²⁵
- 2.74** In evidence, SafeWork NSW officials told the committee that there had been a significant improvement in industry compliance between rounds one and two of the visit program, as evidenced by fewer notices being issued, and the notices being for more minor infringements.¹²⁶ Ms Meagan McCool, Director, Construction Services Group Metropolitan, SafeWork NSW, stated: 'The industry has responded. The industry is improving'.¹²⁷ Mr Anthony Williams, Executive Director, Compliance and Dispute Resolution, NSW Department of Customer

¹²³ Submission 12, SafeWork NSW, p 4.

¹²⁴ Submission 12, SafeWork NSW, p 4.

¹²⁵ Evidence, Ms Meagan McCool, Director, Construction Services Group Metropolitan, SafeWork NSW, Department of Customer Service, 18 March 2022, p 22; Answers to questions on notice, SafeWork NSW, received 27 April 2022, p 1.

¹²⁶ Evidence, Ms McCool, 18 March 2022, pp 19-20.

¹²⁷ Evidence, Ms McCool, 18 March 2022, pp 19-20.

Service, also noted that SafeWork NSW can see a lot of businesses investing in technology that isolates workers from the risk.¹²⁸

Is the monitoring regime sufficient?

- 2.75** Several stakeholders suggested that SafeWork NSW's monitoring program was still insufficient in ensuring industry compliance with safe standards.¹²⁹ Some union representatives suggested that SafeWork NSW has taken a predominantly educative approach over the past few years, and while education is important, a stronger approach in terms of enforcement and prosecutions is needed.¹³⁰
- 2.76** Unions, in particular, called for greater enforcement measures to be taken against workplaces who are found to be non-compliant. The CFMEU highlighted cases in Tasmania and Queensland where WHS regulators have successfully prosecuted manufactured stone companies for breach of regulations. It suggested SafeWork NSW's use of improvement notices and on-the-spot fines is insufficient given the levels of non-compliance in the industry and levels of disease, disability and death that can result.¹³¹
- 2.77** Unions NSW suggested there is a need for a review of SafeWork NSW's exercise of its regulatory and education functions under the *Work Health and Safety Act 2011*.¹³² In evidence, Ms Flores suggested that there are not enough SafeWork inspectors to adequately service the entire state, and they may be dealing with a diverse range of issues.¹³³ She also suggested that independent oversight of SafeWork NSW is lacking and there should be an oversight body conducting an annual review.¹³⁴

Are all worksites being reached?

- 2.78** As noted above, some stakeholders raised concerns as to whether SafeWork NSW's inspection program reaches all relevant worksites. For the manufactured stone industry, there has been a particular concern about those carrying out installation work outside of factory settings, potentially without appropriate safety equipment in place.
- 2.79** A number of inquiry participants, including former stonemasons, Maurice Blackburn Lawyers and the CFMEU, all reported that unsafe cutting continues at installation sites, such as residential apartment complexes, that regulators often do not visit.¹³⁵ Former stonemason Mr Kenneth Parker described 'most stone companies' as 'absolute cowboys' who push the product

¹²⁸ Evidence, Mr Williams, 18 March 2022, p 20.

¹²⁹ For example, Submission 8, Mr Jennings, p 13; Evidence, Mr Peter Tighe, Independent Chair, Asbestos Diseases Research Foundation, 18 March 2022, p 11.

¹³⁰ For example, Evidence, Ms Flores, 16 February 2022, p 16.

¹³¹ Submission 9, CFMEU Construction and General Division NSW Divisional Branch, pp 6-7.

¹³² Submission 14, Unions NSW, p 8.

¹³³ Evidence, Ms Flores, 16 February 2022, p 17.

¹³⁴ Evidence, Ms Flores, 16 February 2022, p 21.

¹³⁵ Evidence, Mr Kruse, 16 February 2022, p 10; Submission 8, Mr Martin Jennings, p 5; Submission 13, Maurice Blackburn Lawyers, p 13; Evidence Mr Klohk and Mr Parker, 18 March 2022, pp 3-4; Evidence, Mr Tighe, 18 March 2022, p 11; Evidence, Professor Driscoll, 16 February 2022, p 42.

without adequate safety standards. He said 'with the cowboy direction of a lot of the companies, masks, dust extractors, fans and things like that do not exist. They just get in and do it...half of them are working for cash and all kinds of things'. While noting some smaller companies had now shut down, his evidence suggested such operations are potentially not on SafeWork NSW's radar when it comes to compliance monitoring visits.¹³⁶ Another former stonemason, Mr Andrew Klohk, described dry cutting being undertaken at a house across the road from him recently.¹³⁷ Both stone masons reported seeing SafeWork inspectors only once or twice in their careers.¹³⁸

- 2.80** Mr Ben Kruse, CFMEU, said his union was not confident that enough monitoring work is done at the installation level, which is where the businesses are, and where a lot of the disease and deaths are thought to be occurring.¹³⁹
- 2.81** SafeWork NSW representatives stated that they are aware of 255 manufactured stone fabrication sites that they inspect, and that 85 per cent of the industry is controlled by or connected to a fabrication workshop. When asked to explain how SafeWork NSW locates manufactured stone worksites, Ms McCool advised that 'we follow the stone'.¹⁴⁰ That is, SafeWork NSW knows there is only a certain number of importers and that the stone, once imported, goes to a factory to be cut down to size. From there, SafeWork NSW can talk to the sites to ask where the rest of the stone is going.¹⁴¹ Ms McCool noted that SafeWork has powers under section 155 of the WHS Act to require provision of information that SafeWork needs to monitor or enforce compliance with the Act.¹⁴²
- 2.82** Responding to questions about inspections to installation sites, SafeWork NSW indicated there was one visit to a residential property where manufactured stone products were being installed in 2021, and one visit in 2022 (to date), with no notices issued. It indicated that in late 2020 a program of visits to six randomly selected high-rise residential apartments was completed, in order to inspect benchtop installation practices, with no enforcement action required. It also indicated that with completion of priority round 1 and 2 visits to fabrication sites (see paragraph 2.70), it was planning further compliance visits to installers in 2022.¹⁴³
- 2.83** The committee tried to explore with both icare and SIRA the extent to which there should be confidence in data indicating the size of the industry and the number of workers and businesses coming into contact with manufactured stone products. This was also an issue raised in the last review.
- 2.84** icare representatives outlined that they rely on SafeWork NSW estimates, which have suggested there are between 1,100 and 1,500 people working in the manufactured stone industry.¹⁴⁴ The

¹³⁶ Evidence, Mr Parker, 18 March 2022, pp 2-3.

¹³⁷ Evidence, Mr Klohk, 18 March 2022, p 4.

¹³⁸ Evidence, Mr Klohk and Mr Parker, 18 March 2022, p 5.

¹³⁹ Evidence, Mr Kruse, 16 February 2022, p 10.

¹⁴⁰ Evidence, Ms McCool, 18 March 2022, p 26.

¹⁴¹ Evidence, Mr Williams, 18 March 2022, p 25; Evidence, Ms McCool, 18 March 2022, pp 23, 27.

¹⁴² Evidence, Ms McCool, 18 March 2022, p 26.

¹⁴³ Answers to supplementary questions, SafeWork NSW, received 27 April 2022, p 2.

¹⁴⁴ Evidence, Dr Nick Allsop, Group Executive, Care and Community Services, icare, 18 March 2022, p 39.

Golder case finding study, which examined data held by SafeWork NSW, icare and NSW Health (see paragraph 3.15), modelled the number of manufactured stone workers at between 1,024 and 2,048 with an average of 1,459.¹⁴⁵ The Golder review commented on the difficulties of understanding incidence of silicosis without a 'more accurate and validated number of workers within the manufactured stone industry'.¹⁴⁶ In response to questioning, Mr Harding from icare acknowledged that there may be a gap in reaching installers who are subcontractors or labour hire workers who do not have a direct link to a fabrication site.¹⁴⁷

Beyond the manufactured stone industry

- 2.85** Although this committee has been particularly concerned with the issue of silicosis in the manufactured stone industry, several stakeholders gave evidence to this review suggesting that the silica exposure also needs consideration in relation to other industries. As noted in Chapter 1, while manufactured stone workers account for the majority of new silicosis cases in 2020-21, over 40 per cent of new cases came from other industries, including construction, demolition, tunnelling, quarrying and other trades.¹⁴⁸
- 2.86** Unions NSW and the Australian Workers' Union both highlighted tunnel construction, noting that there has been a boom in tunnelling construction over the past decade. They pointed out that thousands of workers are potentially being exposed to hazardous dust, and there is a need to ensure best practice to prevent illness and disease there.¹⁴⁹ The Australian Worker's Union also noted workers exposed in quarrying, cement work, mining and construction.¹⁵⁰
- 2.87** Silicosis in other industries may take longer to emerge than has been the case for workers in the manufactured stone industry. Evidence from Professor Driscoll was that, while silica exposure levels from cutting manufactured stone can be so high, workers have developed silicosis within four to six years, whereas tunnelling workers who may have lower levels of exposure that cause them to develop silicosis over time, may not become clinically evident for 10 or more years. He suggested a need for a stronger focus on monitoring silica exposure in such industries now, rather than waiting until more silicosis cases emerge.¹⁵¹
- 2.88** The Australian Workers' Union called for a greater focus on protecting the health of tunnelling workers, noting there are multiple tunnelling projects in Sydney underway. It suggested that if greater focus is not placed on safety, workers in the industry may face 'an impending silicosis death sentence' in coming years.¹⁵² It also noted research showing that silica represents the highest risk of developing an occupational illness for Australian tunnelling workers.¹⁵³ The

¹⁴⁵ Submission 12, SafeWork NSW, Attachment 2, Golder Associates *Case Finding Study – Respirable crystalline silica exposure in the NSW manufactured stone industry: Data triangulation of NSW Government Agency Information*, pp 17, 27.

¹⁴⁶ Submission 12, SafeWork NSW, Attachment 2, Golder Associates *Case Finding Study*, p 17.

¹⁴⁷ Evidence, Mr Richard Harding, CEO and Managing Director, icare, 18 March 2022, p 41.

¹⁴⁸ See also Submission 6, Australian Institute of Occupational Hygienists, p 11.

¹⁴⁹ Submission 14, Unions NSW, p 5; Submission 2, Australian Workers' Union, p 3.

¹⁵⁰ Submission 2, Australian Workers' Union, p 3.

¹⁵¹ Evidence, Professor Driscoll 16 February 2022, p 47.

¹⁵² Submission 2, Australian Workers' Union, pp 11-12.

¹⁵³ Submission 2, Australian Workers' Union, p 10.

Union called for greater powers for health and safety representatives to address silica dust exposure in the workplace, including being able to prosecute employers directly for non-compliance with minimum safety benchmarks.¹⁵⁴

- 2.89** There were also calls for greater awareness and training across other industries, including quarrying, cement work and construction.¹⁵⁵ The CFMEU suggested that awareness and provision of training on silica at construction worksites is 'patchy at best', with many employers providing only a short, unaccredited silica awareness training component into a general on-site induction. The CFMEU called for Work Health and Safety regulations to be amended to require compulsory, nationally accredited training on the health risks posed by silica dust, along with the need for and proper use of and implementation of risk control measures. It noted Victoria has recently put in place such a regulation.¹⁵⁶
- 2.90** There were also concerns about the clarity of employers' regulated responsibilities in these industries. The Cancer Council and Lung Foundation noted that it is just as important to prevent silicosis among construction workers, tunnellers and quarry workers, calling for a regulatory approach that 'removes all doubt' and provides duty holders with clarity about the risk control measures necessary for all high risk silica processes.¹⁵⁷
- 2.91** SafeWork NSW noted that its compliance strategy covers all industries, including tunnelling, construction, cutting bricks, concrete and manufactured stone.¹⁵⁸ Mr Williams said that, of the 1,675 workplace visits done to date, 957 were in manufactured stone workshops, but 720 were done in other places, including on construction sites, tunnels and quarries.¹⁵⁹

Is the New South Wales approach sufficient given action taken in other jurisdictions?

- 2.92** As noted in Chapter 1, New South Wales has enacted and implemented national model WHS legislation. The NSW Government response to our previous review and SafeWork NSW's evidence to this inquiry referred to the need to align New South Wales' response with the national framework.¹⁶⁰ Regardless of this, the committee considered what actions have been taken in other jurisdictions in response to silicosis, outside of the national framework.
- 2.93** While these measures are considered below, it is important to note that the National Dust Disease Taskforce report stated that recent efforts to address the emerging trend of silicosis have highlighted inconsistency in regulatory arrangements. Some states have acted with a sense of urgency to introduce new, targeted measures, which the report noted had served as an immediate response to an urgent issue in that jurisdiction. However, the report also noted that

¹⁵⁴ Submission 2, Australian Workers' Union, p 12.

¹⁵⁵ Submission 9, CFMEU Construction and General Division NSW Divisional Branch, p 12; Submission 2, Australian Workers' Union, p 12.

¹⁵⁶ Submission 9, CFMEU Construction and General Division NSW Divisional Branch, p 12.

¹⁵⁷ Submission 5, Cancer Council and Lung Foundation Australia, p 3.

¹⁵⁸ Evidence, Ms McCool, 18 March 2022, p 20.

¹⁵⁹ Evidence, Mr Williams, 18 March 2022, p 20.

¹⁶⁰ Government response to the 2019 Review of the Dust Diseases Scheme, 24 September 2020, pp 4-5; Evidence, Ms McCool, p 29.

lack of consistency across jurisdictions means businesses 'are not receiving consistent messaging, are not clear about their requirements, and may choose to favour requirements that entail lower costs.' That report underlined the importance of consistent approaches across jurisdictions in interpretation, application and enforcement of the WHS laws.¹⁶¹

Calls to institute a licensing scheme for manufactured stone businesses

2.94 As noted in Chapter 1, Victoria has moved ahead of other Australian jurisdictions and established a licensing regime for engineered stone. This means that all businesses working with engineered stone must be licenced and suppliers cannot supply engineered stone to businesses who do not have a licence.¹⁶²

2.95 Under Victoria's licensing scheme employers have to put in place an Engineered Stone Control Plan, and comply with specific WHS regulation to control risks associated with engineered stone as well as existing duties under WHS regulations. To obtain a licence, employers are responsible for ensuring employees receive information, instruction and training before they start work at a location where engineered stone is processed, covering:

- health risks associated with exposure to crystalline silica dust
- the need for and proper use of control measures required under silica regulations, and
- how the control measures are to be implemented, including for the use of power tool or mechanical plant, and the use, fit, maintenance and storage of respiratory protective equipment.¹⁶³

2.96 The National Dust Disease Taskforce's Final Report noted development of Victoria's licensing scheme, and proposed principles to support the development of licensing schemes at a jurisdictional level.¹⁶⁴ The report stated:

The taskforce considers that development and implementation of licensing schemes by jurisdictions would be a practical and proportionate approach to protecting workers from exposure to silica dust and other potentially harmful substances from engineered stone products... The introduction of a licensing scheme could be considered within the model WHS laws. However, any proposed changes to regulation need to be explored through a regulatory impact analysis.¹⁶⁵

2.97 One of the Taskforce's recommendations was to urgently conduct a Regulatory Impact Analysis, to consider, among other things, a licensing scheme or equivalent to restrict access to the

¹⁶¹ National Dust Diseases Taskforce, *Final Report to Minister for Health and Aged Care* (June 2021), pp 25-26.

¹⁶² Worksafe Victoria website, Engineered stone licence, <https://www.worksafe.vic.gov.au/engineered-stone-licence>, accessed 29 April 2022, referred to by correspondence from Mr John Merritt, Chair, WorkSafe Victoria to the Chair, received 28 March 2022.

¹⁶³ Worksafe Victoria website, Engineered stone licence, <https://www.worksafe.vic.gov.au/engineered-stone-licence>, accessed 29 April 2022, referred to by correspondence, Mr Merritt, 28 March 2022.

¹⁶⁴ National Dust Diseases Taskforce, *Final Report* (2021), pp 29-30.

¹⁶⁵ National Dust Diseases Taskforce, *Final Report* (2021), p 30.

product to those businesses that can adequately demonstrate the ability to effectively manage the risks.¹⁶⁶

- 2.98** SafeWork NSW indicated that the NSW Government supports the Regulatory Impact Assessment process being undertaken by Safe Work Australia for options to minimise risks of respirable crystalline silica, including consideration of a licensing scheme. It noted that New South Wales operates under the national model Work Health and Safety laws and will await the outcome of the Regulatory Impact Assessment process.¹⁶⁷
- 2.99** Many stakeholders in this inquiry, including health experts, legal advocates, occupational hygienists and unions spoke favourably of the Victorian scheme, and suggested New South Wales should move to institute a licensing scheme based on this model.¹⁶⁸
- 2.100** The Australian Institute of Occupational Hygienists noted that a significant impediment to protecting worker health is the varied behavior of engineered stone fabricators, with some companies, particularly smaller enterprises, reluctant to meet the costs associated with monitoring, health surveillance and effective controls. This leads to ongoing problems in these workplaces, while companies that do invest in appropriate controls, monitoring and surveillance may be disadvantaged commercially. It suggested a licensing scheme would level the playing field by establishing a supply chain that complies with regulations, and preventing 'backyard operators' undercutting on costs through unsafe practices.¹⁶⁹
- 2.101** Manufacturers also favoured a licensing scheme to help improve safety culture in the industry. Mr David Cullen, General Manager, Caesarstone, noted that manufacturers were generally in favour of mandatory nationwide licensing, with rigorous auditing and enforcement structures for fabricators. Mr Cullen explained that manufacturers were hopeful that the Federal Government would make an announcement in relation to licensing early in 2022.¹⁷⁰
- 2.102** Smartstone also submitted arguments in favour of a licensing scheme. While noting a preference for a national regulatory framework, Smartstone acknowledged that a state based scheme may be easier to implement. Smartstone suggested that the Victorian reforms, including the licensing system, would be a good starting point. It also suggested some enhancements to the Victorian scheme, including a widening of the definition of engineered stone subject to regulation, requiring an independent audit of control plans prior to granting a licence, establishing a publicly available data base of licence-holders and prohibiting the purchase of uncontrolled products from unlicensed fabricators.¹⁷¹

¹⁶⁶ National Dust Diseases Taskforce, *Final Report* (2021), Recommendation c, p 11.

¹⁶⁷ Answers to questions on notice, SafeWork NSW, received 27 April 2022, p 5.

¹⁶⁸ See, for example, Submission 4, Royal Australasian College of Physicians, p 2; Submission 6, Australian Institute of Occupational Hygienists, pp 4, 10; Submission 9, CFMEU Construction and General Division NSW Divisional Branch, p 8; Evidence, Mr Jonathan Walsh, Principal, Maurice Blackburn Lawyers, 16 February 2022, p 2; Evidence, Ms Joanne Wade, Asbestos/Dust Diseases Practice Group Leader, Slater and Gordon Lawyers, Representative, Australian Lawyers Alliance, 16 February 2022, p 3; Evidence, Ms Flores, 16 February 2022, p 16.

¹⁶⁹ Submission 6, Australian Institute of Occupational Hygienists, p 10.

¹⁷⁰ Evidence, Mr David Cullen, General Manager, Caesarstone, 16 February 2022, pp 50, 58.

¹⁷¹ Submission 17, Smartstone, pp 3-4.

2.103 Not everyone was persuaded a licensing scheme would be sufficient to manage the risks associated with manufactured stone. Mr Kruse, CFMEU, praised the Victorian scheme as 'the best of the licensing schemes that are around', with positives including that it follows the chain of supply, and has requirements around training. However, he stated, 'our view is that that is not sufficient. The substance itself should be banned.'¹⁷²

Should manufactured stone be banned?

2.104 Regardless of whether further WHS regulation and enforcement measures are put in place, some stakeholders continued to advocate for a ban on manufactured stone products. In our previous review, there were arguments for and against a ban.¹⁷³

2.105 This review heard again similar arguments on both sides of the debate. Advocates for a ban generally included medical practitioners, unions and occupational hygienists.¹⁷⁴ Arguments for a ban included:

- manufactured stone has a very high silica content, of 80-85%, which exposes workers to much greater concentrations of silica dust than other products or industries
- elimination is the first step in the control hierarchy – it would be simpler to eliminate a harmful product than to create a regulatory framework that can ensure sufficiently safe work practices
- the dangers of working with manufactured stone are so great that risk of silicosis cannot be reduced to an acceptable level, especially given the difficulty of measuring low silica concentrations
- the structure of the industry, with many small businesses and offsite installation work, means that there is a high level of non-compliance with existing regulation, even with increased monitoring by the regulator
- the health sector will carry long term costs of care for patients who are sick and dying unnecessarily if the product continues to be used
- manufactured stone is a fashion product, there are less harmful alternatives available, such as wood or stainless steel.¹⁷⁵

2.106 Stone manufacturers and suppliers continued to argue against a ban on the product. They argued:

- manufactured stone can be handled safely if the right controls are put in place, and there has been considerable improvement in the industry

¹⁷² Evidence, Mr Kruse, 16 February 2022, p 11.

¹⁷³ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), pp 45-51.

¹⁷⁴ Submission 5, Cancer Council and Lung Foundation, p 3; Evidence, Ms Cole, 16 February 2022, pp 24-25; Submission 9, CFMEU Construction and General Division NSW Divisional Branch, p 8; Evidence, Associate Professor Yates, 16 February 2022, p 40.

¹⁷⁵ Submission 9, CFMEU Construction and General Division NSW Divisional Branch, p 8; Submission 5, Cancer Council and Lung Foundation, p 3; Evidence, Associate Professor Yates, 16 February 2022, p 40; Evidence, Ms Cole, 16 February 2022, pp 24-25; Evidence, Professor Driscoll, 16 February 2022, p 42.

- possible substitutes for manufactured stone, such as porcelain, marble or granite, also contain silica, therefore banning manufactured stone will not eliminate the risk of silicosis, and as such it would be more beneficial to focus on control measures to reduce risk
- manufacturers are working to develop lower-silica products that would reduce the silica exposure to those working with it.¹⁷⁶

2.107 Some stakeholders recognise the dangers of manufactured stone and think more should be done to promote alternatives, but stop short of advocating a ban. Generally, this was because:

- manufactured stone is a popular product widely used in residential and office buildings, and
- there are many businesses and jobs now dependent on the industry
- if businesses dependent on manufactured stone became unviable due to a ban then they would not be able to pay ongoing costs of worker compensation
- a ban on manufactured stone does not address the issue of silica in other products or industries, and would be only a small part of the picture
- more could be done to promote alternatives, or support businesses that are developing alternatives.¹⁷⁷

2.108 SafeWork NSW expressed the view that the industry has been improving as a result of increased education and compliance work.¹⁷⁸

2.109 In our previous reviews, the committee noted the opposing views on whether manufactured stone should be banned, and also noted that elimination of the product within New South Wales would require a national level importation ban. As a result, the committee outlined that it did not feel it was in a position to make a recommendation on this.¹⁷⁹

2.110 Since the 2019 review, the National Dust Disease Taskforce has considered the issue, and in its final report recommended that [the federal government]:

Commence the processes required to implement a full ban on the importation of some or all engineered stone products if, by July 2024:

- There is no measurable and acceptable improvement in regulatory and compliance rates for the engineered stone sector as reported by jurisdictions; and
- Evidence indicates preventative measures are not effectively protecting those working with engineered stone from silicosis and silica-associated diseases.¹⁸⁰

2.111 In coming to this recommendation the Taskforce noted concerns that there is a lack of urgent, concerted and effective effort to address the risks associated with exposure to silica, and continued debate on the best mechanism to address this means more workers are at risk of

¹⁷⁶ Evidence, Mr David Cullen and Mr Gary Isherwood, General Manager, Stone Ambassador, Representative, Australian Engineered Stone Advisory Group, 18 March 2022, pp 50-51.

¹⁷⁷ Evidence, Ms Flores, 16 February 2022, p 21; Evidence, Mr Tighe, 18 March 2022, pp 12-13.

¹⁷⁸ Evidence, Ms McCool, 18 March 2022, p 20.

¹⁷⁹ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), pp 45-50.

¹⁸⁰ National Dust Diseases Taskforce, *Final Report* (2021), Recommendation 1d, p 11.

being exposed to silica. The Taskforce outlined a range of issues that would need further work to determine whether a product or importation ban was warranted, and noted a three-year time frame for evidence collection was reasonable. It also noted that the complexity involved in introducing a product or importation ban meant that more immediate measures to improve compliance with existing WHS laws, and consideration of additional regulatory measures is still required.¹⁸¹

Committee comment

- 2.112** The committee acknowledges the work of SafeWork NSW to step up its education and compliance monitoring of work health and safety standards in the manufactured stone industry over the last few years. We also acknowledge that some important steps have been taken in New South Wales since our last report, including implementation of an explicit ban on dry cutting and a lowering of the workplace exposure standard for respirable crystalline silica to 0.05mg/m³.
- 2.113** The committee also notes the important work that has taken place nationally, which will continue to inform the ongoing response in New South Wales to the emergence of silicosis in the manufactured stone industry. This includes development of the *Code of Practice for Managing the risks of respirable crystalline silica from engineered stone in the workplace*, and release of the final report of the National Dust Diseases Taskforce. We understand that silicosis is a national issue, and that there are benefits to having a co-ordinated and consistent national response.
- 2.114** Having said that, and as outlined in Chapter 1, we remain concerned that the sense of urgency and importance with which we would expect to see around these issues is not evident in New South Wales. In our view, New South Wales continues to lag behind other states in its response.
- 2.115** Reducing the workplace exposure standard for respirable crystalline silica to 0.05mg/m³ was a positive step but we remain concerned that this is not a health based standard. Indeed, there is evidence that a further reduction to 0.02mg/m³ is necessary to bring the risk of silica-related disease to an acceptably low level. While we recognise that there is further work to be done to ensure this level can be effectively measured in workplaces, we urge the NSW Government to advocate for a health-based workplace exposure standard of 0.02mg/m³, and support research that would enable effective measurement of silica concentration at this level.

Recommendation 1

That the NSW Government actively work toward a health-based workplace exposure standard for respirable crystalline silica of 0.02mg/m³, including by advocating for this change at a national level and supporting research that would enable this standard to be effectively measured.

- 2.116** The committee notes that a workplace exposure standard is only as effective as the monitoring and control measures in place to ensure it is not exceeded. The committee notes that the government has not yet acted in response to our previous recommendation to require manufactured stone businesses to register and report on the results of air monitoring to

¹⁸¹ National Dust Diseases Taskforce, *Final Report* (2021), pp 26-28.

SafeWork NSW. We urge the government to take further action to ensure that businesses engaged in manufactured stone fabrication or installation are regularly checking the levels of exposure of their workers to dangerous silica dust through air monitoring.

- 2.117** In addition, noting evidence about issues of silicosis emerging in other industries including tunnelling and construction, we support the stepping up of efforts in other industries to ensure that air quality is monitored regularly, and action taken to address issues where exposure exceeds recommended limits.
- 2.118** Noting the suggestions put forward by occupational hygienists and unions to this committee, we call on the government to consult with stakeholders on appropriate measures to ensure that: there are clear and appropriate standards in place for air monitoring; air monitoring is carried out regularly in workplaces according to relevant standards; the results of air monitoring are recorded appropriately, and; results of air monitoring that exceed the workplace exposure standard are reported to SafeWork NSW and immediate regulatory action taken in response.

Recommendation 2

That the NSW Government, in consultation with key stakeholders, implement measures to enhance air quality monitoring and reporting in relation to respirable crystalline silica, to ensure that:

- there are clear and appropriate standards in place for air monitoring
- air monitoring is carried out regularly in workplaces according to relevant standards
- the results of air monitoring are recorded appropriately
- the results of air monitoring are reported to SafeWork NSW when the workplace exposure standard is exceeded and immediate regulatory action is taken in response.

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- 2.119** The committee is also concerned that, despite the introduction of a new Code of Practice, there remains no regulatory requirement for or standard format for product labelling or safety data sheets for manufactured stone products. We note evidence from occupational hygienists that the information currently provided by manufacturers who do provide such sheets is inconsistent, and may exclude some important information about the contents and hazards of working with manufactured stone. We call on the Minister for Innovation and Better Regulation to advocate at the national level for a mandated, consistent format for product labels and safety data sheets for manufactured stone products.

Recommendation 3

That the Minister for Small Business and Fair Trading advocate at the national level for a mandated, consistent format for product labels and safety data sheets for manufactured stone products.

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- 2.120** While the focus of this committee's attention has largely been on silicosis cases in the manufactured stone industry, we acknowledge that over 40 per cent of silicosis cases are occurring in other industries, including tunnelling and construction. We note evidence that silicosis may take longer to develop in workers in these industries. In the interest of protecting all workers, these figures suggest there is a need to do more to raise awareness of and monitor

compliance with work health and safety standards in all industries where silica dust exposure is an issue.

- 2.121** Through this review, the committee has heard reasonable suggestions from unions and occupational hygienists to improve clarity and compliance with work, health and safety laws. The committee therefore recommends that SafeWork NSW consult with relevant unions and professional bodies to develop a package of measures to increase levels of awareness, training and compliance with work, health and safety requirements across all industries where silica exposure is an issue. This may include, but is not limited to, mandating use of a national Unit of Competency for working with materials containing silica.
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Recommendation 4

That SafeWork NSW, across all industries where licensing requirements for silica exposure operate, consult with relevant unions and professional bodies to develop a package of new measures to increase levels of awareness, training and compliance with work, health and safety requirements.

- 2.122** The committee notes SafeWork NSW's evidence on its program of visits to manufactured stone fabrication sites over the last few years, and the efforts to raise awareness about the risk of silica dust and employer work health and safety obligations. Despite this, we remain concerned that there are still some workers engaged in installation for small businesses that SafeWork's monitoring and compliance regime does not reach. The committee notes that the NSW Government did not accept our earlier recommendation that businesses working with engineered stone should register with SafeWork NSW. We remain concerned that without adequate oversight of this section of the industry, we will continue to see the lives of workers put at risk through unsafe practices.
- 2.123** Taking into account evidence received, the committee has concerns regarding the limited amount of compliance inspections undertaken 'on-site' where manufactured stone is being installed. For this reason, we recommend that SafeWork NSW develop and implement a compliance strategy directed toward the elimination of dry cutting in the manufactured stone industry, incorporating a more rigorous regime of random on-site inspections at sites where manufactured stone is being installed.
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Recommendation 5

That SafeWork NSW develop and implement a compliance strategy directed toward the elimination of dry cutting in the manufactured stone industry, incorporating a more rigorous regime of random on-site inspections at sites where manufactured stone is being installed.

- 2.124** The committee notes that in site visitation data provided by SafeWork NSW there were very low numbers of Health and Safety Representatives in manufactured stone workplaces. The committee is concerned that SafeWork NSW has not placed sufficient emphasis on encouraging and facilitating workplace representation as part of their compliance strategy and is relying too heavily on educational strategies directed towards employers. To remedy this SafeWork NSW
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should investigate the feasibility of implementing an organisational goal of increasing the numbers of Health and Safety Representatives elected in the manufactured stone industry.

Recommendation 6

That SafeWork NSW investigate the feasibility of implementing an organisational goal of increasing the number of Health and Safety Representatives elected in the manufactured stone industry.

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- 2.125** Like many stakeholders to this inquiry we regard a licensing scheme for manufactured stone to be a necessary measure to ensure those working in the industry comply with work health and safety standards and obligations. Such a scheme would offer the benefit of clearly showing the size of the industry, including the number of installers who work with manufactured stone. It would also ensure workers receive adequate training, businesses have appropriate controls in place, and workers are regularly screened for silicosis. A licensing scheme would also allow for more effective monitoring and compliance checking by the regulator.
- 2.126** Noting the principles put forward by the National Dust Disease Taskforce to underpin the development of licensing schemes at a jurisdictional level, we call on the New South Wales Government to take necessary steps to establish a licensing scheme for manufactured stone as a matter of urgency, including a publicly available database of licence holders. When legislating for a licensing scheme, we recommend that the NSW Government consider the feasibility of including provisions for silica control plans that require registration with the regulator of all workers operating within the scope of the control plan including any subcontractors.

Recommendation 7

That the NSW Government, as a matter of urgency, take necessary steps to establish a licensing scheme for businesses working with manufactured stone in New South Wales that:

- includes a publicly available database of licence holders
- takes into consideration the feasibility of including provisions for silica control plans that require registration with the regulator of all workers operating within the scope of the control plan including any subcontractors.

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- 2.127** The committee acknowledges the ongoing calls for a ban on manufactured stone due to the particular risks it poses. As discussed in our 2019 report, there are arguments for and against a ban. In our view, if put in place, an importation ban would best be done at a national level. We note the recommendation of the National Dust Disease Taskforce that importation of manufactured stone should be banned if, by July 2024, there is not demonstrated improvement in the industry, and preventative measures are not enough to prevent cases of silicosis and silica-related disease. This recommendation alone is a clear warning to the industry that significant changes need to take place.
- 2.128** Overall, we agree that a ban is necessary if the industry fails to improve. We therefore recommend that the New South Wales Government indicate its support for a ban at the national level should sufficient progress not be observed by July 2024, in accordance with the National Dust Disease Taskforce's recommendation.

Recommendation 8

That the Minister for Small Business and Fair Trading indicate the NSW Government's support for a ban on manufactured stone should the industry not demonstrate sufficient improvement by July 2024, in accordance with the National Dust Disease Taskforce's recommendation.

Chapter 3 Medical screening, assessment and support

This chapter outlines some progress that has been made since our last review to improve data collection on silicosis, including establishment of a New South Wales dust diseases register. It then considers progress on issues raised in the 2019 review relating to whether New South Wales has a complete picture of silicosis in the manufactured stone industry. This includes whether all workers are being reached by silicosis screening programs, and whether the screening that is being done is adequate to detect silicosis. Finally, it notes calls for further research on the causes, treatment and best practice in preventing silicosis.

Overview of 2019 review recommendations

- 3.1** As noted in Chapter 2, monitoring worker health in workplaces where silica dust is in the air is an important control under the work health and safety (WHS) framework. According to WHS regulations, all employees who work with crystalline silica must be offered regular health monitoring by their employer. Regular screening should enable early detection of disease, which benefits the individual concerned through early access to treatment and compensation if applicable. It is also important to raising understanding about the prevalence of silicosis, and the effectiveness of workplace controls.
- 3.2** The 2019 Review heard concerns about whether all workers were being screened appropriately to identify silicosis, and whether the information available to SafeWork NSW and was sufficient to understand the real picture of silicosis in New South Wales. Stakeholders raised issues about:
- whether the methods used to screen workers during mandatory health checks were sensitive enough to detect silicosis
 - whether all workers were being screened as required by WHS regulations
 - the lack of a mandatory notification system or centralised register that would enable NSW Health, SafeWork NSW and icare to better understand and respond to the outbreak of silicosis.¹⁸²
- 3.3** The committee made five recommendations aimed at promoting regular, appropriate screening of workers in the manufactured stone industry, ensuring early detection of cases, and availability of data to the WHS regulator. These include recommendations to:
- inform manufactured stone workers previously screened that CT scanning is now part of the initial diagnostic process, and review cases previously screened (Recommendation 1)
 - provide free screening for all workers in the manufactured stone industry (Recommendation 2)
 - stipulate that low dose high resolution CT scanning be the preferred diagnostic measure for any person significantly exposed to silica dust from manufactured stone (Recommendation 3)
 - establish a Silicosis Health Register (Recommendation 12)

¹⁸² Standing Committee on Law and Justice, NSW Legislative Council, *2019 Review of the Dust Diseases Scheme: Silicosis in the manufactured stone industry*, (2020), pp 31-38.

- coordinate a case study for silica exposure in the manufactured stone industry to improve identification and assessment of workers at risk of exposure (Recommendation 11).¹⁸³

3.4 The committee also made a recommendation to the NSW Government to provide additional funding for research projects related to prevention, management and treatment of silicosis (Recommendation 14).¹⁸⁴ Progress against these recommendations will be outlined in the sections that follow.

Silicosis made a notifiable diseases and establishment of a NSW Dust Diseases Register

3.5 In the previous review there was broad stakeholder support for the establishment of a dust diseases register, to enable a better understanding of the incidence and prevalence of silicosis in New South Wales. While there was discussion about establishing a national dust diseases register through the work of the National Dust Diseases Taskforce, this had not yet occurred.¹⁸⁵ One issue connected to this, in New South Wales, was that medical professionals were not able to report adverse health findings due to privacy legislation.¹⁸⁶

3.6 In this regard, the committee notes that several stakeholders in the last review called for NSW Health to make silicosis a notifiable condition, which would enable relevant government agencies to collect data to understand, monitor and manage the disease.

Silicosis made a notifiable disease and establishment of a NSW Dust Diseases Register

3.7 Our 2018 review of the Dust Diseases Scheme recommended that if a National Dust Diseases Register was not established by the end of 2019, the NSW Government should establish a New South Wales Dust Diseases Register.¹⁸⁷ In the subsequent review, in 2019, the committee recommended that the NSW Government immediately establish a 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 (this was Recommendation 12).¹⁸⁸

3.8 In its response to this recommendation, the NSW Government advised that from 1 July 2020 silicosis became a notifiable disease in that it was listed as a scheduled medical condition under Part 4 of the New South Wales *Public Health Act 2010*. The NSW Government also noted that amendments to the New South Wales *Work Health and Safety Act 2011* (WHS Act) had been

¹⁸³ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), pp 39-40, 102, 109.

¹⁸⁴ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), p 115.

¹⁸⁵ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), pp 102-109.

¹⁸⁶ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), p 106.

¹⁸⁷ Standing Committee on Law and Justice, NSW Legislative Council, *2018 Review of the Dust Diseases Scheme* (2019), Recommendation 4, p 23.

¹⁸⁸ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), Recommendation 12, p 109.

introduced to Parliament to enable the work health and safety regulators to lawfully use information provided by NSW Health to track and investigate relevant workplaces and take appropriate compliance and enforcement action if required.¹⁸⁹

3.9 SafeWork NSW updated this review on further progress related to these recommendations, noting:

- both silicosis and asbestosis are now scheduled conditions under the *Public Health Act 2010*
- amendments to the WHS Act commenced on 27 October 2020 enabling NSW Health to share notifications of a diagnosis of silicosis, asbestosis and mesothelioma with SafeWork NSW
- the same amendments require SafeWork NSW to maintain a Dust Diseases Register to capture information from NSW Health, enabling improved monitoring and analysis of silicosis incidence in New South Wales
- the first annual report of the Dust Diseases Register was tabled in Parliament (and provided to this committee), and provides demographic analysis of notifications
- the NSW Government now maintains a Silica Dashboard on the nsw.gov.au website, which is regularly updated with information on silicosis prevalence, compliance action and resources for businesses working with silica.¹⁹⁰

3.10 Participants in this review generally welcomed the progress that has been made to make silicosis a notifiable disease, and how this information contributes to SafeWork's monitoring and compliance work.¹⁹¹ Maurice Blackburn Lawyers expressed some scepticism about the quality of the data contained in the register, suggesting it needs to go further than merely collecting medical data, but enable analysis of trends, both in industry sectors and individual workplaces.¹⁹²

Case finding study

3.11 In 2018 the committee heard concerns that silicosis was being underreported in New South Wales. Stakeholders pointed out that Queensland had been taking an active approach to identifying new cases of silicosis, and as a result had a massive increase to cases reported, with around 25 per cent of workers in the manufactured stone industry found to have the disease. In comparison, it was suggested that New South Wales was not picking up cases because there was no mandatory reporting and workers may not be getting tested out of fear of losing their job.¹⁹³

3.12 A key recommendation of the 2018 Review was that icare and SafeWork NSW conduct a case finding study for silicosis in the manufactured stone industry, as had been undertaken in

¹⁸⁹ Correspondence from the Hon Dominic Perrottet MP to the Clerk of the Parliaments providing government response to the 2019 Review of the Dust Diseases Scheme, 24 September 2020, p 5.

¹⁹⁰ Submission 12, SafeWork NSW, p 5. The 2021 Annual Report of the Dust Diseases Register is Attachment 1 to the SafeWork NSW submission.

¹⁹¹ For example, Submission 4, Royal Australasian College of Physicians, p 12; Submission 5, Cancer Council and Lung Foundation, p 1.

¹⁹² For example, Submission 13, Maurice Blackburn Lawyers, p 7.

¹⁹³ Standing Committee on Law and Justice, *2018 Review of the Dust Diseases Scheme* (2019), pp 14-19.

Queensland. The government response indicated its support for this recommendation, however rather than committing to a case finding study, indicated that 'icare will work with Government agencies to determine the best way of identifying instances of silicosis in the manufactured stone industry in New South Wales.'¹⁹⁴ icare told the committee in the 2019 review that 'case finding is a part of icare Dust Diseases Care business as usual', noting that icare works in partnership with SafeWork NSW, which was undertaking a program of inspections in the manufactured stone industry, and checking compliance with health monitoring requirements as part of that process.¹⁹⁵

- 3.13** Noting the lack of a specific effort to find cases not identified through screening organised by employers, in 2019 this committee again recommended that NSW Health in conjunction with SafeWork NSW coordinate a case funding study for respirable crystalline silica exposure in the manufactured stone industry, to improve the identification and assessment of workers at risk of exposure (this was Recommendation 11). This recommendation arose from ongoing stakeholder concerns that there was insufficient evidence of SafeWork NSW being aware of and inspecting settings outside of fabrication sites and factories, with a case finding study enabling a focus on identifying workers who are independent contractors or working in certain cohorts of the industry, such as on new high rise apartment complexes.¹⁹⁶
- 3.14** In response, the NSW Government again outlined employers' obligations under existing work health and safety regulations to monitor the health of workers, and the ongoing work by NSW Health, SafeWork NSW and icare to identify new silicosis cases. It stated that 'these whole of government measures are considered more effective than an ad hoc case finding study. In that regard it better implements the objective of the recommendation which is *to improve the identification and assessment of workers at risk of exposure*'.¹⁹⁷
- 3.15** Nevertheless, SafeWork NSW advised in this review that it conducted a 'case-finding study' to investigate respirable crystalline silica exposure in the manufactured stone industry. The study was conducted by Golder Associates Pty Ltd in 2021 'on data provided by SafeWork, NSW Health and icare', and is available on the NSW Government Silica Dashboard. A copy of the outcomes were also provided to this committee.¹⁹⁸
- 3.16** Participants in this review considered the Golder Associates 'case finding study' inadequate. The Construction, Forestry, Maritime, Mining and Energy Union, NSW Divisional Branch (CFMEU) described it as 'a failure', stating that it was essentially a desktop review of data from three New South Wales government agencies, which failed to meet the intention of the 2019 recommendation. The CFMEU specifically criticised the assumptions made in the Golder report that only a small number of businesses are involved in installation only, stating this is not in line with the Union's experience, which suggests there are a large number of small installation businesses whose workers who are more likely to be exposed to unsafe practices and not accessing screening.¹⁹⁹

¹⁹⁴ Correspondence from the Hon Dominic Perrottet MP to the Clerk of the Parliaments providing government response to the 2018 Review of the Dust Diseases Scheme, 5 July 2019, p 2.

¹⁹⁵ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), p 99.

¹⁹⁶ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), pp 101-102.

¹⁹⁷ Government response to the 2019 Review of the Dust Diseases Scheme, 24 September 2020, p 5.

¹⁹⁸ Submission 12, SafeWork NSW, Attachment 2.

¹⁹⁹ Submission 9, CFMEU Construction and General Division NSW Divisional Branch, pp 14-15.

- 3.17** The Royal Australasian College of Physicians also raised concerns about the government's response to this recommendation, suggesting that a case study should be done using appropriate, scientifically valid research methodology to enable full identification of new cases, rather than relying on triangulation of data currently held by NSW Health, SafeWork NSW and icare.²⁰⁰
- 3.18** The Royal Australasian College of Physicians suggested that, without a proactive case-finding study, New South Wales is significantly behind other states in assessing occupational safety risk and assisting affected workers.²⁰¹ The College called for the government to release specific details of how many cases were identified and of what severity, along with the total denominator of workers exposed, as well as to make publicly available the information from the three identified data sources.²⁰²

Health monitoring for workers exposed to silica dust

- 3.19** As noted in Chapter 2, monitoring the health of workers is one of the mandated workplace controls designed to minimise the occurrence of silicosis. The duty of employers to ensure that health monitoring is provided to employees exposed to crystalline silica is set out in Division 6 of the *Work Health and Safety Regulation 2017* (WHS regulation), which outlines an employer's obligation to:
- provide health monitoring
 - inform workers about the health monitoring requirement
 - ensure the health monitoring is appropriate, and provided by a registered medical practitioner with experience in health monitoring
 - pay the costs of health monitoring
 - provide certain information to the registered medical practitioner
 - obtain the health monitoring report
 - give the health monitoring report to the worker
 - provide the health monitoring report to other businesses²⁰³ who have a duty to monitor health of the worker
 - keep health monitoring documents as a confidential record and not disclose without the worker's consent.²⁰⁴
- 3.20** Schedule 14 of the WHS regulation specifies the type of monitoring to be undertaken for workers exposed to crystalline silica, including:
- demographic, medical and occupational history

²⁰⁰ Submission 4, Royal Australasian College of Physicians, p 12.

²⁰¹ Submission 4, Royal Australasian College of Physicians, p 12.

²⁰² Submission 4, Royal Australasian College of Physicians, p 12.

²⁰³ The terminology used in the Act is 'person conducting a business or undertaking' or PCBU.

²⁰⁴ *Work Health and Safety Regulation 2017* cl 368-378.

- records of personal exposure
- standardised respiratory questionnaire to be completed
- standardised respiratory function test
- chest X-ray full size.²⁰⁵

3.21 Safe Work Australia has a number of pieces of guidance on employer responsibilities for health monitoring under Schedule 14.²⁰⁶ The new *Code of Practice – managing the risks of respirable crystalline silica from engineered stone in the workplace* articulates in more detail how employers in the manufactured stone industry should discharge their duty with respect to health monitoring.²⁰⁷ There is also a Safe Work Australia guide entitled *Health monitoring: Guide for crystalline silica*, published in February 2020, aimed at doctors who monitor the health of workers exposed to crystalline silica.²⁰⁸

3.22 The National Dust Diseases Taskforce report noted the screening requirements outlined in the model WHS regulation and suggested that 'there is merit in amending the existing health monitoring requirements to provide greater clarity in relation to which workers are at risk and need to undergo monitoring, and the obligations of businesses'.²⁰⁹

Method of screening

3.23 In the 2019 review, the committee heard concerns from physicians that the methods specified in WHS regulations and commonly used to screen workers for silicosis were not in line with recent medical evidence. Physicians noted a high false negative rate – as much as 40 percent – of chest x-rays in detecting silicosis, and called for a high resolution CT scan to be the preferred screening process for lung diseases caused by silica exposure.²¹⁰

3.24 The *Guidelines for health monitoring for crystalline silica* state that a chest x-ray should be performed as a baseline measure, with frequency of follow up x-rays based on exposure levels. These guidelines also state that high resolution CT scanning has been demonstrated to be more sensitive than chest x-rays in detecting early dust lung diseases, and should be considered instead of, or as an adjunct to, x-ray in high risk occupations or industries, such as the composite stone industry.²¹¹

²⁰⁵ *Work Health and Safety Regulation 2017*, Schedule 14.

²⁰⁶ Eg Safe Work Australia, *Health Monitoring: Guide for persons conducting a business or undertaking*, found at <https://www.safeworkaustralia.gov.au/doc/health-monitoring-persons-conducting-business-or-undertaking-guide>.

²⁰⁷ Safe Work Australia, *Code of Practice: Managing the risks of respirable crystalline silica from engineered stone in the workplace*, October 2021, pp 23-27.

²⁰⁸ Safe Work Australia, *Health Monitoring: Guide for crystalline silica*, February 2020, found at: <https://www.safeworkaustralia.gov.au/doc/health-monitoring-crystalline-silica>, accessed 12 May 2022.

²⁰⁹ National Dust Diseases Taskforce, *Final Report* (2021), p 36.

²¹⁰ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), pp 31-37.

²¹¹ Safe Work Australia, *Health Monitoring: Guide for crystalline silica*, pp 6-7.

- 3.25** The committee ultimately recommended 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 (this was Recommendation 3).
- 3.26** The NSW Government supported this recommendation 'in principle', stating:
- The NSW Government supports the use of high resolution CT (HRCT) scans as a replacement for, or as an adjunct to, chest x-rays for workers with a significant level of exposure to respirable crystalline silica.
- These CT scans are now a routine part of the health monitoring process facilitated by icare for workers with significant exposure to respirable crystalline silica, or for workers who show potential abnormalities or other respiratory function testing.
- HRCT is preferred over the low dose high resolution CT as the sensitivity and clarity is considered superior for baseline screen.²¹²
- 3.27** Medical experts were critical of the NSW Government's response to this recommendation. The Royal Australasian College of Physicians suggested the government should have supported this recommendation 'in full', and suggested there is a need to ensure the New South Wales position is in line with professional medical bodies' recommendations, including the Thoracic Society of Australia and New Zealand's position statement on respiratory surveillance for coal mine dust and artificial stone exposed workers in Australia and New Zealand.²¹³
- 3.28** Professor Tim Driscoll, University of Sydney, Cancer Council's Chair of the Occupational and Environmental Cancer Committee, noted that chest x-rays are still being used as part of surveillance and screening of people exposed to silica, despite very good evidence that chest x-rays are not good at picking up silicosis in its early stages.²¹⁴
- 3.29** The Royal Australasian College of Physicians further pointed out that the Australian Department of Health was finalising a guidance note for doctors assessing workers exposed to respirable crystalline silica dust early in 2022, and suggested that this new guidance should be incorporated into the NSW Government's actions to address silica-related occupational respiratory diseases.²¹⁵
- 3.30** icare noted that the Dust Diseases Care clinic in Sydney has provided a 'one stop shop' service for its customers for over 30 years, with the clinic's screening services involving:
- an x-ray
 - full lung function test

²¹² Government Response – 2019 Review of the Dust Diseases Scheme p 3.

²¹³ Submission 4, Royal Australasian College of Physicians, p 7.

²¹⁴ Evidence, Professor Tim Driscoll, University of Sydney, Cancer Council's Chair of the Occupational and Environmental Cancer Committee; 16 February 2022, p 42.

²¹⁵ Submission 4, Royal Australasian College of Physicians, p 7. The Department of Health guidance note was published on 8 February 2022, *National Guidance for doctors assessing workers exposed to respirable crystalline silica dust (with specific reference to the occupational respiratory diseases associated with engineered stone)* and is found at: <https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-dust-nat-guide-gp.htm>.

- a 20-metre walk test
- a medical examination with a medical specialist.²¹⁶

3.31 icare's submission also highlighted the mobile Lung Bus screening unit, which visits sites across Sydney, enabling screening of workers to take place close to their workplace. It noted that this is a popular service for workers to access screening.²¹⁷

3.32 icare was questioned directly on the type of screening it provides, and whether CT scanning is used as the primary diagnostic tool for silicosis. In response, it advised that most screenings at its clinic are for asbestos, hence the process outlined above. icare representatives advised that CT scanning is recommended for diagnosis of silicosis, and is fundamental to determining whether a worker exposed to crystalline silica has developed silicosis. icare representatives provided evidence that:

- use of CT scans is offered in accordance with clinical diagnostic guidance and any time when clinically indicated for the individual worker
- all workers who have had exposure to manufactured stone are offered and recommended to have a CT scan during their consultation with icare
- icare uses the existing network of radiology providers for CT scans – workers presenting to the Sydney clinic are referred to the Sydney Hospital for same-day screening
- the Lung Bus cannot be equipped with a CT scanner due to the calibration requirements of that instrument, with workers presenting to the lung bus being referred to a local service provider
- CT scans are provided free of charge to the worker and icare can arrange the appointment at the time of screening
- not all workers offered a scan take up the offer
- icare does not track whether low-dose or high-dose CT scan is used - the most important consideration is obtaining the resolution required to make the diagnosis and this decision is made by accredited imaging facilities
- in 2020-21 a total of 184 CT scans were provided by icare, resulting in 17 silicosis diagnoses.²¹⁸

3.33 icare also noted that it is not the only provider of health monitoring in New South Wales.²¹⁹ As noted above, according to the WHS regulation it is an employer's responsibility to arrange health monitoring with 'a registered medical practitioner with experience in health monitoring'.²²⁰

²¹⁶ Submission 16, icare, p 5.

²¹⁷ Submission 16, icare, p 6.

²¹⁸ Evidence, Mr Richard Harding, CEO and Managing Director, icare, 18 March 2022, p 37; Evidence, Dr Nick Allsop, Group Executive, Care and Community Services, icare, 18 March 2022, pp 41-42; Answers to questions on notice, icare, received 29 April 2022, p 3; Answers to pre-hearing questions, icare, received 9 February 2022, p 1.

²¹⁹ Answers to questions on notice, icare, received 29 April 2022, p 3.

²²⁰ *WHS Regulations 2017* cl 371.

3.34 Stakeholders noted that Western Australia has passed a regulation requiring a CT scan as the principal screening mechanism.²²¹ The Cancer Council and Lung Foundation and CFMEU called for New South Wales to do the same, to ensure a CT scan is the method employers must use as part of their WHS obligations to screen silica-exposed workers, particularly in the manufactured stone industry.²²²

3.35 The National Dust Disease Taskforce final report also considered the WHS regulation that prescribes chest X-ray as the minimum health monitoring requirement. Noting evidence that a HRCT scan is more sensitive than x-ray at detecting early stages of silicosis, it suggested that workers with a high level of silica exposure should be screened with a HRCT scan as a replacement or adjunct to x-ray. It also noted health professionals need to balance the risk of radiation exposure versus the risk associated with exposure to silica dust.²²³ It concluded that:

HRCT scans at as low a dose as is practical are superior to chest x-rays for the early detection of silicosis. As such, it is recommended that contemporary methodologies such as low dose HRCT scans be included as the minimum requirement for health monitoring in WHS laws.²²⁴

Has enough been done to identify silicosis cases in the manufactured stone industry?

3.36 In light of evidence in the 2019 review about the high false negative rate of workers screened by chest x-ray, our committee, in the 2019 report, called for more proactive work on the part of the NSW Government to identify cases of silicosis in the manufactured stone industry.

3.37 The committee recommended that icare inform all manufactured stone workers previously screened that CT scanning is now part of the initial diagnostic process and; 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 (this was Recommendation 1).²²⁵

3.38 According to the government response to this recommendation, icare instituted a policy of routinely recommending a CT scan for workers with a significant level of exposure to respirable crystalline silica, from early February 2020. Further, the NSW Government advised that:

- icare prompts employers to return workers for screening as part of the annual requirement of the health monitoring process
- employers who do not comply can receive a compliance breach through SafeWork NSW, and as a result would have their workers screened
- 'the majority of' previously screened workers would be informed via this process

²²¹ Submission 5, Cancer Council and Lung Foundation, p 3, Evidence, Mr Ben Kruse, Legal/Industrial Officer, CFMEU Construction, 16 February 2022, p 15.

²²² Submission 5, Cancer Council and Lung Foundation, p 3; Evidence, Mr Kruse, 16 February 2022, p 15.

²²³ National Dust Diseases Taskforce, *Final Report* (2021), p 36.

²²⁴ National Dust Diseases Taskforce, *Final Report* (2021), p 41.

²²⁵ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), pp 38-39.

- workers would discuss their individual situation with a medical professional, and during this consultation the medical professional could identify workers who meet criteria for a CT scan
- icare would conduct an audit to determine which workers are not captured through this process and use other means to contact them and discuss options for a CT scan.²²⁶

3.39 icare's submission to this inquiry did not state whether icare had contacted all previously screened workers to advise that a CT scan is the preferred screening method for workers exposed to crystalline silica. In response to questions raised in relation to this, icare suggested that CT scans are used 'frequently', and there are no structural barriers to the widespread use of CT scans. However, it said not all workers consent or agree to undertake the scan.²²⁷

3.40 The Royal Australasian College of Physicians raised concerns about the government's response. It suggested that:

- *all* previously screened workers should have been rescreened by an appropriately qualified physician
- it was insufficiently clear what type of CT scan was being recommended
- there was not public information available about whether compliance breaches had been issued
- there was no timeframe specified for auditing previously screened cases despite the committee calling for 'an urgent' review.²²⁸

3.41 A number of stakeholders to this and the previous review suggested New South Wales is not taking a proactive enough approach to identifying cases of silicosis in the manufactured stone industry, and that a more proactive and effective screening program, such as that in Queensland, would result in more silicosis diagnoses.²²⁹

3.42 Mr Walsh, Principal, Maurice Blackburn Lawyers, noted the screening program conducted by WorkSafe Queensland in conjunction with WorkCover Queensland which screened 1,200 stonemasons in the state. Of these, around 25 per cent were diagnosed with a silica-related disease. Mr Walsh suggested a full screening of all workers in affected areas in New South Wales would lead to greater numbers of silicosis cases being picked up than have been currently.²³⁰

Access to screening

3.43 In 2019 the committee heard that, although there is an obligation for employers to provide and pay for health monitoring, there were a number of barriers preventing workers from accessing screening services, including out-of-pocket costs, and fear of going to testing organised by the

²²⁶ Government response to the 2019 Review of the Dust Diseases Scheme, 24 September 2020, p 1.

²²⁷ Answers to pre-hearing questions, icare, received 20 February 2022, p 1.

²²⁸ Submission 4, Royal Australasian College of Physicians, p 5.

²²⁹ For example, Evidence, Dr Graeme Edwards, Senior Consulting Physician, Occupational and Environmental Medicine, Representative Royal Australasian College of Physicians, 16 February 2022, p 16; Submission 6, Australian Institute of Occupational Hygienists, p 6.

²³⁰ Evidence, Mr Jonathan Walsh, Principal, Maurice Blackburn Lawyers, 16 February 2022, p 8.

employer in case the results had an adverse impact on employment prospects. Stakeholders to that review highlighted work in other states to more proactively screen stonemasons, and implement models of screening that encouraged workers to get tested.²³¹

- 3.44** In 2019, this committee recommended 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 following 12 months, and exiting and new workers in the manufactured stone industry to be tested regularly (this was Recommendation 2).²³²
- 3.45** The NSW Government's response stated that the government supported this recommendation, and that icare would provide free screening for all New South Wales workers within the manufactured stone industry for 12 months. It further stated that:
- health screening is currently free for workers of small businesses with less than 30 employees and is subsidised for medium and large employers whose workers are identified by SafeWork NSW as being most at risk to crystalline silica exposure
 - the NSW Government continues to promote the screening program through icare's website, brochures and collateral material, and via SafeWork NSW events, forums and workplace visits.
 - screening for workers exposed to any respirable crystalline silica dust remains an annual requirement of the health monitoring process.²³³
- 3.46** Stakeholders suggested there could be further improvement to the availability and awareness of screening services. Maurice Blackburn Lawyers submitted that a number of their clients have been completely unaware of the existence of icare's screening service, and that their experience is that awareness of the availability of screening for new, current and exiting workers is only happening via word of mouth or through workers finding out screening is available from media reports.²³⁴
- 3.47** The Australian Lawyers Alliance re-stated a call for all employees in the manufactured stone industry in New South Wales to be offered free lung screening.²³⁵
- 3.48** Further doubts were raised in this review about whether all workers in the manufactured stone industry are receiving regular health monitoring funded by employers as required by the regulation.
- 3.49** Maurice Blackburn Lawyers suggested that it is important that government accept responsibility for the development of messaging around screening and not rely on employers to provide information, as 'in our experience, across the board, a large number of employers cannot be relied upon to provide such information in a predictable or accessible manner'.²³⁶

²³¹ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), pp 31-38.

²³² Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), Recommendation 2, p 39.

²³³ Government response to the 2019 Review of the Dust Diseases Scheme, 24 September 2020, p 2.

²³⁴ Submission 13, Maurice Blackburn Lawyers, p 3.

²³⁵ Submission 1, Australian Lawyers Alliance, p 6.

²³⁶ Submission 13, Maurice Blackburn Lawyers, p 3.

- 3.50** The CFMEU highlighted a calculation in the Golder Review, based on data available from SafeWork NSW's compliance checking, that 14 per cent of manufactured stone facilities were identified as not having met their duty to provide health monitoring.²³⁷
- 3.51** As noted in Chapter 2, there remains doubt among stakeholders as to whether SafeWork NSW's compliance regime is reaching all people working with manufactured stone. The CFMEU expressed ongoing concern that the manufactured stone industry involves many small business installers who do not observe WHS safety or health monitoring requirements, and are not on the radar of SafeWork NSW.²³⁸ Mr Ben Kruse, Legal/Industrial Officer, CFMEU Construction, said 'we are just not confident that enough monitoring work and inspectorate work is being done at the installation level, where all the small businesses are... We think that is where a lot of the disease and deaths are occurring'.²³⁹
- 3.52** There were also still concerns that some workers may be reluctant to take up screening provided by employers. Associate Professor Deborah Yates, representing the Royal Australasian College of Physicians and Thoracic Society of Australia and New Zealand, suggested some workers may be reluctant to take up screening organised by employers in case they lose their job. She suggested SafeWork NSW should be funded to implement a scheme such as Victoria where there is a very rapid clinic, which is free to workers, with a fast track system, appropriate clinical guideline pathway and dedicated staff who have established procedures.²⁴⁰
- 3.53** Victoria's silicosis health assessment program was also highlighted in the National Dust Disease Taskforce Report, which described it as a 'best practice' approach to accurately identifying accelerated silicosis in stonemasons.²⁴¹
- 3.54** In contrast with the concerns about whether all workers are being appropriately screened, icare representatives expressed confidence that all workers in the manufactured stone sector are being reached. Dr Nick Allsop, Group Executive, Care and Community, icare, advised that icare:
- relies on SafeWork NSW estimates that there are between 1,100 and 1,500 people working in the manufactured stone sector in New South Wales
 - has screened 1,200 people identified as working in that sector over the last three years, excluding repeat screenings.²⁴²
- 3.55** In its submission, icare highlighted that the mobile Lung Bus screening service is now available to small and medium employers, where previously it was limited to large employers. It reported that the lung bus has provided respiratory health monitoring examinations to 3,190 workers in

²³⁷ Submission 9, CFMEU Construction and General Division NSW Divisional Branch, p 14.

²³⁸ Submission 9, CFMEU Construction and General Division NSW Divisional Branch, pp 4, 15-16; Evidence, Mr Kruse, 16 February 2022, pp 10-11.

²³⁹ Evidence, Mr Kruse, 16 February 2022, pp 10-11.

²⁴⁰ Evidence, Associate Professor Deborah Yates, Respiratory Physician, Department of Thoracic Medicine at St Vincent's Hospital Sydney and Conjoint Professor at UNSW; Representative, Royal Australasian College of Physicians and Thoracic Society of Australia and New Zealand, 16 February 2022, p 38.

²⁴¹ National Dust Diseases Taskforce, *Final Report* (2021), pp 38-39.

²⁴² Evidence, Mr Harding, 18 March 2022, p 38; Evidence Dr Allsop, 18 March 2022, p 39, Answers to questions on notice, icare, received 29 April 2021, p 2.

2020-21, with a further 1,377 workers accessing the icare clinic in Sydney. icare has also facilitated 73 health monitoring examinations for workers through local service providers.²⁴³ These numbers include workers from industries such as tunnelling and construction as well as manufactured stone.²⁴⁴

- 3.56** As noted earlier, under WHS regulations it is the employer's responsibility to pay for health screening costs for their workers. Nevertheless, some worker representatives to this inquiry gave evidence suggesting some workers are paying for health screening themselves, in particular CT scans.
- 3.57** Maurice Blackburn Lawyers noted that the majority of their clients diagnosed with silicosis over the past two years had organised screening themselves, and mostly end up paying an out of pocket cost for the scan – in some cases hundreds of dollars.²⁴⁵ Mr Timothy McGinley, Senior Associate, Maurice Blackburn Lawyers, suggested that while it is good some workers are getting the message and organising CT scans for themselves, there are potentially many more for whom that cost barrier may deter them from getting a CT scan as part of their screening.²⁴⁶
- 3.58** Mr Kruse from the CFMEU similarly raised concerns on this point, noting that while screening from icare may be free, there may be costs involved for some workers where it is arranged by employers.²⁴⁷
- 3.59** The final report of the National Dust Diseases taskforce suggested that screening of workers who have or have had exposure to respirable crystalline silica could save lives and play a part in reducing the adverse consequences of a diagnosis, as well as raise awareness among workers about the dangers of working with silicosis. It recommended that jurisdictions that do not have free health screening assessments in place introduce one using Victoria's approach as a baseline, to supplement the requirement in the model WHS laws for health monitoring. It suggested that where jurisdictions do have assessments in place, they should be reviewed to ensure the outcomes are consistent with this approach.²⁴⁸

Silicosis research

- 3.60** In our previous review the committee heard stakeholders calls for more funding to be directed to research that would inform control measures to manage associated with the use of manufactured stone, as well as in relation to the treatment of silicosis. The committee called for more research on issues such as health monitoring, air monitoring and the effectiveness of wet cutting.
- 3.61** The committee recommended that the NSW Government provide additional funding to the Dust Diseases Board and Centre for Work Health and Safety specifically for research projects

²⁴³ Submission 16, icare, p 6.

²⁴⁴ Evidence, Dr Alsop, p 46.

²⁴⁵ Evidence, Mr Timothy McGinley, Senior Associate, Maurice Blackburn Lawyers, 16 February 2022, p 7.

²⁴⁶ Evidence, Mr McGinley, 16 February 2022, p 7.

²⁴⁷ Evidence, Mr Ben Kruse, 16 February 2022, p 15.

²⁴⁸ National Dust Diseases Taskforce, *Final Report* (2021), p 41.

related to the prevention, management and treatment of silicosis, and commission icare to scope out possible funding models that would be based on cost recovery from the industry (this was Recommendation 14).

- 3.62** The government supported this recommendation 'in principle', but noted that the Dust Diseases Scheme is funded on a pay-as-you-go basis through an employer levy on New South Wales worker compensation insurance premiums and, as such, an increase in research funding may result in an increase to employer levy contributions. It stated the NSW Government will continue to fund research projects to prevent, manage and treat silicosis.²⁴⁹
- 3.63** In its submission to this inquiry, icare stated that the Dust Diseases Board has implemented a 2020-2024 research strategy, providing grant funding of \$2.5 million per annum under four streams: innovation, impact, collaboration and building capacity. It stated that overall committed funding for the current portfolio is \$5,645,649.21, consisting of:
- 15 *ideas to action* grants studying asbestos related diseases
 - 4 *focus* grants researching silica exposure and related diseases
 - 2 fellowships and 2 scholarships, and
 - funding for 2 support organisations.²⁵⁰
- 3.64** icare further stated that it has allocated funding for the 2022-23 financial year for focus grants into research to investigate the unique health needs of younger people with silicosis, with particular focus on psychological health, health literacy and long-term chronic care to optimise quality of life.²⁵¹
- 3.65** Stakeholders to this inquiry questioned the government's commitment to silicosis-related research, given there was no additional funding provided. Mr Kruse, CFMEU, said that, while over the past few years the Dust Diseases Board has been able to direct some focused funding towards silica-related research, from time to time those focus areas have had to change to due other priorities such as mesothelioma treatment and quality of life research. He suggested there is a strong argument for government to support a specific funding initiative directly focusing on silicosis.²⁵² The Royal Australasian College of Physicians asked for the government to specify which mechanisms it will use to continue funding research projects to prevent, manage and treat silicosis.²⁵³
- 3.66** Some stakeholders to this review queried whether enough research is actually being carried out in New South Wales. Mr Barry Robson, President, Asbestos Diseases Foundation of Australia, said that currently '99.9 per cent' of the grants money from icare goes outside New South Wales, with 'miniscule' amounts spent in New South Wales, despite the funds coming from New South

²⁴⁹ Government response to the 2019 Review of the Dust Diseases Scheme, 24 September 2020, p 7.

²⁵⁰ Submission 16, icare, p 12.

²⁵¹ Submission 16, icare, p 12.

²⁵² Evidence, Mr Kruse, 16 February 2022, p 10.

²⁵³ Submission 4, Royal Australasian College of Physicians, p 13.

Wales employers. He suggested that funding research in New South Wales should be a priority.²⁵⁴

3.67 The report of the National Dust Diseases Taskforce noted a lack of research and knowledge about how silicosis results from short-term, moderate to high-level silica exposure in the workplace, and also that, apart from lung transplantation, no treatments have yet been identified. It called for a strategic national approach to strengthening the evidence base on silicosis, with four priorities including:

- pathogenesis of engineered stone associated silicosis
- identification of factors associated with diseases severity and risk of progression
- best practice to minimise exposure
- the efficacy and sensitivity of radiological methods to diagnose early silicosis.²⁵⁵

3.68 Similar to the above, areas highlighted by participants in this review as needing further research included:

- the management and treatment of silicosis²⁵⁶
- causes and prevention of silicosis²⁵⁷
- toxicity of ingredients of manufactured stone²⁵⁸
- improved or cheaper technology to monitor air quality to a standard lower than 0.05mg/m³.²⁵⁹

3.69 As noted in Chapter 2, research and development of technology that would enable accurate and timely measurement of silica dust exposure was one area highlighted by several stakeholders as a clear priority.²⁶⁰ SafeWork NSW informed the committee that SafeWork's Centre for Work Health and Safety has completed Phase One of a research project on the development of real-time silica detection devices, which have shown promise in testing and will now follow a fast-tracked path to commercialisation.²⁶¹ This development was welcomed by some stakeholders.²⁶²

²⁵⁴ Evidence, Mr Barry Robson, President, Asbestos Diseases Foundation of Australia, 18 March 2022, pp 14-15.

²⁵⁵ National Dust Diseases Taskforce, *Final Report* (2021), p 64.

²⁵⁶ Evidence, Dr Edwards, 16 February 2022, p 36.

²⁵⁷ Evidence, Mr Kruse, 16 February 2022, p 10; Evidence, Dr Edwards, 16 February 2022, p 36.

²⁵⁸ Evidence, Mr Kruse, 16 February 2022, p 10.

²⁵⁹ Evidence, Mr Kruse, 16 February 2022, p 10; Evidence, Associate Professor Yates, 16 February 2022, p 40.

²⁶⁰ For example, Evidence, Associate Professor Yates, 16 February 2022, p 40.

²⁶¹ Submission 12, SafeWork NSW, p 5.

²⁶² Evidence, Ms Natasha Flores, Industrial Officer, Work Health and Safety and Workers Compensation, Unions NSW, 16 February 2022, p 22.

Committee comment

- 3.70** This committee welcomes the progress that has been made to make silicosis a notifiable disease under the *Public Health Act*, and to establish a New South Wales Dust Diseases Register. These are important steps to building an understanding of the scale and nature of the silicosis epidemic in New South Wales and should be useful in targeting further action to make workplaces safer.
- 3.71** Overall, however, we are concerned that New South Wales is lagging behind other states in ensuring all workers exposed to silica are identified and screened using methods sensitive enough to detect silicosis, particularly for workers in the manufactured stone industry. This leads to a concern that we do not yet have a full picture of the emergence of silicosis in this state.
- 3.72** We are disappointed that the 'case-finding study' carried out by Golder Associates was essentially a desktop review of data on silicosis cases already identified. The intention of the committee's recommendation to conduct a case-finding study, made twice, was to ensure that we build a comprehensive understanding of where cases of silicosis are emerging by taking a valid research approach that reached out to people potentially exposed to silicosis who have not been tested, or tested appropriately, by employer-organised screening. Having heard stakeholder concerns in this inquiry about whether all manufactured stone workers are being screened, and whether the standard screening process is sensitive enough to identify cases of silicosis, we remain of the view that there is more work to do to understand the extent of silicosis in New South Wales.
- 3.73** The committee is of the view that this issue remains serious enough to require a concerted response that is not essentially 'more of the same' from SafeWork NSW and icare. We consider a more proactive response is required to ensure that *all* current and former manufactured stone workers who have been exposed to silica dust through their work are reached, in a format that is accessible, acceptable and free to them.
- 3.74** We note evidence given to the National Dust Diseases taskforce that Victoria has established a streamlined health assessment program that offers a more supportive pathway for current and former workers to be both tested and linked with medical and compensation support where needed. If a research-based approach to a case finding is not going to be pursued, it is possible that a more streamlined and supportive path to screening in New South Wales, that is a genuine 'one-stop-shop' incorporating a CT scan as standard for workers with silica exposure, would help give confidence that workers are being reached. We note the call from the National Dust Diseases Taskforce for all jurisdictions to review their screening assessments, using Victoria's approach as a baseline, to supplement the requirement in the model WHS laws for health monitoring.
- 3.75** For this reason, we recommend that icare, SafeWork NSW and NSW Health jointly review the approach to screening workers exposed to silica dust, particularly in the manufactured stone industry, to ensure that there is an accessible and supportive model of screening that is appropriate, accessible and free to workers (former, current and future) and that links them with treatment and compensation where necessary.

Recommendation 9

That the NSW Government review the approach taken to the medical screening and assessment of workers who are exposed to respirable crystalline silica, to ensure that:

- all workers, former, current and future, exposed to respirable crystalline silica in the manufactured stone industry have been screened using high resolution CT scanning sensitive enough to detect silicosis
 - screening services are supportive, accessible and free to workers, and offer a streamlined pathway to treatment and compensation where this is applicable
 - there are processes in place to identify and reach all workers exposed to respirable crystalline silica and to follow up on screening or treatment drop-out
 - data is collected and reported publicly on the number of individual workers screened, the types of scans performed, and location of silica-related cases.
-

3.76 As well as seeing a need to improve the screening model to ensure all at risk workers are reached, we also believe that the requirements for health monitoring under work health and safety legislation need to be clearer. We note the recommendation of the National Dust Diseases Taskforce that national guidance should be developed to identify people at risk from respirable crystalline silica exposure, and to improve the quality, frequency and coverage of health screening assessment for current and former workers. The Taskforce commented that there is merit in amending existing health monitoring requirements under the work health and safety laws to provide greater clarity.

3.77 The Taskforce also recommended that the contemporary methodologies such as low dose HRCT scans should be included as the minimum requirement for health monitoring in work health and safety laws. In this respect, we acknowledge the evidence again from medical experts who continue to call for high resolution CT scans to be used as the primary diagnostic method for silicosis. We are concerned that some workers are not being screened using a CT scan, and believe that this requirement, with no out of pocket cost to workers, should be enshrined in the legislation.

Recommendation 10

That the NSW Government review and improve health monitoring requirements for workers exposed to respirable crystalline silica, by:

- advocating for and supporting the development of national guidance to identify people at risk from respirable crystalline silica exposure and improve the quality, frequency and coverage of health screening assessments for current and former workers, and
 - amending the *Work Health and Safety Regulation 2017* to provide certainty on the requirements, which could include amending Schedule 14 to stipulate that high resolution CT scan is the primary method of screening for workers exposed to respirable crystalline silica.
-

Chapter 4 Compensation and support

Given silicosis is a serious disease affecting many young workers, this chapter focuses on the support and compensation available under the Dust Diseases Scheme, including access to vocational education and training. This chapter also considers broader issues raised in relation to accessibility of the Dust Diseases Scheme, including the definition of a dust disease under the Act. It will also look at the financial position of the scheme, including calls for employers to bear a greater share of the costs.

Overview of 2019 review recommendations

- 4.1 The 2019 Review heard evidence about the importance of support being provided to workers diagnosed with silicosis, and concerns that inadequate support was leading some workers to keep working in the industry after diagnosis as they felt they had no other option. The committee heard particular concerns about the level and nature of support provided to younger workers with silicosis who wished to retrain to work in another industry.²⁶³
- 4.2 Further, the committee considered the costs of silicosis claims under the scheme and its potential liabilities. In light of increasing numbers and cost of silicosis claims, the committee wanted to see the NSW Government ensure the Dust Diseases Scheme will be able to meet its future liabilities, with appropriate contribution from supplies within the manufactured stone industry.²⁶⁴
- 4.3 The committee made two recommendations linked to the need to ensure the Dust Diseases Scheme can provide adequate support to workers and fund its future liabilities. They were:
- to review and expand the financial assistance provided for retraining and vocational support (Recommendation 4)
 - to investigate opportunities to raise funds for future silica-related compensation claims, considering the possibility of a specific levy on the manufactured stone industry (Recommendation 5).

Benefits under the scheme for silicosis victims

- 4.4 As highlighted in the recent report of the National Dust Diseases Taskforce, workers diagnosed with a silica-related disease face serious, life-changing consequences, as do their families.²⁶⁵ The evidence to this review from two former stone masons diagnosed with silicosis illustrated the impact this disease can have, physically, mentally and financially.²⁶⁶

²⁶³ Standing Committee on Law and Justice, NSW Legislative Council, *2019 Review of the Dust Diseases Scheme: Silicosis in the manufactured stone industry*, (2020), pp 40-42.

²⁶⁴ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), pp 42-44.

²⁶⁵ National Dust Diseases Taskforce, *Final Report to Minister for Health and Aged Care* (June 2021), pp 50-61.

²⁶⁶ Evidence, Mr Kenneth Parker and Mr Andrew Klohk, former stonemasons and silicosis sufferers, 18 March 2022, pp 2-9.

- 4.5 As our 2019 review and this review have showed, silicosis is affecting a younger cohort of workers in comparison to victims of asbestos related disease, who have tended to be closer to or past retirement age. Evidence from workers, lawyers and medical practitioners has again raised questions over whether the entitlements and support available under the Dust Diseases Scheme is adequate for these workers, given some are the primary income earners in their family, who will face a longer term loss of income as well as other impacts of the serious disease. This section will consider these issues.

Vocational education and training

- 4.6 In our 2019 review, there were concerns that younger workers diagnosed with silicosis, often with financial pressure to support their family, face serious challenges to find employment that pays as well, if they cannot continue working in the manufactured stone industry. A number of stakeholders in that review called for the scheme to be enhanced in terms of the support it provides workers, both financially and non-financially. In particular, there were concerns about the support provided for workers to retrain to take up alternative employment.²⁶⁷
- 4.7 In the 2019 report, our committee recommended that icare review and expand the financial assistance provided 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 (this was Recommendation 4).²⁶⁸
- 4.8 The NSW Government response supported this recommendation 'in-principle', stating that:

icare provides financial compensation and support in accordance with the *Workers Compensation (Dust Diseases) Act 1942* to Scheme participants diagnosed with a dust disease who wish to leave the industry and require vocational rehabilitation or retraining. Icare has established procedures in place to ensure these workers are well supported throughout the process and will continue to review opportunities to do so.

The Dust Diseases Scheme is funded on a pay-as-you-go basis through annual contributions made by New South Wales workers compensation insurers, which is passed on to employers through premiums. As such, an increase in financial assistance may result in an increase in employer premiums.²⁶⁹

- 4.9 In its submission to this review, icare stated that it has established processes to provide vocational support to all workers with silicosis who meet the eligibility criteria under the Dust Diseases Care scheme. It submitted that:
- icare works with a number of vocational rehabilitation providers across the state
 - the entitlements and options for vocational rehabilitation supports are discussed with a worker when their claim is awarded, and they are assigned an icare case manager as a single point of contact to support their vocational rehabilitation, medical treatment and other aspects of their compensation claim

²⁶⁷ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), pp 40-42.

²⁶⁸ Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme* (2020), Recommendation 4, p 42.

²⁶⁹ Correspondence from the Hon Dominic Perrottet MP to the Clerk of the Parliaments providing government response to the 2019 Review of the Dust Diseases Scheme, 24 September 2020, p 3.

- those workers who choose to leave the industry or who are contemplating leaving the industry, are referred to the vocational rehabilitation provider to undertake a vocational assessment.²⁷⁰

- 4.10** Stakeholders in this review expressed disappointment at the government's response, and lack of broader action to improve access to vocational retraining and support under the Dust Diseases Scheme, particularly for silicosis victims.
- 4.11** Maurice Blackburn Lawyers reported that it had observed no difference in icare's approach to the retraining of workers since the committee's 2019 report was tabled. It noted that it continues to represent a number of silicosis-related disease sufferers who have been left without viable return to work options.²⁷¹
- 4.12** Mr Timothy McGinley, Senior Associate, Maurice Blackburn Lawyers, acknowledged icare's system for vocational rehabilitation, although he suggested that it is 'really limited to educating people on how to go about finding another job once they have suffered workplace injury', thereby failing to provide the level of support workers need to retrain for an equivalent-paying job. In fact, Mr McGinley explained that many stonemasons earn above the median wage and would require TAFE or tertiary level training to find another job that pays as well.²⁷²
- 4.13** Further, Mr McGinley noted that while the scheme provides 26 weeks of wage-replacement allowance, this reduces to a statutory rate after that time, meaning a person undertaking a training course longer than 26 weeks may not be able to support their family. According to Mr McGinley, some people may make the decision that they cannot afford to leave the industry.²⁷³
- 4.14** The Royal Australasian College of Physicians called for the committee's 2019 recommendation to be implemented in full, emphasising that providing adequate funding for retraining and vocational support for workers diagnosed with a silica-related condition who want to leave the industry should be a priority, even if it means an increase in employer premiums. The College noted that these workers are often young and in the early part of their working lives, stating that 'adequate support in this regard is crucial both for themselves, their family and the broader community'.²⁷⁴
- 4.15** The Royal Australasian College of Physicians also called for the NSW Government and icare to make publicly available all the data available in relation to return to work rates for diagnosed cases, including the type of retaining provided and detail about the new jobs/industries these workers are returning to.²⁷⁵
- 4.16** The committee also heard evidence from a former stonemason about this issue. Mr Andrew Klohk, who spent 32 years in the industry, explained that he was provided with access to retraining, with no out of pocket expenses, although he felt the options were limited given the

²⁷⁰ Submission 16, icare, p 8.

²⁷¹ Submission 13, Maurice Blackburn Lawyers, pp 4-5.

²⁷² Evidence, Mr Timothy McGinley, Senior Associate, Maurice Blackburn Lawyers, 16 February 2022, p 4.

²⁷³ Evidence, Mr McGinley, 16 February 2022, p 4.

²⁷⁴ Submission 4, Royal Australasian College of Physicians, p 7.

²⁷⁵ Submission 4, Royal Australasian College of Physicians, p 7.

building industry was all he knew. He was retrained to be a truck driver and then was put back into the construction industry where 'there is cement and all different kinds of dust that floats around.' Mr Klohk said, 'My professor was gobsmacked' and that 'it beggars belief' that someone with silicosis would be sent back into the building industry.²⁷⁶

- 4.17** In response to questions about the services provided to silicosis victims, including specifically vocational education and training, icare advised that Dust Diseases Care commenced a vocational support program in 2019, using existing vocational providers working in partnership with case management staff and leveraging support provided through other icare-administered schemes. icare advised that this program has developed and expanded since 2019, and it is working with providers to help them understand the needs of this group of workers.²⁷⁷
- 4.18** Dr Nick Allsop, Group Executive, Care and Community, icare, described how the vocational rehabilitation support under the Dust Diseases Scheme is designed to work. He said icare links an injured worker with a vocational rehabilitation specialist, who helps them identify career goals outside the stonemasonry industry, identify training opportunities, and provides support to identify potential workplaces and apply for roles. He noted that where a role ends up paying less than their previous role, icare looks at make-up compensation to cover the gap in earning potential.²⁷⁸ Dr Allsop also noted that the service has only been running for 'a relatively short' period of time, given there is a new cohort of injured workers that have been identified in recent years whereas previously most people who entered the scheme were past retirement age.²⁷⁹
- 4.19** icare stated that the legislation under which Dust Diseases Care operates specifies how workers in this position can be compensated.²⁸⁰ However, icare witnesses also noted that icare's screening and redeployment support is discretionary, something icare is able to offer because the assets of the scheme allow it to provide these additional services.²⁸¹
- 4.20** Maurice Blackburn Lawyers suggested there is an issue with the Act itself, in that the language is archaic, and the provisions are pitched at workers who are retired or approaching retirement, given the experience of dust diseases at the time it was written. As a result, it argued that the Act does not focus in any meaningful way on training of a younger cohort of workers who are closer to the start of their careers.²⁸²

Compensation

- 4.21** The access to and level of compensation paid to silicosis victims was also an issue raised in this review. The report of the National Dust Diseases Taskforce noted that there is variability between the workers' compensation schemes in Australia, with some schemes paying

²⁷⁶ Evidence, Mr Klohk, 18 March 2022, pp 4 and 7. See also Evidence, Mr Barry Robson, President, Asbestos Diseases Foundation of Australia, 18 March 2022, p 10.

²⁷⁷ Answers to questions on notice, icare, received 29 April 2022, p 3.

²⁷⁸ Evidence, Dr Nick Allsop, Group Executive, Care and Community Services, icare, 18 March 2022, pp 43, 50.

²⁷⁹ Evidence, Dr Allsop, 18 March 2022, pp 43, 49-50.

²⁸⁰ Answers to questions on notice, icare, received 29 April 2022, p 3.

²⁸¹ Evidence, Dr Allsop, 18 March 2022, pp 43, 49-50.

²⁸² Submission 13, Maurice Blackburn Lawyers, p 5.

significantly more compensation than others, in addition to varying significantly in the level of support services provided.²⁸³ It noted there is some inequity across jurisdictions, and it called on industry and governments to ensure that workers with silica-related diseases are provided with support that is tailored to their unique and complex needs.²⁸⁴

- 4.22** As noted above, Maurice Blackburn Lawyers suggested the structure of compensation payments can lead to workers with an early diagnosis of silicosis continuing to work in the manufactured stone industry, at ongoing risk to their health, largely because the compensation is insufficient in allowing them the opportunity to retrain at the same time as supporting a family.²⁸⁵
- 4.23** The Australian Lawyers Alliance similarly argued that workers who have been told they have early silicosis on their CT scan, even though the impairment has not affected them yet, should be supported to leave the industry. Ms Joanne Wade, representing the Alliance, argued that workers in this situation should be paid what they were earning for up to two years, in order to undertake a retraining program and support their family.²⁸⁶
- 4.24** The Australian Workers' Union also raised concerns about the adequacy of compensation under the scheme for workers diagnosed with silicosis. The Union noted that under the scheme, New South Wales workers diagnosed with silicosis are paid a wage replacement amount by icare, but that this is a pro-rata amount based on their level of disablement from silicosis and how much exposure they have had in New South Wales as opposed to other states. It stated that after the first 26 weeks, they are dropped back to a lower, statutory rate, and then have to decide whether to file a common law claim. The Australian Workers' Union called on the NSW Government to ensure full financial compensation is provided for more than 26 weeks, until a worker has found alternative employment or received common law compensation.²⁸⁷
- 4.25** Lawyers from both Maurice Blackburn and the Australian Lawyers Alliance pointed to more favourable compensation in other states. Mr Jonathan Walsh noted that in Victoria there is compensation for 2 years' lost wages, whereas in Queensland there is compensation up to 5 years before a worker is exited from the scheme.²⁸⁸
- 4.26** Another concern raised in relation to compensation available under the scheme was the speed with services and support are provided to claimants. Associate Professor Deborah Yates, representing the RACP, said the current system for individuals involved does not seem to working along the lines of a fast-track compensation system as exists in other states, such as Victoria.²⁸⁹

²⁸³ National Dust Diseases Taskforce, *Final Report* (2021), p 53.

²⁸⁴ National Dust Diseases Taskforce, *Final Report* (2021), p 55.

²⁸⁵ Evidence, Mr Jonathan Walsh, Principal, Maurice Blackburn Lawyers, 16 February 2022, p 4; Evidence, Mr McGinley, 16 February 2022, p 4.

²⁸⁶ Evidence, Ms Joanne Wade, Asbestos/Dust Diseases Practice Group Leader, Slater and Gordon Lawyers, Representative, Australian Lawyers Alliance, 16 February 2022, p 5.

²⁸⁷ Submission 2, Australian Workers' Union, p 9.

²⁸⁸ Evidence, Mr Walsh, 16 February 2022, p 5.

²⁸⁹ Evidence, Associate Professor Deborah Yates, Respiratory Physician, Department of Thoracic Medicine at St Vincent's Hospital Sydney and Conjoint Professor at UNSW; Representative, Royal Australasian College of Physicians and Thoracic Society of Australia and New Zealand, 16 February 2022, p 35.

Other support services

- 4.27** The National Dust Diseases Taskforce report identified a need for improved support for workers diagnosed with silicosis across a range of areas, including legal, financial, physical and mental health services. It recommended workers affected by dust diseases and their families should be supported through individually tailored programs of psychological, financial and return-to-work support.²⁹⁰
- 4.28** Some stakeholders to this review raised concerns in relation to the support provided by icare to silicosis victims. Mr Barry Robson, President, Asbestos Diseases Research Foundation of Australia, told the committee that he had observed former stone masons suffer a negative mental impact not just from the diagnosis of silicosis but from an 'unsympathetic attitude' displayed from icare to victims.²⁹¹
- 4.29** Mr Kenneth Parker, a former stonemason and participant in the scheme, spoke of the difficulties he experienced with 'the whole insurance thing', describing how he has been repeatedly asked to test for the same thing.²⁹² The committee witnessed firsthand the emotional impacts being experienced by Mr Klohk who questioned the support his family will receive if his illness becomes aggressive and he needs to be hospitalised or succumbs to the disease.²⁹³
- 4.30** The Australian Workers' Union also highlighted the lack of mental health support as a concern of its members. It noted the great stress that a silicosis diagnosis – potentially a death sentence – causes the workers and their families. It recommended that workers diagnosed with silicosis should have access to ongoing health and medical support, including mental health support, and that mental health assistance should be available to the worker's immediate family.²⁹⁴
- 4.31** In its submission, icare stated that Dust Diseases Care works closely with past and present workers and their families to provide 'timely access to information, personalised care and comprehensive support'. It outlined service enhancements it has been making to provide:
- more timely access to care and support services
 - more choice and convenience of medical screening services
 - more care and support options for empowered and independent living
 - additional support for employers to meet their WHS obligations
 - facilitated access to peer support services for workers with dust diseases and their families.²⁹⁵

²⁹⁰ National Dust Diseases Taskforce, *Final Report* (2021), pp 50-56.

²⁹¹ Evidence, Mr Robson, 18 March 2022, p 10.

²⁹² Evidence, Mr Parker, 18 March 2022, pp 6-7.

²⁹³ Evidence, Mr Klohk, 18 March 2022, p 2.

²⁹⁴ Submission 2, Australian Workers' Union, pp 3, 8-9.

²⁹⁵ Submission 16, icare, pp 2, 6-10.

Broader issues relevant to the Dust Diseases Scheme

4.32 A number of broader issues relating to the Dust Diseases Scheme arose during this review, including the definitions of dust diseases under the legislation and whether scheme participants are aware of the full range of entitlements.

Definition of 'dust diseases' under the Act

4.33 Under the *Workers Compensation (Dust Diseases) Act 1942*, there are 14 dust diseases compensable under the scheme, listed in Schedule 1.²⁹⁶ Stakeholders to this and previous reviews have questioned whether the definition is adequate to reflect what is now known about the impact of silica dust exposure on workers' health.

4.34 In the committee's 2018 Review, it was recommended that SIRA liaise with key stakeholders, including the Thoracic Society of Australia and New Zealand, regarding updates to the list of dust diseases contained in Schedule 1 of the *Workers' Compensation (Dust Diseases) Act 1942*, and commission an independent actuarial study to consider the implications of making any amendments (this was Recommendation 6 in the 2018 review).²⁹⁷

4.35 SIRA advised that, in response to this recommendation, it had:

- consulted with the Thoracic Society of Australia and New Zealand and commissioned Professor Tim Driscoll to conduct an evidence review on options to update the dust diseases schedule
- finalised the Driscoll review in 2021 after peer review
- commissioned Taylor Fry to consider the potential implications of amending the dust diseases schedule
- provided Taylor Fry's actuarial assessment (received in October 2021) to icare in November 2021.²⁹⁸

4.36 SIRA further advised that, having provided the evidence review and actuarial documents to icare, it had now completed its role on leading action on this recommendation, with any further progress to be now led by icare.²⁹⁹

4.37 The Driscoll evidence review assessed a range of disorders that the Thoracic Society of Australia and New Zealand suggested may be covered under the Act according to whether:

²⁹⁶ Schedule 1 of the Act lists the following dust diseases: Aluminosis, Asbestosis, Asbestos induced carcinoma, Asbestos related pleural diseases, Bagassosis, Berylliosis, Coal dust pneumoconiosis, Farmers' lung, Hard metal pneumoconiosis, Mesothelioma, Silicosis, Silico-tuberculosis and Talcosis.

²⁹⁷ Standing Committee on Law and Justice, NSW Legislative Council, *2018 Review of the Dust Diseases Scheme* (2019), Recommendation 6, p 31.

²⁹⁸ Correspondence from Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority to the Chair, 17 December 2021; Evidence, Mr Dent, 18 March 2022, p 36.

²⁹⁹ Correspondence from Mr Dent to Chair, 17 December 2021; Evidence, Mr Dent, 18 March 2022, p 36.

- they are caused by exposure to a dust that can result in chronic or permanent pathological damage to the lung
- the exposure is known to occur in occupational circumstances, and
- all or the vast majority of occupational cases of the disorder result from exposure to dust.³⁰⁰

4.38 The Driscoll review recommended inclusion of pneumoconiosis, hypersensitivity pneumonitis, silica-related lung cancer, diffuse dust-related pulmonary fibrosis and systemic sclerosis involving interstitial lung disease associated with exposure to silica.³⁰¹

4.39 icare advised the committee that it had received the Driscoll evidence review in November 2021, and was working with NSW Treasury on identifying whether changes to legislation or regulation are required. Mr Richard Harding, CEO and Managing Director, icare, stated that there is 'no debate' about the merits of the change, but there is a process question about the best way to make the change, and once resolved it will be up to the Government to approve.³⁰²

4.40 Although the government is considering potential changes, stakeholders continued to highlight the issue as a matter of concern, including the Australian Lawyers Alliance.³⁰³ Both Maurice Blackburn Lawyers and the Australian Lawyers Alliance highlighted dust-related conditions they believe should be covered under the Act, including: chronic obstructive lung disease; silica induced auto-immune conditions such as silica scleroderma, rheumatoid arthritis, lupus and renal failure where there is no evidence of silicosis; occupational asthma and reactive airways dysfunction syndrome.³⁰⁴

4.41 Maurice Blackburn Lawyers also pointed out that the definition of a dust disease in the 1942 Act is different to the definition under the *Dust Diseases Tribunal Act 1989*. The Dust Diseases Tribunal Act 1989's definition of 'dust-related condition' includes both the 14 specified dust diseases (as per the 1942 Act) but also 'any other pathological condition of the lungs, pleura or peritoneum that is attributable to dust'.³⁰⁵ Maurice Blackburn and the Australian Lawyers Alliance both called for a similarly worded, more inclusive definition of dust diseases to be included in the Dust Diseases scheme legislation.³⁰⁶

³⁰⁰ Professor Tim Driscoll, Update of Schedule 1 of the New South Wales Dust Diseases Act: Final Report, September 2021. Provided in correspondence from Mr Tim Noonan, Manager, Governance, State Insurance Regulatory Authority to the secretariat, 23 February 2022.

³⁰¹ Professor Tim Driscoll, Update of Schedule 1 of the New South Wales Dust Diseases Act: Final Report, September 2021. Provided in correspondence from Mr Noonan to the secretariat, 23 February 2022.

³⁰² Evidence, Mr Richard Harding, CEO and Managing Director, icare, 18 March 2022, p 48.

³⁰³ Submission 1, Australian Lawyers' Alliance, p 5.

³⁰⁴ Submission 13, Maurice Blackburn Lawyers, p 5.

³⁰⁵ *Dust Diseases Tribunal Act 1989* s 3(1)(b)

³⁰⁶ Submission 13, Maurice Blackburn Lawyers, p 5; Submission 1, Australian Lawyers Alliance, p 5.

Awareness of entitlements under the scheme

- 4.42 A number of submissions to this inquiry raised concerns that scheme participants are not fully aware of the full range of entitlements they can access.
- 4.43 The Australian Lawyers' Alliance raised its continuing concern that many compensation recipients under the scheme are elderly, and unaware of potential entitlements such as lawn mowing and gardening. The Alliance suggested icare should be more proactive in alerting compensation recipients to the availability of such services.³⁰⁷
- 4.44 On a different but related point, icare advised that it has implemented a Decision Making Framework within Dust Diseases Care, enabling rapid flow approvals to be given for low risk services, such as lawnmowing and domestic supports. icare stated that it has recently initiated improved guidance and support for professionals working with dust diseases in the community.³⁰⁸
- 4.45 Carers New South Wales expressed overall satisfaction with their ongoing partnership with icare, but called on icare staff to continue participating in community awareness events to promote the scheme and available carer supports.³⁰⁹

Financial position of the scheme

- 4.46 The committee was also interested in the financial position of the scheme, including the scheme's liabilities. In its submission, icare provided the following table outlining the financial performance of the scheme:

Table 3 Dust Diseases Scheme Financial Performance

Net Result	Funding Ratio (excluding future levies provision)	Insurance Ratio (excluding future levies provision)	Investment Funds under management	Investment Return	Investment Benchmark
\$0.0	59%	75%	\$1.2 billion	12.2%	12.4%

Source: Submission 16, icare, p 3.

- 4.47 icare noted that the scheme's liabilities have been impacted by 'a higher than expected number of claims and an increase in the expected claims handling expenses, as well as allowances for remediating past under-payments to some workers and revising future payment practices'.³¹⁰

³⁰⁷ Submission 1, Australian Lawyers Alliance, p 6.

³⁰⁸ Submission 16, icare, p 9.

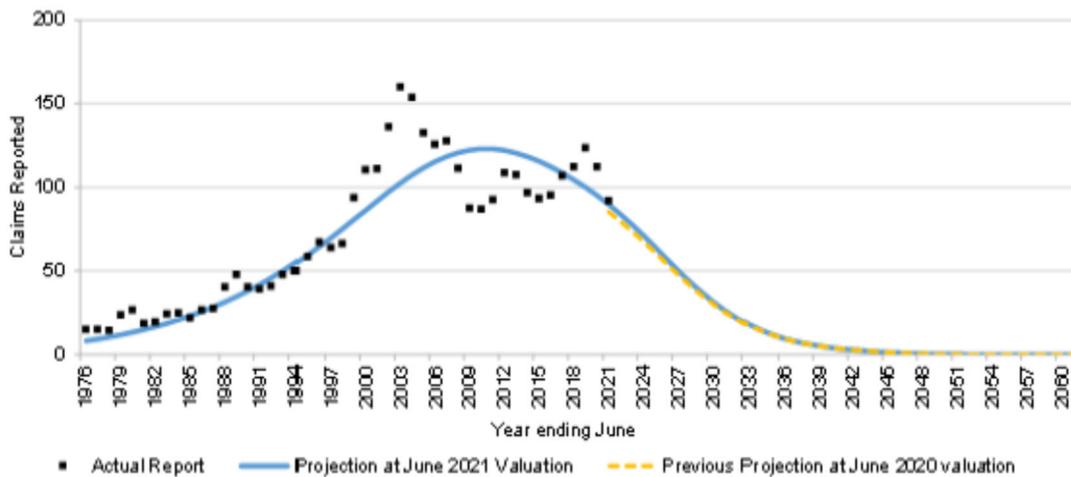
³⁰⁹ Submission 3, Carers NSW, pp 1-2.

³¹⁰ Submission 16, icare, p 3.

4.48 icare said that it anticipates a sustained trend of higher than expected numbers of claims to continue, which may be partly attributable to a new online customer portal along with additional assistance provided by client liaison officers to facilitate the claims lodgement process.³¹¹

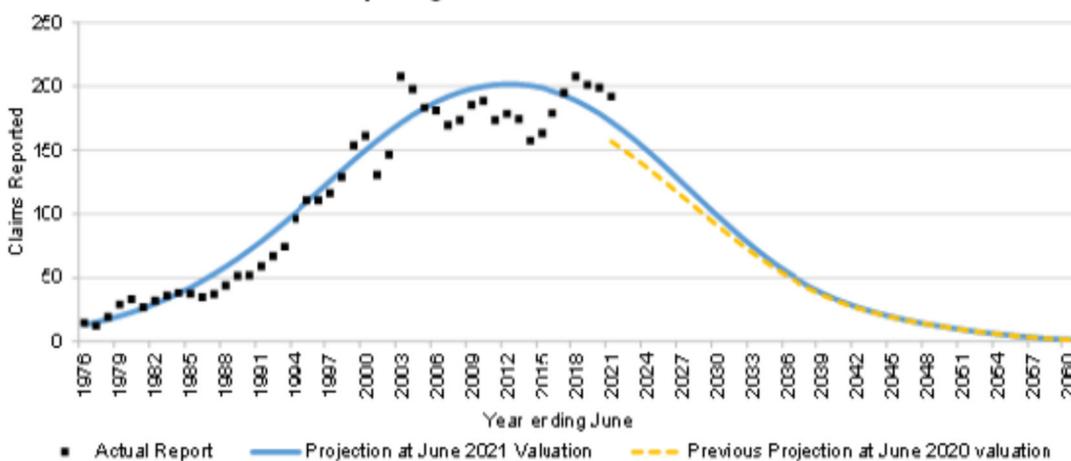
4.49 Illustrating the trends in claims for asbestos-related diseases, icare provided the following charts summarising the claim reporting patterns for asbestosis and mesothelioma:

Figure 3 Claim reporting pattern for asbestosis claims



Source: Submission 16, icare, p 3.

Figure 4 Claim reporting pattern for mesothelioma claims



Source: Submission 16, icare, p 4.

4.50 icare's submission noted that investment funds under management increased by four percent, or \$51 million during the financial year, although investment returns were 0.2 per cent below benchmark.³¹²

³¹¹ Submission 16, icare, p 3.

³¹² Submission 16, icare, pp 3-4.

4.51 Explaining the financial position of the scheme to the committee at a hearing, Mr Harding stated:

When the scheme commenced almost 100 years ago, it had no assets, other than a small operating float. The design of the scheme was such that the contributions collected from employers would cover the cost of paying the entitlements and the administration costs of the scheme each year. Due to this pay-as-you-go design, the funding ratio does not reflect the financial viability of the scheme, as it will always collect contributions to balance outgoings, and this is enshrined in the legislative design.³¹³

4.52 Mr Harding noted that due to the differences between the estimated and collected contributions and the cash outflows over the years, the scheme has accumulated assets over time, to the tune of \$1.2 billion, which he said benefits scheme stakeholders, including employers, victims and their dependants and the Dust Diseases Board and Tribunal.³¹⁴

4.53 Regarding the increased claims handling expenses, icare representatives advised that this has resulted from a reallocation of expenses between different parts of icare following a review by the Auditor General. A greater share of icare's corporate overheads is now being allocated to the Dust Diseases Scheme. Mr Harding explained that this meant overhead costs charged to the Dust Diseases Scheme had gone from around \$2 million to \$15 million per year.³¹⁵

Impact of silicosis cases on the financial position of the scheme and recovery from manufacturers

4.54 The committee explored whether the surge in silicosis cases seen in previous years is or will have an impact on the financial position of the Dust Diseases scheme. It also considered the powers icare has to pursue recovery of compensation from manufacturers. Both of these issues were considered in the previous review.

4.55 In fact, following the concerns the committee heard from various stakeholders in 2019 about likely future expenses associated with silicosis claims, the committee recommended that the NSW Government investigate opportunities to raise and manage funds for future silica related compensation claims by manufactured stone workers, and that consideration should be given to imposing a specific levy on the manufactured stone industry (this was Recommendation 5).

4.56 The Government response noted that SIRA is responsible for determining contributions to the Dust Diseases Authority by New South Wales workers compensation insurers to enable the Authority to pay compensation in accordance with the Act, including compensation for silica-related claims. It further stated:

The Act enables SIRA to apportion contributions in a way that reflects the relative risk of developing silicosis and other dust diseases for workers in different classes of employment. The exposure risk for each industry is a key part of the process by which SIRA determines the contributions payable by insurers. This ensures that the industries

³¹³ Evidence, Mr Harding, 18 March 2022, p 36.

³¹⁴ Evidence, Mr Harding, 18 March 2022, p 36.

³¹⁵ Evidence, Mr Harding, 18 March 2022, p 43.

in which workers are most likely to contract silicosis or other dust diseases, such as the manufactured stone industry, bear a higher proportion of the cost of related claims.³¹⁶

4.57 In this review, Mr Harding acknowledged the spike in claims in 2020 but advised that icare was not anticipating an impact to premiums in the short or medium term because of silica disease.³¹⁷ icare noted that 95 per cent of scheme participants are affected by asbestos related diseases, and that the impact of more asbestos-related sufferers entering the scheme added approximately \$77 million to liabilities.³¹⁸ According to Dr Allsop, where there had been lower numbers of asbestos related claims in earlier years, although there was an increase between 2018 and 2020. He noted that long latency periods between exposure and disease manifestation make it difficult to predict future claim numbers for asbestos related disease.³¹⁹

4.58 On the issue of whether the scheme is financially sustainable, Mr Harding emphasised that the scheme is designed to support people in perpetuity through its pay as you go model. As a result, he said 'it is viable into the future, no matter what'. With the \$1.2 billion in cash and assets the scheme has accumulated, Mr Harding explained that the money has been used to subsidise the cost to employers 'so that the intergenerational issues that exist in the nature of this product, given the time it takes for development of the diseases, can somewhat be ameliorated'. He added that icare has held for the last two years the cost to the industry at \$70 million.³²⁰

4.59 As noted in chapter 2, several stakeholders in this review suggested stone manufacturers should be taking a greater responsibility for the harm caused by the product. Section 8E of the *Workers Compensation (Dust Diseases) Act 1942* provides for the Dust Diseases Authority to seek to be reimbursed for compensation paid where damages are recoverable from a negligent third party. Asked whether icare had ever taken action to recover compensation from stone manufacturers, icare advised that it had not, but this was something icare could 'look at'.³²¹ icare noted:

- section 8E of the Workers Compensation Dust Diseases Act 1942 provides icare with the right to be reimbursed for statutory workers compensation paid or payable by Dust Diseases Care when a worker has also claimed common law damages from negligent, third-party non-employers
- recoveries under section 8E have been in place since 1 January 2002
- in financial year 2020-21, icare issued 93 section 8E recovery notices with a total value of \$2,571,769.46.³²²

4.60 In relation to recovering compensation from engineered stone manufacturers, icare further explained:

Under section 8E, icare can recover moneys from companies such as Caesarstone if they are required to pay common law damages as a negligent third-party non-employer. Third party non-employers can include companies that supply products that contain

³¹⁶ Government response to the 2019 Review of the Dust Diseases Scheme, 24 September 2020, p 2.

³¹⁷ Evidence, Mr Harding, 18 March 2022, p 37;

³¹⁸ Evidence, Mr Harding, 18 March 2022, p 37; Evidence, Dr Allsop, 18 March 2022, p 42.

³¹⁹ Evidence, Dr Allsop, 18 March 2022, p 42.

³²⁰ Evidence, Mr Harding, 18 March 2022, p 38.

³²¹ Evidence, Mr Harding, 18 March 2022, p 52.

³²² Answers to questions on notice, icare, received 29 April 2022, p 4.

materials that can cause a dust disease or companies where a worker was exposed to dust on their premises as a non-employee. For example, Dust Diseases Care would be able to recover monies from Caesarstone under section 8E in circumstances where a worker employed by a benchtop installation company has made a claim for damages against Caesarstone as a company that supplied a product containing silica dust that caused that worker to develop silicosis. To date, icare has not recovered any monies from Caesarstone under section 8E.³²³

- 4.61** icare reiterated that the Dust Diseases Scheme is funded by employer contributions and any lack of ability to recover will not impact the entitlements of workers who develop a silica related dust disease in the course of their employment. It may impact on future employer contributions to the scheme but injured people will not be disadvantaged. Mr Harding said in evidence: 'We will focus on providing compensation to anybody impacted adversely by a dust disease in New South Wales. Recoveries are a secondary aspect to that'.³²⁴

Remediation program

- 4.62** The committee was also provided with an update on icare's remediation program, which was established to address both underpayments and overpayments in workers entitlements, including entitlements under the Dust Diseases Scheme.
- 4.63** icare's submission noted that there have been discrepancies between workers injured pre- and post-1987, relating to rates of compensation, eligibility for dependent allowance and treatment of retired or unemployed totally disabled workers. There were some workers underpaid, due to an incorrect rate being used for the first 26 weeks. There were also some overpayments due to an incorrect rate being used, or dependent allowances being granted in error.³²⁵
- 4.64** PriceWaterhouseCoopers was engaged to undertake a remediation program to address the underpayments, with icare noting that all planning was completed and a pilot conducted to test the methodology. The results of the pilot were peer reviewed by Deloitte. Documents prepared by both PriceWaterhouseCoopers and Deloitte related to this remediation program were provided to the committee.³²⁶
- 4.65** The committee was advised that \$9.6 million had to date been paid to current scheme beneficiaries, with an estimated \$28 million still needing to be paid out to address past underpayments.³²⁷ Dr Allsop advised that:
- all living workers registered with the scheme have been contacted, and are in the process of remediation, except for a small number who cannot be contacted at this stage

³²³ Answers to questions on notice, icare, received 29 April 2022, p 4.

³²⁴ Evidence, Mr Harding, 18 March 2022, p 52.

³²⁵ Submission 16, icare, p 11.

³²⁶ Correspondence from Ms Clemency Morony, Head of Ministerial and Parliamentary Support, icare, to the Chair, received 14 March 2022, Attachment 1: Deloitte, Assessment of the design effectiveness of the Dust Diseases Care Award Remediation Program Methodology, p 1; Attachment 2, icare DDC Award Remediation.

³²⁷ Evidence Mr Harding, 18 March 2022, p 36; Evidence, Dr Allsop, 18 March 2022, p 43.

- \$4 million worth of payments has been made to deceased estates, however there remains another \$27 or \$28 million to go
- the process of contacting deceased estates has taken longer than anticipated, but should be completed by June 2022.³²⁸

4.66 icare advised it would not be seeking to claw back any past overpayments, but rather is working with NSW Treasury on legislation to address anomalies within the Act and preserve that level of payment for all participants in the scheme.³²⁹ Mr Harding could not say when the legislation would come forward, but indicated that is a matter for the NSW Government.³³⁰

4.67 It is noted that the Auditor General, in the Financial Audit reported entitled Treasury 2021, released after the conclusion of public hearings for this inquiry, commented on various matters relating to the remediation program.³³¹

Committee comment

4.68 Throughout this report we have frequently referred to the numbers of silicosis 'cases'. We are acutely aware, however, that each 'case' is a person who faces significant physical and mental health impacts as a result of a preventable disease, with their working life often cut short. Many of these people have partners and children, and after being diagnosed with a silica related disease or silicosis, face a life where they are unable to work or support their family. Some simply will not be able to enjoy a full life due to a condition they acquired on the job, and others sadly, will lose their life to this terrible occupational disease.

4.69 Clearly, it is absolutely critical for the Dust Diseases Scheme to provide appropriate support and compensation to those with silica related conditions, including silicosis. It is vital that there is an empathetic, streamlined and supportive service available that will that connect workers with the support, treatment and compensation they need.

4.70 While some improvements have been made, including the fast tracking of some support services and enhancements to icare's case management and service delivery models, we remain concerned about whether the scheme is providing sufficient, appropriate support and compensation to victims of silicosis who, as we have heard, are for the most part a younger cohort of workers than the scheme was originally designed for.

4.71 We note icare's evidence that the compensation payable to workers is determined by the legislation. We also note that there have been some additional services provided, including screening and vocational rehabilitation services, which are discretionary, and enabled by the scheme's accumulation of assets over the years.

4.72 Our committee would like to see evidence that a higher number of affected workers are able to access vocational support and training such that it is not necessary for them to continue working in an industry where exposure to silica is significantly causing them harm. Like stakeholders, we

³²⁸ Evidence, Dr Allsop, 18 March 2022, p 43.

³²⁹ Evidence, Dr Allsop, 18 March 2022, pp 43-44.

³³⁰ Evidence, Mr Harding, 18 March 2022, p 49.

³³¹ Audit Office of New South Wales, *Treasury 2021*, Financial Audit, 20 April 2022, pp 18-19.

feel this area of support needs to be expanded, with greater reporting related to return to work rates. We also question whether there is adequate mental health support in place, not only for affected workers but also for family members, carers and friends.

- 4.73** Noting that the National Dust Diseases Taskforce reported that there needs to be improved and tailored support for workers diagnosed with silicosis, including legal, financial, physical and mental health services, the committee recommends that an independent review be conducted to identify improved support services that could be provided to silicosis victims, involving consultation with key stakeholders and silicosis victims. This review should look not only at return to work supports, including support for vocational education and training, it should also consider customer centric case management models that may better meet the needs of workers diagnosed with silicosis.

Recommendation 11

That the NSW Government conduct an independent review into the adequacy of the legal, financial, physical and mental support provided to workers diagnosed with silicosis, including return to work supports and customer centric case management models, with an intention of expanding the support and care provided to workers.

-
- 4.74** The committee notes that the NSW Government has not implemented the changes required to expand the definition of a 'dust diseases' in the Act, despite this being raised in our last two reviews. The committee notes the evidence from icare that it is consulting with NSW Treasury on legislation or regulatory change in relation to this matter, and we call on the NSW Government to bring forward this change as a matter of priority.

Recommendation 12

That the NSW Government, within this term of Parliament, amend the definition of a 'dust disease' in the *Workers Compensation (Dust Diseases) Act 1942*, in accordance with the outcomes of the Driscoll review.

-
- 4.75** The committee also notes icare's remediation program underway to address past underpayments. We acknowledge that icare has recommended changes to the legislation to ensure it aligns with the legislative intent, enabling all workers to receive the same benefit regardless of the workers date of injury. We encourage the government to bring forward this legislation at the earliest opportunity.

Appendix 1 2019 Review of the Dust Diseases Scheme Recommendations

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.

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.

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.

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.

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.

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.

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.

Recommendation 8

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

Recommendation 9

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

Recommendation 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.

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.

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.

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.

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 2 Submissions

No.	Author
1	Australian Lawyers Alliance
2	The Australian Workers' Union
3	Carers NSW Australia
4	The Royal Australasian College of Physicians (RACP)
5	Cancer Council & Lung Foundation Australia
6	Australian Institute of Occupational Hygienists, Inc.
7	Mr Grahame Orchard
8	Mr Martin Jennings
8a	Mr Martin Jennings
9	CFMEU Construction, Forestry, Maritime, Mining and Energy Union, Construction and General Division, NSW Divisional Branch
10	Agglomerated Stone Manufacturers Association (A.St.A)
11	The Mine Ventilation Society of Australia
12	SafeWork NSW
13	Maurice Blackburn Lawyers
14	Unions NSW
15	Caesarstone
15a	Caesarstone
16	icare
17	Smartstone

Appendix 3 Witnesses at hearings

Date	Name	Position and Organisation
Wednesday, 16 February 2022 Parliament House, Sydney Via teleconference	Ms Joanne Wade	Asbestos/Dust Diseases Practice Group Leader, Slater and Gordon Lawyers; Representative, Australian Lawyers Alliance
	Mr Jonathan Walsh	Principal, Maurice Blackburn Lawyers
	Mr Timothy McGinley	Senior Associate, Maurice Blackburn Lawyers
	Mr Ben Kruse	Legal/Industrial Officer, CFMEU Construction
	Mr Chris Donovan	National WHS Director, The Australian Workers' Union
	Ms Natasha Flores	Industrial Officer, Work Health & Safety & Workers Compensation, Unions NSW
	Ms Kate Cole OAM	President, Australian Institute of Occupational Hygienists
	Mr Michael Shearer	President, Mine Ventilation Society of Australia
	Mr Martin Jennings	Consultant Occupational Hygienist
	Dr Graeme Edwards	Senior Consulting Physician, Occupational and Environmental Medicine; Representative RACP
	Associate Professor Deborah Yates	Respiratory Physician, Department of Thoracic Medicine at St Vincent's Hospital Sydney and Conjoint Associate Professor at UNSW; Representative RACP; Representative, Thoracic Society of Australia and New Zealand
	Professor Tim Driscoll	University of Sydney; Cancer Council's Chair of the Occupational and Environmental Cancer Committee

Date	Name	Position and Organisation
	Mr David Cullen	Managing Director, Caesarstone Asia Pacific; Representative, Australian Engineered Stone Advisory Group
	Mr Gary Isherwood	General Manager, Stone Ambassador; Representative, Australian Engineered Stone Advisory Group
Friday, 18 March 2022 Jubilee Room Parliament House, Sydney	Mr Kenneth Parker	Former stonemason and silicosis sufferer
	Mr Andrew Klohk	Former stonemason and silicosis sufferer
	Mr Peter Tighe	Independent, Chair, Asbestos Diseases Research Foundation
	Mr Barry Robson President	Asbestos Diseases Foundation of Australia
	Mr Anthony Williams	Executive Director, Compliance and Dispute Resolution, Better Regulation Division, NSW Department of Customer
	Ms Meagan McCool	Director, Construction Services Group Metropolitan, SafeWork NSW, Department of Customer Service
	Mr Adam Dent	Chief Executive, State Insurance Regulatory Authority
	Mr Richard Harding	CEO and Managing Director, icare
	Dr Nick Allsop	Group Executive, Care and Community, icare

Appendix 4 Minutes

Minutes no. 38

Friday 23 July 2021

Standing Committee on Law and Justice

Via videoconference, 10.06 am

1. Members present

Mr Fang, *Chair*

Mr Donnelly, *Deputy Chair*

Mr D'Adam

Mr Farlow

Mr Khan

Mr Martin

Mr Roberts

Mr Shoebridge

2. Apologies

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 23 June 2021 - Email from Mr Alastair McConnachie, Deputy Executive Director, NSW Bar Association, to secretariat, providing a link to the EY report on Dispute Resolution published on SIRA's website, in response to a question taken on notice at the hearing on 25 May 2021.
- 21 June 2021 – Email from Kiril Georgiev to committee, requesting an inquiry into the NSW Civil and Administrative Tribunal.

4. 2020 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes

4.1 Answers to questions on notice

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

- answers to questions on notice from icare, received on 21 June 2021, including attachment B
- answers to questions on notice from the Insurance Council of Australia, received on 21 June 2021,
- answers to questions on notice from the State Insurance Regulatory Authority, received on 20 June 2021,
- answers to questions on notice from the Motorcycle Council of NSW Inc, received on 20 June 2021.

Resolved, on the motion of Mr Shoebridge: That Tab A and Tab C, two attachments to icare's answers to questions on notice, received on 21 June 2021, be kept confidential.

4.2 Report deliberative – 2020 Review of the Lifetime Care and Support scheme

The Chair submitted his draft report entitled '2020 Review of the Lifetime Care and Support scheme' which having been previously circulated was taken as being read.

Resolved, on the motion of Mr Donnelly: That:

- The draft report 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
- The secretariat tables the report on 30 July 2021.

4.3 Report deliberative – 2020 Review of the Compulsory Third Party insurance scheme

The Chair submitted his draft report entitled '2020 Review of the Compulsory Third Party Insurance scheme' which having been previously circulated was taken as being read.

Chapter 2

Resolved, on the motion of Mr Shoebridge: That paragraph 2.14 be amended by omitting the second sentence: 'For an injury to be considered not minor, the person is required to have a degree of permanent impairment greater than 10 per cent'.

Mr Shoebridge moved: That paragraph 2.70 be amended by omitting 'Given the broader consultations that will take place as part of that process, and to avoid pre-empting outcomes, we do not make any recommendations on this occasion. We do, however, strongly suggest that the statutory review specifically consider the following matters, based on evidence and concerns raised by stakeholders in this review.' and inserting instead:

'We note that there is further consultations that will take place as part of that statutory review. There were a series of matters raised by stakeholders in this inquiry that, prima facie, require intervention and amendment to the scheme. To take advantage of the further consultation, and noting that the review is effectively paralleling this committee's deliberations, rather than recommending these changes be implemented immediately, we recommend that the following issues form a significant part of the review's work.

Recommendation 1

That the current statutory review of the *Motor Accident Injuries Act 2017* closely consider the following issues for reforms to the scheme:

- whether the no fault statutory benefit period should be expanded to a minimum of 52 weeks
- how the minor injury definition can be amended to ensure it does not exclude those with genuine minor injuries, avoiding unfair outcomes for injured people, particularly in relation to psychological claims
- whether the 20 month cooling off period should be reduced or abolished, to facilitate the faster resolution of some claims
- the provision of legal support to claimants in the scheme, particularly in relation to disputes, including the internal review process
- how to improve transparency and accountability in relation to insurer profits and premium setting.'

Mr Khan moved: That the motion of Mr Shoebridge be amended by:

- a) omitting 'There were a series of matters raised by stakeholders in this inquiry that, prima facie, require intervention and amendment to the scheme.' after 'We note that there is further consultations that will take place as part of that statutory review'
- b) omitting 'significant part of the reviews work' and inserting instead 'part of the reviews work'
- c) omitting 'avoiding unfair outcomes for injured people' after 'how the minor injury definition can be amended to ensure it does not exclude those with genuine minor injuries'

- d) omitting 'particularly in relation to psychological claims' and instead inserting 'including in relation to psychological claims'.

Amendments of Mr Khan put and passed.

Original question of Mr Shoebridge, as amended, put and passed.

Resolved, on the motion of Mr Donnelly: 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
- The secretariat tables the report on 30 July 2021.

5. **Timeline for next reviews and activity**

The committee discussed the timeline and order of its next oversight reviews.

Resolved, on the motion of Mr Shoebridge: That the 2021 Review of the Dust Diseases scheme commence in September 2021, with submissions open until 12 December 2021, and two hearing dates arranged for early February 2022 (one as a reserve), subject to the availability of members.

Resolved, on the motion of Mr D'Adam: That in accordance with the recommendations from the 2020 Review of the Workers Compensation scheme, the committee:

- request an update from icare by end November 2021 about its performance and the reforms it has implemented since the report was tabled
- have a 2 hour hearing with icare early December 2021.

6. **Other business**

Resolved, on the motion of Mr Donnelly: That the secretariat request the Parliamentary Research Service to prepare a briefing paper on federal developments regarding the Dust Diseases Scheme, with respect to the use of manufactured stone in the building industry, for consideration by the committee in the forthcoming 2021 Review of the Dust Diseases scheme.

7. **Adjournment**

The committee adjourned at 10.41 am, *sine die*.

Vanessa O'Loan / Tina Higgins
Committee Clerk

Minutes no. 46

Wednesday 16 February 2022

Standing Committee on Law and Justice

Via videoconference, at 8.45 am

1. Members present

Mr Fang, *Chair*

Mr Donnelly, *Deputy Chair (from 9.00 am)*

Mr Amato

Mr Buttigieg (*participating from 8.55 am*)

Mr D'Adam

Mr Farlow

Mr Martin

Mr Roberts

Mr Shoebridge (*from 8.50 am*)

2. Correspondence

Committee noted the following items of correspondence:

Received

- 8 September 2021 – Email from Ms Jacinta Mitchell, Tipstaff/Research to the Hon. Justice Price AO, Chief Judge to the Chair, declining the invitation to the Chief Judge of the District Court and President of the Dust Diseases Tribunal to make a submission to the Review
- 17 December 2021 – Letter from Mr Adam Dent, Chief Executive, SIRA to the Chair, providing an update on certain recommendations from the 2018 and 2019 reviews of the Dust Diseases Scheme
- 2 February 2022 – Email from Dr Susan Miles to the secretariat, declining the invitation to appear at a public hearing for the 2021 Review of the Dust Diseases Scheme
- 4 February 2022 – Email from Ms Grace Robin, Carer Representation Program/Policy Officer, Carers NSW to the secretariat, declining the invitation to appear at a public hearing for the 2021 Review of the Dust Diseases Scheme
- 7 February 2022 – Email from Ms Page Preston, Lung Foundation, to the secretariat, declining the invitation to appear at a public hearing for the 2021 Review of the Dust Diseases Scheme
- 9 February 2022 – Email from Ms Kathryn Powell, RACP, to the secretariat indicating that an RACP member would be able to facilitate contact with workers with experience of dust diseases should the committee wish to hear from them.

Sent:

- 18 January 2022 - Email from the secretariat to Ms Clemency Morony, icare, enclosing pre-hearing questions from the committee for the 2021 review of the Dust Diseases scheme
- 18 January 2022 - Email from the secretariat to Mr James Mathison, SIRA, enclosing pre-hearing questions from the committee for the 2021 review of the Dust Diseases scheme
- 18 January 2022 – Email from the secretariat to Ms Natasha Mann, SafeWork NSW, enclosing pre-hearing questions from the committee for the 2021 review of the Dust Diseases scheme
- 31 January 2022 - Letter from the Chair to Mr John Merritt, Chair, Worksafe Victoria, seeking information from WorkSafe Victoria about the operation of its proposed licencing regime for engineered stone.

3. 2021 Review of the Dust Diseases Scheme**3.1 Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-17, supplementary submission 8a.

3.2 Attachments to submissions

Resolved, on the motion of Mr Amato: That the committee authorise the publication of attachments to submission nos. 12 and 15.

3.3 Answers to pre-hearing questions

The committee noted that the following answers to pre-hearing questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to pre-hearing questions from SIRA, received 7 February 2022
- answers to pre-hearing questions from SafeWork NSW, received 8 February 2022
- answers to pre-hearing questions from icare, received 9 February 2022.

3.4 Witnesses for next hearing

Resolved, on the motion of Mr Farlow: That the committee invite workers affected by dust diseases to appear at the next hearing.

3.5 Live streaming and recording of public hearing

The committee noted that all hearings for the 2021 Review of the Dust Diseases Scheme, including this hearing, will be live steamed via the Parliament's website and recorded.

Resolved, on the motion of Mr Farlow: That the committee authorise publication of the video recordings on the Parliament's YouTube channel.

3.6 Photo of committee for social media

Resolved, on the motion of Mr Farlow: That the secretariat take a screenshot of the committee during its deliberative for the purposes of publishing on social media.

3.7 Public hearing***Allocation of questioning***

Resolved, on the motion of Mr D'Adam: That the allocation of questions for this hearing be left in the hands of the Chair.

Witnesses were admitted via videolink.

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

The following witnesses were sworn and examined:

- Ms Joanne Wade, Asbestos/Dust Diseases Practice Group Leader, Slater and Gordon Lawyers; Representative, Australian Lawyers Alliance

- Mr Jonathan Walsh, Principal, Maurice Blackburn Lawyers
- Mr Timothy McGinley, Senior Associate, Maurice Blackburn Lawyers.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Ben Kruse, Legal/Industrial Officer, CFMEU Construction
- Mr Chris Donovan, National WHS Director, The Australian Workers' Union.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Natasha Flores, Industrial Officer, Work Health & Safety & Workers Compensation, Unions NSW.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Kate Cole OAM, President, Australian Institute of Occupational Hygienists
- Mr Michael Shearer, President, Mine Ventilation Society of Australia.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Martin Jennings, Consultant Occupational Hygienist.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Graeme Edwards, Senior Consulting Physician, Occupational and Environmental Medicine; Representative RACP
- Associate Professor Deborah Yates, Respiratory Physician, Department of Thoracic Medicine at St Vincent's Hospital Sydney and Conjoint Associate Professor at UNSW; Representative RACP; Representative, Thoracic Society of Australia and New Zealand.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Professor Tim Driscoll, University of Sydney; Cancer Council's Chair of the Occupational and Environmental Cancer Committee.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr David Cullen, Managing Director, Caesarstone Asia Pacific; Representative, Australian Engineered Stone Advisory Group
- Mr Gary Isherwood, General Manager, Stone Ambassador; Representative, Australian Engineered Stone Advisory Group.

Mr Shoebridge tendered the following document:

- Extract from Caesarstone Form 20-F, Lodged with United States Securities and Exchange Commission.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.30 pm.

3.8 Tendered documents

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

- Extract from Caesarstone Form 20-F, Lodged with United States Securities and Exchange Commission, tendered by Mr David Shoebridge MLC.

3.9 Next hearing

The committee noted that as Budget Estimates 2021-2022 hearings have been scheduled for 16 March, a new date for the second public hearing previously scheduled for that same date, is to be canvassed.

Resolved, on the motion of Mr Donnelly: That the next public hearing for the 2021 Review of the Dust Diseases Scheme be scheduled for Friday 18 March 2022, commencing at 10am.

3.10 Request for information from SIRA, icare and SafeWork NSW

Resolved, on the motion of Mr Shoebridge: That the Chair write to SIRA, icare and SafeWork NSW as applicable requesting copies of the following documents prior to the next hearing:

- The evidence review conducted by Professor Tim Driscoll on updating the dust diseases list in Schedule 1 of the *Workers Compensation (Dust Diseases) Act 1942* (the 'Driscoll Report')
- The report by PricewaterhouseCoopers that identified underpayments to workers under the scheme by icare
- An update on SafeWork NSW interventions at manufactured stone worksites, updating the spreadsheet 'SafeWork NSW interventions – manufactured stone 131119' provided under Standing Order 52 on 28 November 2019.

4. Adjournment

The committee adjourned at 4.43 pm, until Friday 18 March, 10 am, Jubilee Room - 2021 Review of the Dust Diseases Scheme (public hearing).

Peta Leemen

Committee Clerk

Minutes no. 47

Friday, 18 March 2022

Standing Committee on Law and Justice

Jubilee Room, NSW Parliament House, at 10.00 am

1. Members present

Mr Fang, *Chair*

Mr Donnelly, *Deputy Chair*

Mr Amato

Mr Buttigieg (*participating*)

Mr D'Adam

Mr Martin

Mr Roberts

Mr Shoebridge

2. Apologies

Mr Farlow

Ms Faerhmann (*participating member for the RTA – Medicinal Cannabis Bill inquiry*)

3. Previous minutes

Resolved, on the motion of Mr Shoebridge: That draft minutes no. 46 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 15 February 2022 – Email from Ms Cara Punch, Office of the Opposition Whip, to the secretariat, advising that the Hon Mark Buttigieg will be a participating member for the 2021 Review of Dust Diseases hearings
- 21 February 2022 – Email from Ms Natalie Ryan, WorkSafe Victoria, to the secretariat, requesting an extension of time to respond to the committee's request for information
- 23 February 2022 – Email from Mr Tim Noonan, Manager Governance, SIRA, to the secretariat, providing Professor Driscoll's evidence review report as requested by the committee
- 1 March 2022 – Email from Mr James Mathison, SIRA, to the secretariat, confirming the name of the SIRA representative to the 18 March dust diseases hearing
- 2 March 2022 – Email from Ms Tamara Dryton, Department of Customer Service, to the secretariat, requesting an extension of time to respond to the committee's request for information, and providing names of SafeWork NSW witnesses to the dust diseases hearing
- 3 March 2022 – Email from Ms Kary Petersen, icare, to the secretariat, providing names of icare representatives to the dust diseases hearing
- 7 March 2022 – Email from Dr Narelle Beer, Executive Director, WorkSafe Victoria, to the secretariat, declining an invitation to appear at the dust diseases hearing on 18 March
- 14 March 2022 – Letter from Ms Clemency Morony, icare, to the Chair, providing a copy of reports prepared by PwC and Deloitte regarding underpayments to workers under the Dust Diseases Scheme, as requested by the committee.

Sent

- 22 February 2022 – Letter from the Chair to Mr Adam Dent, Chief Executive, SIRA, requesting provision of the evidence review by Professor Tim Driscoll
- 22 February 2022 – Letter from the Chair to Ms Natasha Mann, Deputy Secretary, Department of Customer Service, requesting provision of updated information about SafeWork NSW interventions at manufactured stone worksites
- 22 February 2022 – Letter from the Chair to Mr Richard Harding, CEO, icare, requesting provision of the PwC report into worker underpayments under the Dust Diseases Scheme.

5. Inquiry into the Road Transport Amendment (Medicinal Cannabis - Exemptions from Offences) Bill 2021

5.1 Terms of reference

The committee previously noted the following terms of reference referred by the House on 23 November 2021:

That:

- (a) the Road Transport Amendment (Medicinal Cannabis-Exemptions from Offences) Bill 2021 be referred to the Standing Committee on Law and Justice for inquiry and report,
- (b) the committee report by 23 June 2022.

5.2 Proposed timeline

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

- Call for submissions – Monday 4 April 2022
- Submissions close – Sunday 1 May 2022
- Hearing – Second half of May or June 2022
- Report deliberative – For discussion

Resolved, on the motion of Mr Donnelly: That the Chair, on behalf of the committee, seek a resolution of the House to extend the reporting date for the inquiry until the first sitting week in August 2022.

5.3 Stakeholder list

Resolved, on the motion of Mr Donnelly: 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.

5.4 Advertising

The committee noted that all inquiries are advertised via Twitter, Facebook, stakeholder letters and a media release distributed to all media outlets in New South Wales. It is no longer standard practice to advertise in the print media.

6. 2021 Review of the Dust Diseases Scheme

6.1 Live streaming and recording of public hearing

The Committee noted that it resolved on 16 February that all hearings for the 2021 Review of the Dust Diseases Scheme will be live streamed via the Parliament's website and recorded. All recordings will be made publicly available online.

6.2 Witnesses to be accompanied by a support person

The Committee noted that former stonemasons and silicosis sufferers Mr Kenneth Palmer and Mr Andrew Klohk will be accompanied by their nominated support people, Mr Dylan John Parker and Mr Barry Robson, when they give evidence.

6.3 Reporting date

The committee to consider a reporting date for this Review.

Resolved, on the motion of Mr Shoebridge: That the report be tabled by 10 June.

6.4 Public hearing

Witnesses and the public were admitted.

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

The following witnesses were sworn and examined:

- Mr Kenneth Parker, Former stonemason and silicosis sufferer
- Mr Andrew Klohk, Former stonemason and silicosis sufferer

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Peter Tighe Independent, Chair, Asbestos Diseases Research Foundation
- Mr Barry Robson President, Asbestos Diseases Foundation of Australia

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Anthony Williams, Executive Director, Compliance and Dispute Resolution, Better Regulation Division, NSW Department of Customer
- Ms Meagan McCool Director, Construction Services Group Metropolitan, SafeWork NSW, Department of Customer Service

Mr Williams tendered the following document:

- Opening statement by SafeWork NSW

Hon Greg Donnelly MLC tendered the following document:

- Letter from 8 prominent health organisations to Hon Kevin Anderson MP regarding regulation around respirable crystalline silica across all industries, dated 1 October 2021.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority
- Mr Richard Harding, CEO and Managing Director, icare
- Dr Nick Allsop, Group Executive, Care and Community, icare

The evidence concluded and the witnesses withdrew.

5.5 Tendered documents

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

- Opening statement by SafeWork NSW, tendered by Mr Williams
- Letter from 8 prominent health organisations to the Hon Kevin Anderson MP regarding regulation around respirable crystalline silica across all industries, dated 1 October 2021, tendered by Mr Donnelly.

7. Adjournment

The committee adjourned at 4.03pm, *sine die*.

Peta Leemen

Committee Clerk

Draft minutes no. 48

6 June 2022

Standing Committee on Law and Justice

Room 1136, NSW Parliament House, 10.01 am

1. Members present

Mr Rath, Chair

Mr Donnelly, Deputy Chair

Mr Amato

Mr Buttigieg (*participating*)

Mr D'Adam

Mr Fang

Mr Farlow (*substituting for Mr Martin until 12.08 pm*)

Mr Martin (*from 12.08 pm*)

Mr Roberts

2. Apologies

Ms Boyd

3. Previous minutes

Resolved, on the motion of Mr Amato: That draft minutes no. 47 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 16 March 2022 – Email from Office of the Deputy Secretary, Better Regulation Division, Department of Customer Service to the secretariat providing additional information requested by the committee on SafeWork NSW inspections of manufactured stone worksites
- 16 March 2022 – Email from the office of the Hon Scott Farlow MLC to the secretariat advising that Mr Farlow is an apology for the hearing on Friday 18 March 2022
- 28 March 2022 – Letter from Mr John Merritt, Chair, WorkSafe Victoria to the Chair providing information on WorkSafe Victoria's engineered stone licensing scheme.

Resolved, on the motion of Mr Roberts, that the committee authorise the publication of the following items of correspondence:

- Correspondence from Mr John Merritt, Chair, WorkSafe Victoria, regarding Victoria's engineered stone licensing scheme, dated 28 March 2022
- Correspondence from Mr Tim Noonan, SIRA, including the Driscoll Evidence Review, dated 23 February 2022
- Correspondence from the Office of the Deputy Secretary, Better Regulation Division, Department of Customer Service providing information on SafeWork NSW inspections of manufactured stone worksites, dated 16 March 2022
- Correspondence from Ms Clemency Morony, icare, including reports prepared by PriceWaterhouse Coopers and Deloitte regarding remediation of underpayments to workers under the dust diseases scheme, dated 14 March 2022.

5. 2021 Review of the Dust Diseases Scheme

5.1 Submissions

The committee noted that the following supplementary submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission no. 15a.

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 published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Ms Kate Cole OAM, President, Australian Institute of Occupational Hygienists, received 7 March 2022
- answers to questions on notice from Mr Ben Kruse, Legal/Industrial Officer, CFMEU Construction, received 14 March 2022
- answers to questions on notice from Mr Chris Donovan, National WHS Director, the Australian Workers' Union, received 15 March 2022
- answers to questions on notice from Mr Jonathan Walsh, Principal, Maurice Blackburn Lawyers, received 16 March 2022
- answers to questions on notice from Associate Professor Deborah Yates, Respiratory Physician, Department of Thoracic Medicine at St Vincent's Hospital Sydney and Conjoint Associate Professor at UNSW, representative, Royal Australasian College of Physicians and Thoracic Society of Australia and New Zealand, received 25 March 2022
- answers to questions on notice from Mr Michael Shearer, President, Mine Ventilation Society of Australia, received 27 March 2022
- answers to questions on notice from Dr Graeme Edwards, Senior Consulting Physician, Occupational and Environmental Medicine and representative, Royal Australasian College of Physicians, received 28 March 2022
- answers to questions on notice from Ms Joanne Wade, Asbestos/Dust Diseases Practice Group Leader, Slater and Gordon Lawyers, Representative, Australian Lawyers Alliance, received 30 March 2022
- answers to questions on notice and supplementary questions from SafeWork NSW, received 27 April 2022

- answers to questions on notice and supplementary questions from icare, received 29 April 2022.

5.3 Consideration of Chair's draft report

The Chair submitted his draft report entitled *2021 Review of the Dust Diseases Scheme*, which, having been previously circulated, was taken as being read.

Chapter 1

Resolved, on the motion of Mr Donnelly: That paragraph 1.11 be amended by inserting after the word 'scarring' the following new sentence: 'Each review has also head that silicosis is a preventable lung disease.'

Resolved, on the motion of Mr Donnelly: That paragraph 1.12 be amended by inserting 'far' before 'more'.

Resolved, on the motion of Mr Donnelly: That paragraph 1.19 be amended by inserting after '2020' the following new sentence: 'Of the 14 recommendations, the government supported six (recommendations 1, 2, 9, 11, 12 and 13), supported in principle seven (recommendations 3, 4, 5, 6, 7, 10 and 14) and rejected one (recommendation 8).'

Resolved, on the motion of Mr Donnelly: That paragraph 1.21 be amended by inserting 'mining' after 'cement'.

Resolved, on the motion of Mr Donnelly: That paragraph 1.23 be amended by omitting 'questions' after 'have been' and inserting instead 'significant questions raised'.

Resolved, on the motion of Mr Donnelly: That the following new paragraph be inserted after 1.29:

'The matter of underreporting of the disease caused by exposure to respiratory crystalline silica was raised in a number of submissions and witnesses to this inquiry. This matter is discussed in more detail in Chapters 2 and 3 of the report.'

Resolved, on the motion of Mr Donnelly: That paragraph 1.38 be amended by inserting 'very clearly' after 'underlined'.

Resolved, on the motion of Mr Donnelly: That paragraph 1.45 be amended by inserting 'Hospital' after 'the Alfred'.

Resolved, on the motion of Mr Donnelly: That paragraph 1.49 be amended by omitting the words 'to some extent focused' after 'The last three reviews of this committee have' and inserting instead 'provided a particular focus'.

Mr Donnelly moved: That the following new sentence be added after the end of paragraph 1.50:

'We believe that on the balance of the evidence once again brought before the inquiry, it is clear that the government does not understand the seriousness of this occupational disease.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath, Mr Roberts.

Question resolved in the negative.

Mr Donnelly moved: That paragraph 1.52 be omitted: 'We call upon the government to consider not only the recommendations we outline in this report, but also whether it can and should do more to ensure workers are not being exposed to harmful levels of silica dust. In our view, there is clearly more work to be done in this area, and we hope it happens soon, so that other lives are not taken prematurely and the social, economic and human costs associated with silicosis are avoided' and the following new paragraph be inserted instead:

'This is now the fourth report by the Standing Committee on Law and Justice sounding the alarm regarding the occupational disease caused by respirable crystalline silica. We call on the government, without further delay, to examine closely the compelling evidence brought once again before a parliamentary inquiry about the seriousness of the matter. We urge the government to support all the recommendations made by the committee and move expeditiously to implement them.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

Chapter 2

Resolved, on the motion of Mr Donnelly: That the introductory paragraph be amended by inserting 'serious' before 'concerns' after 'continuing' (line 3) and 'given' (line 7).

Resolved, on the motion of Mr Donnelly: That paragraph 2.1 be amended by omitting 'the previous review' and inserting instead 'previous reviews'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.2 be amended by inserting ', except for Victoria,' after 'has been'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.4 be amended by omitting 'The committee's previous review' and inserting instead 'The committee's 2019 review.'

Resolved, on the motion of Mr Donnelly: That paragraph 2.23 be amended by omitting 'push for' and inserting instead 'advocate for' after 'encouraged this committee'.

Resolved, on the motion of Mr Donnelly: That paragraphs 2.29, 2.33 and 2.44 be amended by omitting 'previous review' and inserting instead '2019 review'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.47 be amended by inserting 'significant' before 'improvements required in terms of education and training'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.55 be amended by omitting 'report' and inserting instead 'reports' before 'the committee noted that'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.68 be amended by inserting 'both at factories and at installation' after 'manufactured stone workplaces'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.109 be amended by omitting 'review' and inserting instead 'reviews' after 'In our previous'.

Mr Donnelly moved: That Recommendation 1 be amended by:

- omitting 'work towards' and inserting instead pursue' before 'a health based workplace exposure standard'
- inserting 'a time-weighted average over 8 hours' before 'of 0.02mg/m3'
- inserting 'strongly' before 'advocating for this change at a national level'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That paragraph 2.117 be amended by omitting 'suggest there is room to step up' and inserting instead 'support the stepping up of' before 'efforts in other industries to ensure that air quality is monitored regularly.'

Mr Donnelly moved: That Recommendation 2 be amended by:

- inserting 'by no later than 31 December 2022' after 'implement' and before 'measures to enhance air quality monitoring'
- inserting mandatory after 'enhance' and before 'air quality monitoring'
- inserting 'including details of all legislative and regulative breaches' after 'air quality monitoring and reporting' and before 'in relation to respirable crystalline silica'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

Mr Donnelly moved: That recommendation 3 be amended by inserting at the end: 'Such mandated product labelling and safety data sheets must be provided across the entire manufactured stone supply chain and be available in multiple languages'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Mr Roberts: That the following new paragraph be inserted after paragraph 2.122:

'Taking into account evidence received, the committee has concerns regarding the limited amount of compliance inspections undertaken 'on-site' where manufactured stone is being installed. For this reason, we recommend that SafeWork NSW undertake a more rigorous regime of random on-site compliance inspections at sites where manufactured stone is being installed.'

Mr Roberts moved: That the following new recommendation inserted after paragraph 2.122:

'Recommendation X

That SafeWork NSW develop and implement a compliance strategy directed toward the elimination of dry cutting in the manufactured stone industry, incorporating a more rigorous regime of random on-site inspections at sites where manufactured stone is being installed'.

Mr D'Adam moved: That the motion of Mr Roberts be amended by inserting at the end: 'That the compliance strategy be implemented from 1 January 2023 for a period of 12 months with a review of its effectiveness to be completed and published by no later than 30 June 2024'.

Amendment of Mr D'Adam put.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

Original question of Mr Roberts, put and passed.

Resolved, on the motion of Mr Donnelly: That recommendation 4 be amended by omitting the words 'silica exposure presents a risk' and inserting instead 'licensing requirements for silica exposure operate'.

Mr Donnelly moved: That the following new paragraph and recommendation be inserted after recommendation 4 (paragraph 2.122):

'The committee notes that in site visitation data provided by SafeWork NSW there were very low numbers of Health and Safety Representatives in manufactured stone workplaces. The committee is concerned that SafeWork NSW has not placed sufficient emphasis on encouraging and facilitating workplace representation as part of their compliance strategy and is relying too heavily on educational strategies directed towards employers. To remedy this SafeWork NSW should implement an organisational goal of increasing the numbers of Health and Safety Representatives elected in the manufactured stone industry.'

Recommendation X

That SafeWork NSW implement an organisational goal of increasing the number of Health and Safety Representatives elected in the manufactured stone industry.'

Mr Farlow moved: That the motion of Mr Donnelly be amended by omitting 'implement' in the recommendation and inserting instead 'investigate the feasibility of implementing' before 'an organisational goal of increasing the number of Health and Safety Representatives.'

Amendment of Mr Farlow put.

The committee divided.

Ayes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath, Mr Roberts.

Noes: Mr Donnelly, Mr D'Adam.

Amendment of Mr Farlow resolved in the affirmative.

Original question of Mr Donnelly, as amended, put and passed.

Resolved, on the motion of Mr Donnelly: That paragraph 2.122 be amended by omitting 'potentially still' and inserting instead 'still some' before 'workers engaged in installation for small businesses that SafeWork's monitoring and compliance regime does not reach.'

Mr D'Adam moved: That the existing paragraph 2.124 and recommendation 5 be omitted and the following new paragraph and recommendation be inserted instead:

'Noting the principles put forward by the National Dust Disease Taskforce to underpin the development of licensing schemes at a jurisdictional level, we call on the New South Wales Government to legislate to establish a licensing scheme for manufactured stone, that must be renewed every 12 months, by no later than 31 December 2022 and that such a licensing scheme include a publicly available database of licence holders.'

Recommendation X

That the NSW Government by no later than 31 December 2022 legislate to establish a licensing scheme for businesses working with manufactured stone, that must be renewed every 12 months, and that such a licensing scheme include a publicly available database of licence holders.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath, Mr Roberts.

Question resolved in the negative.

Resolved, on the motion of Mr Amato: That Recommendation 5 be amended by inserting 'including a publicly available database of licence holders' after 'in New South Wales'.

Mr Donnelly moved: That the following new recommendation be inserted after Recommendation 5:

'When legislating for a licensing scheme that the NSW Government include provisions for Silica Control Plans that require the following elements:

- a requirement for the registration with the regulator of all workers operating within the scope of the control plan including any subcontractors
- a requirement for mandatory minimum training to be provided to the workers by a provider accredited by the regulator and that completion of the training be a precondition for the registration of a worker under the licensing scheme
- a requirement for the control plan to be independently audited prior to the issuing or renewal of any business license
- a requirement that license holders with more than five workers must elect Health and Safety Representatives and the details of the elected representatives be registered with the regulator.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Mr D'Adam: That Recommendation 5, as previously amended, be further amended by inserting at the end: 'When legislating for a licensing scheme, that the NSW Government consider the feasibility of including provisions for silica control plans that require registration with the regulator of all workers operating within the scope of the control plan including any subcontractors.'

Mr Donnelly moved: That recommendation 6 be omitted and the following recommendation inserted instead:

'That the NSW Government will support the ban on manufactured stone if by July 2024:

- there is no measurable and acceptable improvement in regulatory compliance rates for the manufactured stone sector
- the evidence indicates that preventative measures are not effectively protecting those working with manufactured stone from silicosis and silica-related diseases.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath, Mr Roberts.

Question resolved in the negative.

Mr Donnelly moved: That the following new paragraph and recommendation be inserted after recommendation 6:

'The committee notes concerns from a number of stakeholders about the adequacy of SafeWork NSW's compliance and enforcement work. The inquiry received evidence that supported the need for an independent review to be undertaken into SafeWork NSW reflecting a recommendation made by the McDougall Review. The committee supports this and recommends that such a review be initiated by the NSW Government.'

Recommendation X

'That consistent with the recommendation of the McDougall Review, the NSW Government initiate an independent review into SafeWork NSW to include consideration of its exercise of both regulatory and educational functions.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

Mr Martin joined the meeting and Mr Farlow left the meeting.

Chapter 3

Resolved, on the motion of Mr Donnelly: That paragraph 3.23 be amended by omitting 'previous' and inserting instead '2019'.

Resolved, on the motion of Mr Donnelly: That paragraph 3.36 be amended by omitting 'previous' and inserting instead '2019'.

Mr Donnelly moved: That Recommendation 7 be amended by:

- omitting 'review the approach taken to' and inserting instead 'will ensure that regarding'
- omitting 'silica, to ensure that' and inserting instead 'silica:'.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That Recommendation 7 be amended by inserting ', former, current and future' after 'all workers' in the first bullet point.

Mr Donnelly moved: That Recommendation 8 be amended by omitting 'review and improve' and inserting instead 'will ensure that'.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That Recommendation 8 be amended by omitting 'greater clarity' in the second bullet point and inserting instead 'certainty'.

Chapter 4

Resolved, on the motion of Mr Donnelly: That paragraphs 4.5, 4.6 and 4.7 be amended by omitting 'last' and inserting instead '2019'.

Mr Donnelly moved: That the following new paragraph be inserted after paragraph 4.66:

'The Auditor-General's Financial Audit, 20 April 2022, entitled *Treasury 2021* notes at page 18:

The Workers Compensation (Dust Diseases) Authority increased its outstanding claims liability by \$93.9 million at 30 June 2021 to allow for additional payments to injured workers. The increase comprised:

- \$39.3 million to correct historical underpayments to affected workers
- \$54.6 million for higher future claim costs, relating to existing exposures

The underpayments relate to totally disabled retired workers being incorrectly paid in the first 26 weeks of their entitlements. Under existing legislation, the fortnightly entitlements in this period should be based on their current weekly wage rate, instead of a lower statutory indexed rate. It is

estimated that 1,345 workers were incorrectly paid, resulting in underpayments of \$39.3 million. icare advise that underpaid workers will be remediated through compensation payments.

According to an icare Board paper dated 4 June 2021, the Authority sought legal advice on the underpayments issue in 2014, and sought to explain that changes in leadership meant that the advice was not being picked up again until 2020. As a result, the Authority continued to pay at the lower statutory rate until 2020–21.

The Authority has also been overpaying some participants. It is estimated up to 754 workers with an injury before 30 June 1987 have been receiving the same rate of compensation as workers with an injury after 30 June 1987, when their compensation should be 20 per cent lower. In addition, the Authority found it incorrectly paid a dependent allowance for up to 334 individual workers with an injury after 30 June 1987. The icare Board has approved the continuation of current payment practices, while NSW Treasury seeks legislative amendments to preserve entitlements.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Mr Martin: That the following new paragraph be inserted after paragraph 4.66:

'It is noted that the Auditor General, in the Financial Audit reported entitled *Treasury 2021*, released after the conclusion of public hearings for this inquiry, commented on various matters relating to the remediation program'.

[FOOTNOTE: Audit Office of New South Wales, *Treasury 2021*, Financial Audit, 20 April 2022.]

Resolved, on the motion of Mr Donnelly: That Recommendation 9 be amended by:

- inserting 'adequacy of the' before 'legal, financial, physical and mental support provided to workers'
- inserting 'with an intention of expanding the support and care provided to workers' after 'case management models'.

Resolved, on the motion of Mr Donnelly, that Recommendation 10 be amended by omitting 'as a matter of priority' and inserting instead 'within this term of Parliament' before 'amend the definition of a 'dust disease'.

Mr Donnelly moved: That the following new recommendation be inserted after paragraph 4.74:

'Recommendation X

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.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.

Mr Donnelly moved: That the following new paragraph and recommendation be inserted after Recommendation 10:

'The committee heard evidence from the Asbestos Diseases Foundation of Australia pertaining to the current configuration of the Dust Diseases Board which no longer caters directly to the specific needs of victims of Dust Diseases. Under the pre-2015 configuration the dust diseases board had a more unique and empathetic perspective on the plight of those victims and allowed them to tailor compensation appropriate to those circumstances on a case-by-case basis. Under the current configuration Board

members exclusively deal with the allocation and administration of research grant funding, as opposed to compensation which is governed by standardised formulaic metrics rather than a more hands on human approach. The committee also heard that the vast majority of research grant funding is allocated outside NSW.

Recommendation X

That the government review the current operation and outcomes of victim compensation payments in respect of the way compensation payments are handled and administered compared with the pre-2015 regime which was formulated by the former, section 5. Workers' Compensation (Dust Diseases) Board, whereby Board members were nominated by Unions and Industry and had exclusive jurisdiction to examine into, hear and determine all matters and questions arising out of a claim for compensation under this Act. This model should be reconsidered as a means for improving the allocation of compensation payments.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.

Mr Donnelly moved: That the following new recommendation be inserted after Recommendation 10:

'That the NSW Government examine and report on the reasons why the vast majority of research grant funding allocated by the Board has been directed outside of New South Wales.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.

Mr Donnelly moved: That the following new paragraph and recommendation be inserted after Recommendation 10:

'The committee notes the evidence provided to the inquiry by icare regarding the remediation program. icare reported that progress had been made with respect to addressing the matters of both underpayments and overpayments with the expectation that outstanding issues will be resolved by June 2022.'

Recommendation X

That the responsible Minister provide a statement to the House by no later than 30 June 2022 reporting on the progress made by icare with respect to the remediation program established to address both underpayment and overpayments in workers entitlements, including entitlements under the Dust Diseases Scheme.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: 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;
- The secretariat table the report at 11.00 am, 10 June 2022.

6. Next oversight reviews

The committee discussed the timeline for its next reviews of the Workers Compensation scheme and CTP insurance and Lifetime Care and Support schemes. Discussion ensued about whether the Workers Compensation Scheme should have focus on the rise in psychological claims.

Resolved, on the motion of Mr Roberts: That the committee agree over email as to whether the next review of the workers compensation scheme should have a specific focus, and that the following timeline be adopted:

- submissions to open on Friday 17 June and close 24 July 2022
- two hearing dates to be held in September 2022
- report to be tabled by end November 2022.

Resolved, on the motion of Mr Roberts: That the combined Review of the CTP insurance scheme and Lifetime Care and Support scheme adopt the following timeline:

- submissions to open on 15 August and close on 25 September 2022
- two hearing dates to be held in November 2022
- report to be tabled by end February 2023.

7. Adjournment

The committee adjourned at 1:07 pm until Thursday 16 June, 9.30 am (public hearing for the medical cannabis bill inquiry).

Peta Leemen
Committee Clerk

Appendix 5 Dissenting statement

Hon Greg Donnelly MLC and Hon Anthony D'Adam MLC, Australian Labor Party

Recommendation 1

That the relevant Minister urgently convene a taskforce of industry, regulatory and workforce representatives to review safety standards in the manufactured stone industry and consider regulatory changes necessary to protect workers in the industry.

There it is in black and white, the first recommendation of the Standing Committee on Law and Justice report of August 2017 titled First review of the Dust Diseases scheme. This committee, five years ago was sounding the alarm very loudly about the clear and present danger that respiratory crystalline silica posed to workers, particularly those engaged in the manufactured stone industry in New South Wales. For those with eyes to see the evidence was already clearly pointing in one direction and would only grow stronger over time. And with those vivid images of workers exposed to asbestos gasping for breath at the end of their shortened lives still fresh in the minds of committee members, the call to action was deemed to be urgent.

That was August 2017. Since then, there has been the February 2019 report, the March 2020 report and now the June 2022 report. Four reports over a five year period by this parliamentary committee imploring the NSW Government to act, and act decisively to deal with this occupational disease; an occupational disease that is preventable.

We as Labor Party members on this committee believe that if the recommendations from the previous inquiries had been fully supported by the NSW Government and duly implemented, the state would not be in the position that it finds itself in today. While other states over the same five year period have pursued a suite of legislative, regulatory, compliance and educative initiatives to tackle this occupational disease, New South Wales has been content to drift along and do just enough so it can not be accused of ignoring the matter.

In our opinion, because of what is at stake, this matter should be addressed with the political will and resources it deserves. It must be raised above the usual cut and thrust of party politics and given the laser-like attention it deserves. The snail-like progress in this state of addressing this matter can not be justified or explained away. The sense of frustration and dismay almost jumps off the pages of a number of submissions made by medical professionals, legal experts and trade unions to this inquiry. In many cases they quote back evidence and recommendations that they themselves made at previous inquiries.

In terms of this inquiry report and its 12 recommendations, there is no doubt that they could and we believe should have been strengthened. The minutes of the deliberative meeting of the committee to settle the report are found in Appendix 4. A number of amendments, particularly around specifying dates for key actions to be implemented by, were opposed by government members on the committee. This is particularly disappointing given what we know are the dire health implications for workers being exposed to this occupational disease.

One way of focusing the minds of legislators, irrespective of their political affiliations, regarding respirable crystalline silica is to imagine this. What if they personally, through working in the manufactured stone industry or in other industries including tunnelling, quarrying, cement, mining and construction had to front up each day and be exposed to respirable crystalline silica? Would not they be moving far more quickly to address what we know are its threats and dangers? There is no doubt what the answer would be.

There is no reason at all why the NSW Government should not support and implement all the recommendations made in this report along with the accelerated timetable that we proposed. In many respects the last five years have been a wasted opportunity to deal with a significant occupational disease that has and continues to impact on a number of workers in this state. This must change, and change immediately.

