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The Chair
Legislative Council Standing Committee on Law and Justice
New South Wales Parliament

By email: lawandjustice@parliament.nsw.gov.au

Dear Chair,

We are writing in response to the following question on notice arising from the proceedings of 25 January 2019:

The Question on Notice

The Hon. LYNDA VOLTZ: Could you please take this question on notice? From a cursory glance, it looks as though Queensland amended legislation in 2018 to have mandatory reporting for both coal pneumoconiosis and for silicosis.

The Hon. TREVOR KHAN: Do you have that there?

The Hon. LYNDA VOLTZ: I did. I just looked it up.

The Hon. TREVOR KHAN: I am not disagreeing.

The Hon. LYNDA VOLTZ: What I am asking him to take on notice is whether he can check whether that is correct for Queensland and whether any other States are also doing that. It looks like Western Australia may have done something.

Ms FLORES: I think Victoria is moving in that direction.

The Hon. LYNDA VOLTZ: If you could take a look, take the question on notice, and come back to us on whether any States have done that and confirm whether Queensland has done that, that would be good.

Mr KRUSE: Sure.

The Hon. TREVOR KHAN: If you are looking at the other States, I would be interested to know, for instance—the United States is such a fragmented jurisdiction, it is hopeless—whether jurisdiction such as the United Kingdom [UK]—

The Hon. DANIEL MOOKHEY: The European Union [EU]

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The Hon. TREVOR KHAN: Yes, the EU, although they may be one and the same.

Mr DAVID SHOEBRIDGE: There are standards in place in places like British Columbia in North America, which apparently have high standards applying to silicosis. There may be some useful Canadian legislation or United States of America States' jurisdictions or provincial jurisdictions.

Our response is provided in two parts, the first dealing with mandatory reporting, the second dealing with workplace exposure standards

Mandatory reporting

Queensland

The *Health and Other Legislation Amendment Bill 2018* was introduced before the Queensland Parliament on 13 November 2018.[1] The Explanatory Memorandum states that one of the objects of the Bill is to amend the *Public Health Act 2005* to:

> *'establish the Notifiable Dust Lung Disease register and require prescribed medical practitioners to notify the chief executive of Queensland Health about cases of notifiable dust lung disease;'*

In addition to discussing the Queensland government response to black lung disease in the coal industry the Explanatory Memorandum refers to the recent spike in silicosis cases:

> *'In addition, there has recently been a sudden spike in the number of confirmed cases of silicosis for workers in the engineered stone benchtop manufacturing industry. There are high levels of silica in engineered stone, which can be breathed in as dust when cut dry. The Queensland Government has issued a safety warning for workers and employers to cease dry cutting of engineered stone benchtop manufacturing.'*

The substantive amendments are at Part 3 Division 1 of the *Public Health Act*. The purposes of the register, at section 279 AB are to:

> *'(a) monitor and analyse the incidence of notifiable dust lung diseases; and*
>
> *(b) enable information about notifiable dust lung diseases to be exchanged with an entity of the State.'*

The amendments also address practical considerations including maintenance of the register, confidentiality etc.

Query whether the Queensland model may be suitable for application in New South Wales.

Other Australian states

In the time available to respond to the question on notice we have been unable to identify similar initiatives in other states - we understand that some action is underway in Victoria at the policy level.

[1] https://www.legislation.qld.gov.au/view/html/bill.first/bill-2018-035/lh

The United States

In the US mandatory reporting appears to differ depending upon state jurisdiction. For example reporting is mandatory in New Jersey as discussed in the Division of Environmental and Occupational Health publication *'What Physicians Need to Know About Silicosis in Construction Demolition and Renovation Workers.'*[2]

> *'Reporting Guidelines*
> *Physicians, radiologists, pathologists and other health care professionals should report cases of silicosis to the health department in their state so that it can be determined whether silica exposures are being controlled at the workplaces where the patient has been employed. Such reporting is mandatory in many states, including New Jersey. (In NJ, call 800-772-0062 to report cases or for reporting forms.)*
>
> *If the state has no occupational health program, cases of concern should be discussed with NIOSH (National Institute for Occupational Safety and Health) or the local OSHA (Occupational Safety and Health Administration) office.*
>
> *Information on how to contact NIOSH and OSHA is given at the end of this bulletin.*
>
> *The following elements define a case of silicosis for reporting purposes:*
>
> *A physician's provisional or working diagnosis of silicosis, OR Chest x-ray or other imaging technique interpreted as consistent with silicosis, OR Pathologic findings consistent with silicosis. Because silicosis is sometimes confused with sarcoidosis, asbestosis, coal miner's pneumoconiosis, or other pneumoconiosis it is important that all chest x-rays be reviewed by a B-reader.'*

British Columbia

In British Columbia the *Public Health Act* [SBC 2008] provides a mechanism for the mandatory reporting of infection or exposure to hazardous agents including mandatory reporting for public health purposes – see '*College of Physicians and Surgeons of British Columbia: Legislative Guidance, Duty to Report*'.[3] Reporting is required in respect of prescribed hazardous agents and diseases. It is not clear whether silica exposure and silicosis has been prescribed for the purposes of mandatory public reporting.

Workplace exposure standards

Australia

With respect to silica exposure, the current Australian workplace exposure standard is **0.1** micrograms of silica per cubic metre (0.1 mcg/m³.) The standards are located in the SafeWork publication *Workplace Exposure Standards for Airborne Contaminants.*[4]

The table for silica exposure is extracted below:

Silica – Crystalline							-		

[2] *https://www.state.nj.us/health/workplacehealthandsafety/documents/silicosis/sili2web.pdf*
[3] https://www.cpsbc.ca/files/pdf/PSG-Duty-to-Report.pdf
[4] https://www.safeworkaustralia.gov.au/doc/workplace-exposure-standards-airborne-contaminants

Cristobalite (respirable dust)		14464-46-1	-	0.1	-	-	-	-	
Quartz (respirable dust)		14808-60-7	-	0.1	-	-	-	-	
Tridymite (respirable dust)		15468-32-3	-	0.1	-	-	-	-	

Australian workplace exposure standards are currently subject to review by SafeWork Australia. [5] However should it be determined to reduce the standard this will not take effect at least until December 2019. In the meantime there is a strong argument for a lesser standard (0.025 mcg/m³) per square cubic to be incorporated in government contracts, including ongoing projects such as WestConnex. There is also no reason why, pending the SafeWork Australia review, the New South Wales Government could not pass a regulation implementing the lower standard in New South Wales.

United States

The American maximum permissible exposure standard in the construction industry is **0.025** mcg/m³ and .050 mcg/m³ in general industry.[6] The majority of exposure including artificial stone benchtop installation occurs in the construction industry. It is not clear why there different standards for the American construction industry as opposed to general industry. As discussed in the evidence of Unions NSW and the CFMMEU before Standing Committee the American construction industry standard is four times lower than the Australian standard.

Note also that the American standard is often wrongly quoted as being .050 mcg/m³.

British Columbia

The workplace exposure standard for silica in British Columbia[7] is **0.025** mcg/m³. Noting that the current workplace exposure standard for Mexico[8] is also **0.025** mcg/m³ this brings most of North America into line with a standard that is four times below that currently operating in Australia.

United Kingdom

The UK standard is the same as the Australian standard at 0.1 - however there is an increasingly urgent debate in England regarding that standard being out of date - see the '*no time to lose'* discussion in *'Respirable Crystalline Silica: The Facts'* published by the Institution of Occupational Safety and Health. This paper includes a reference to other world standards including:

- **British Columbia** and other states and Canada - also at **0.025** mcg/m²
- **Ireland, Italy, Finland and Portugal** - **0.05** mcg/m²
- **Netherlands** - **0.075** mcg/m².

Yours faithfully

[5] https://www.safeworkaustralia.gov.au/workplace-exposure-standards-review-methodology

[6] https://www.osha.gov/Publications/OSHA3681.pdf; https://www.osha.gov/silica/SilicaConstructionRegText.pdf

[7] https://www.worksafebc.com/en/resources/law-policy/ohs-guidelines/table-exposure-limits-chemical-biological-substances?lang=en

[8] https://www.ishn.com/articles/109495-international-silica-standards-countries-must-update-exposure-limits

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