

**2019 review of the Dust Diseases Scheme
Chair's proposed pre-hearing questions
SafeWork NSW**

Please note, in responding to the following questions, the 2019 review of the Dust Diseases scheme is focused on the response to silicosis in the manufactured stone industry in NSW.

1. Could you inform the committee of the work being conducted by SafeWork NSW as part of the SafeWork Australia response to silicosis in the manufactured stone industry in New South Wales.

- In September 2016, SafeWork NSW launched the *Work health and safety roadmap for NSW 2022* (Roadmap) and identified reducing exposure to hazardous chemicals and materials as a key priority area under Action Area 2.
- By 30 June 2017, SafeWork NSW had completed pilot visits and a research project to identify the Top 10 hazardous chemicals and materials that are causing the most harm to workers from a list of over 40,000 chemicals available in Australia. The results were confirmed through stakeholder consultation in a range of industries and pilot visits, followed by the development and launch of the *2017-2022 Hazardous chemicals and materials exposures baseline reduction strategy* (Chemicals Strategy) in October 2017. The initial focus of the Chemicals Strategy is on the top two priority chemicals: Formaldehyde and Respirable Crystalline Silica (silica); with silica covering all industries – manufactured stone, tunnelling, domestic and civil construction, foundries; and building products (concrete, bricks, etc).
- The strategy consists of four key components for SafeWork NSW intervention over five years:
 1. awareness (webinars, factsheets, video safety alerts, social media)
 2. interactions (workplace visits, conferences, events)
 3. research (health monitoring, international modelling, medical testing)
 4. legislation (review of WHS laws, workplace exposure standards, supporting guidance material and/or codes of practice).
- icare Dust Diseases Care are supporting SafeWork NSW's inspection program by providing subsidised health monitoring. A total of 2,076 workers exposed to silica underwent health monitoring provided by icare Dust Diseases Care in 2017/18 and 3,563 in 2018/19, with icare Dust Diseases Care to continue supporting SafeWork's five-year Chemicals Strategy to 30 June 2022.
- SafeWork NSW also established the Manufactured Stone Industry Taskforce to review the safety standards in the manufactured stone industry and consider regulatory changes to protect workers' health, as a recommendation of the *First Review into the Dust Diseases Scheme* (2017). The Taskforce commenced on 1 July 2018 and comprised industry, peak bodies, medical professionals, unions and other government agencies, including the Lung Foundation, Australian Industry Group and Unions NSW. It met monthly until its completion on 30 June 2019, with its regulatory findings in the areas of work health and safety (WHS laws), health (Public Health laws) and Trade Education. The findings are now with the NSW Government for consideration.
- During this period, all manufactured stone (fabrication) sites were also visited in NSW – 246 sites, 523 visits (some received follow ups), with 578 improvement notices and 39 prohibition notices issued. Another 448 visits were conducted in other industries that work with silica.

- In terms of awareness and education - the Phase 1 multi-channel *Which mask will you wear?* awareness campaign was released in November 2018, that included radio, print, social media and a video safety alert.
- SafeWork NSW delivered three safety forums in February 2019 in Bankstown, Newcastle and Wollongong, as well as completed 36 other industry presentations at various locations up to today's date.
- In April 2019, silica was one of the focus areas in the broader SafeWork NSW three-year media campaign *Safety starts with you* – with TV, radio, social media and website advertisements on silica dust prevention.
- In May 2019, SafeWork NSW delivered a Silica Symposium to over 350 business owners and workers, chemical associations, peak bodies, universities, medical professionals, government representatives and industry experts, with “Dr Karl” Kruszelnicki the MC for the event.
- This was followed by the June 2019 Phase 2 release of the *Which mask will you wear?* campaign, where Dr Karl was introduced as the face and voice of the campaign – radio, social media, video. Materials are available on the SafeWork NSW website www.safework.nsw.gov.au/silica
- From August to October 2019, SafeWork NSW is delivering six Silica Roadshow events – Orange, Liverpool, Ballina, Newcastle, Tamworth & Queanbeyan. All events so far have reached capacity (100) with waiting lists activated.
- As part of National Safety Month in October 2019, SafeWork NSW will target silica dust prevention as well as falls from heights through various media and events, with the four components of the Chemicals Strategy (awareness, interactions, research and legislative review) to continue through to 30 June 2022.

2. Could you provide the committee with an update on icare's work to determine the best way of identifying instances of silicosis in the manufactured Stone industry.

- SafeWork NSW is a separate NSW Government agency to icare. icare can be address questions relating to their work on identifying instances of silicosis in the manufactured stone industry.

3. What actions have been taken by SafeWork NSW to review workplace exposure standards as they apply to silica exposure?

- The review of Australian Workplace Exposure Standard for respirable crystalline silica (silica) is a national process that is being undertaken by Safe Work Australia. Safe Work Australia can be contacted for an update on this review.

4. Has SafeWork NSW taken any steps to establish a dust disease registry and mandatory reporting of dust diseases, including silicosis?

- This action was Recommendation 2 of the *First Review into the Dust Diseases Scheme* (2017), where the NSW Government responded in February 2018 that SIRA would assess the viability of this option. SIRA can be contacted for an update on their progress, noting this action is also item four in the terms of reference for the National Dust Diseases Taskforce that commenced on 1 July 2019.

5. Is icare aware of standardised information collection via standardised respiratory questionnaires, spirometry and other pulmonary function assessments?

- SafeWork NSW is a separate NSW Government agency to icare. icare can be contacted for the information they collect.

6. Could you provide the committee with advice on whether there is a mechanism for reporting worker exposure to silica dust?

- Respirable crystalline silica (silica) is a Schedule 14 hazardous chemical under the *Work Health and Safety Regulation 2017*.
- The duty to provide health monitoring is outlined in Division 6, Clause 368 of the *Work Health and Safety Regulation 2017*. A person conducting a business or undertaking (employer) must ensure that health monitoring is provided to a worker carry out work for the business or undertaking if:
 - (a) the worker is carrying out ongoing work at a workplace using, handling, generating or storing hazardous chemicals and there is a significant risk to the worker's health because of exposure to hazardous chemicals referred to in Schedule 14, Table 14.1, Column 2, or
 - (b) the person identifies that because of ongoing work carried out by a worker using, handling, generating or storing hazardous chemicals there is a significant risk that the worker will be exposed to a hazardous chemical (other than a hazardous chemical referred to in Schedule 14, Table 14.1) and either:
 - i. valid techniques are available to detect the effect on the worker's health, or
 - ii. a valid way of determining biological exposure to the hazardous chemical is available and it is uncertain, on reasonable grounds, whether the exposure to the hazardous chemical has resulted in the biological exposure standard being exceeded.
- Under Division 6, Clause 376 of the *Work Health and Safety Regulation 2017*, a person conducting a business or undertaking (employer) for whom a worker is carrying out work for which health monitoring is required, must give a copy of the health monitoring report to the regulator (SafeWork NSW) as soon as practicable after obtaining the report if the report contains:
 - (a) any advice that test results indicate that the worker may have contracted a disease, injury or illness as a result of carrying out the work using, handling, generating or storing hazardous chemicals that triggered the requirement for health monitoring, or
 - (b) any recommendation that the person conducting the business or undertaking take remedial measures, including whether the worker can continue to carry out the work using, handling, generating or storing hazardous chemicals that triggered the requirement for health monitoring.
- Summary of all Clauses in Division 6:
 - (a) 368 – duty to provide health monitoring
 - (b) 369 – duty to inform health monitoring
 - (c) 370 – duty to ensure appropriate health monitoring is provided
 - (d) 371 – duty to ensure health monitoring is supervised by registered medical practitioner with experience
 - (e) 372 – duty to pay costs of health monitoring

- (f) 373 – information that must be provided to registered medical practitioner
- (g) 374 – duty to obtain health monitoring report
- (h) 375 – duty to give health monitoring report to the worker
- (i) 376 – duty to give health monitoring report to the regulator
- (j) 377 – duty to give health monitoring report to relevant persons conducting businesses or undertakings
- (k) 378 – health monitoring records.

7. Has Safework NSW taken any action to amend the Work Health and Safety Act and regulations to require mandatory air monitoring and the use of controls in circumstances where work is carried out where exposure to silica dust occurs?

- Division 7, Clause 49 of the *Work Health and Safety Regulation 2017* states, a person conducting a business or undertaking at a workplace must ensure that no person at the workplace is exposed to a substance or mixture in an airborne concentration that exceeds the exposure standard for the substance or mixture.
- Division 7, Clause 50 of the *Work Health and Safety Regulation 2017* states, a person conducting a business or undertaking at a workplace must ensure that air monitoring is carried out to determine the airborne concentration of a substance or mixture at the workplace to which an exposure standard applies if:
 - (a) the person is not certain on reasonable grounds whether or not the airborne concentration of the substance or mixture at the workplace exceeds the relevant exposure standard, or
 - (b) monitoring is necessary to determine whether there is a risk to health.

Also, a person conducting a business or undertaking at a workplace must ensure that the results of air monitoring are recorded, and kept for 30 years after the date the record is made, and that they are readily accessible to persons at the workplace who may be exposed to the substance or mixture.

8. How are past test results of individual workers recorded and accessed? Has SafeWork NSW investigated the possibility of a centralised data-storage system? Has SafeWork NSW investigated the possibility of individuals being issued with a “lung passport” as a record of past results?

- As per question 6, it is the duty of the person conducting the business or undertaking to provide health monitoring under Division 6, Clause 368 of the *Work Health and Safety Regulation 2017* to a worker that is carrying out ongoing work at a workplace using, handling, generating or storing hazardous chemicals and there is a significant risk to the worker’s health because of exposure to hazardous chemicals. This can be done in pre-employment checks and is required throughout the course of employment. It is also the duty under Division 6 for the medical practitioner to give the health monitoring report to the worker and the person conducting the business or undertaking. It is only required to be provided to the regulator if the worker has contracted a disease or their work requires remedial measures (work adjustment).

- When SafeWork NSW obtains or gains access to a document in exercising any power or function, under Section 271 of the *Work Health and Safety Act 2011* (confidentiality of information) SafeWork NSW cannot:
 - disclose to anyone else the information, or the contents of or information contained in the document
 - give access to the document to anyone else
 - use the information for any other purpose.

This does not apply if:

- it is about a person and the person gives consent to disclose the information
- it is necessary for the exercise of a power or function under this Act
- or the regulator (SafeWork NSW) or a person authorised by the regulator reasonably believes the disclosure, access or use is necessary for:
 - administering, or monitoring or enforcing compliance with this Act, or
 - administration or enforcement of another Act prescribed by the regulations, or
 - administration or enforcement of another Act or law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety, or
 - recognition of authorisations under a corresponding WHS law, or
 - exercising a power or function under a corresponding WHS law, or
 - is required by any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions, or
 - is required or authorised under a law, or
 - to a Minister.

9. What is the view of icare on the proposed exposure standard of 0.05 mg/m³ and compliance with the exposure standard in dusty workplaces? Should the lower standard of .02 mcg/ m³ be adopted.

- SafeWork NSW is a separate NSW Government agency to icare. icare can be contacted in relation to their view on the proposed Australian Workplace Exposure Standard for silica that is being reviewed by Safe Work Australia. Additionally, per the State Insurance Regulatory Authority (SIRA) submission to the 2019 Review of the Dust Diseases Scheme, Ms Carmel Donnelly, Chief Executive of SIRA, is the (voting) NSW Safe Work Australia Member that can be contacted for the NSW position on the proposed standard. Ms Donnelly/SIRA will also accept the Committee's invitation to attend the hearings on 16 and 20 September 2019 on behalf of SafeWork NSW and will take on notice any questions the Committee wishes to direct to SafeWork NSW or Safe Work Australia.

10. Are you aware of research being conducted to gain a better understanding of the nature, extent and effects of silica exposure, including impacts of dry cutting and wet cutting, and other controls?

- The NSW Centre for WHS (SafeWork NSW) is currently undertaking research into wearable detectors that could alert workers of the presence of silica dust (and other chemicals) in real time.
- The University of Newcastle is assessing the adequacy of the current Australian health monitoring (screening) tests.
- The University of Wollongong is assessing exposure level differences with dry and wet cutting.
- WorkSafe Victoria is undertaking a specific research program, which includes a stonemasons' survey, an epidemiology evidence review and a safe work methods evidence review to identify effective risk minimisation strategies.
- SafeWork South Australia provided a one-off grant to the University of Adelaide in relation to research on exposures to silica dust in the fabrication of engineered stone benchtops.
- Safe Work Australia has engaged experts at Monash University to update the report *Occupational lung diseases in Australia* (2006). The updated report will analyse trends between 2006 and 2019 and is expected to provide a present-day view of occupational lung diseases in Australia.
- Safe Work Australia is also reviewing key literature on effective dust mitigation strategies and advances in technologies to control airborne contaminants at the workplace in a range of industries.

11. Has there been any prosecutions of work health and safety breaches relating to silica?

- SafeWork NSW has issued 578 improvement notices and 39 prohibition notices.
- There are also a number of matters currently under further investigation by SafeWork NSW.
- SafeWork NSW also referred a matter it detected relating to the exposure of workers to silica dust levels above the Australian Workplace Exposure Standard to the NSW Resources Regulator to investigate. This resulted in an Enforceable Undertaking, which is a legally binding agreement under the *Work Health and Safety Act 2011*. An undertaking can be proposed by a company following an alleged contravention, which may be considered as an alternative to prosecution. As part of the undertaking the company has committed to a range of actions with a financial commitment of at least \$498,500. This is in addition to an estimated \$500,000 already spent on works carried out at the site following the incident.