

From:
To:
Cc:
Subject: FW: SafeWork NSW response - Inquiry into Work Health and Safety Amendment (Information Exchange) Bill 2020 - Questions on notice
Date: Tuesday, 8 September 2020 2:39:44 PM
Attachments: [image001.png](#)

Dear Emma

Thank you for your question.

The reasons for requesting that the MOU not be published in its present form are:

- The current version is not final.
- The MOU is premised on the Work Health and Safety Amendment (Information Exchange) Bill 2020 becoming law in its current form. It refers to the proposed amendments to the *Work Health and Safety Act 2011* as if they had been made. If the Bill is not passed or if it is amended the draft MOU will need to be reconsidered or revised.
- There is therefore no benefit in publishing the MOU at this stage. In fact publishing a draft with reference to those amendments being law has the potential to create confusion.
- SafeWork NSW and NSW Health have agreed to publish the MOU once it has been signed.

If you wish to discuss this further please contact Gabbie Gallagher, Director Public and Product Safety, on

Kind regards
Gabbie Gallagher
obo Rose Webb
Deputy Secretary, Better Regulation Division
Department of Customer Service



**Customer
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Our reference: BN-03220-2020

Ms Emma Rogerson
Principal Council Officer, Committee Office
Parliament of New South Wales

Dear Ms Rogerson

I refer to a question taken on notice at the Legislative Council's Law and Justice Committee hearing on the inquiry into the Work Health and Safety Amendment (Information Exchange) Bill 2020.

The Committee asked SafeWork NSW whether the draft Memorandum of Understanding (**MOU**) between SafeWork NSW and NSW Health could be provided to the Committee.

On 21 August, SafeWork NSW responded to the question on notice undertaking to provide the draft MOU by 4 September 2020, following further consultation with relevant Government agencies.

I now provide the draft MOU between SafeWork NSW and NSW Health on silicosis information-sharing.

Please note that the draft MOU is provided on the basis that it is not for publication.

If you have any further queries, please contact Gabrielle Gallagher, Director, Policy and Strategy,

Yours sincerely

Rose Webb
Deputy Secretary – Better Regulation Division

04/09/20

Tab A: Draft Memorandum of Understanding between SafeWork NSW and NSW Health.

Memorandum of Understanding

between

SafeWork NSW

and

NSW Health

Notification of a diagnosis of silicosis

1. Parties

SafeWork NSW of 92-100 Donnison Street Gosford NSW 2250, ABN (81 913 830 179)

and

Health Administration Corporation of 1 Reserve Road, St Leonards NSW 2065 (herein referred to as NSW Health)

now jointly referred to as “the parties”.

2. Recitals

- 2.1 SafeWork NSW is the regulator established under the *Work Health and Safety Act 2011* (**WHS Act**) and is responsible for administering the following acts and where applicable their associated regulations and codes – the WHS Act except at mining and petroleum sites; the *Explosives Act 2003*.
- 2.2 NSW Health is responsible for administering the *Public Health Act 2010*, including receiving notifications under the Public Health Act about scheduled medical conditions and notifiable diseases and taking appropriate public health action in relation to the notifications.

3. Definitions

Comcare means the body corporate established under section 68 of the *Safety, Rehabilitation and Compensation Act 1988* and defined as the regulator under the *Work Health and Safety Act 2011* (Cth).

MOU means this Memorandum of Understanding and includes any Protocols and Schedules as well as any documents to the extent that they are incorporated by reference.

NSW Resources Regulator means the Work Health and Safety Regulator established under clause 1(b) of Schedule 2 to the WHS Act in relation to mining and petroleum sites and the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*.

WHS Regulators means SafeWork NSW and the NSW Resources Regulator.

Person conducting a business or undertaking (PCBU) has the meaning given in section 5 of the WHS Act.

Health monitoring report means a report issued by a medical practitioner to monitor a worker to identify changes in the worker's health because of exposure to a hazardous chemical in accordance with Division 6 of Part 7.1 of the WHS Act.

4. Background

Silicosis is a category 2 scheduled medical condition under the Public Health Act and cases must be notified by medical practitioners to the NSW Health.

Silicosis is also an occupational illness of concern to WHS Regulators.

Information obtained by NSW Health under the Public Health Act may be relevant to allow the WHS Regulators to undertake investigations and ensure measures are in place in the workplace to minimise the risk of silicosis developing.

Recent changes to the WHS Act allow SafeWork NSW to lawfully use information provided by NSW Health, if it is considered that the information is necessary to enable SafeWork NSW to exercise its functions.

It is expected that if information is shared, it may be used to investigate how the worker's exposure to respirable crystalline silica occurred, and shared with the NSW Resources Regulator if it relates to a workplace regulated by the NSW Resources Regulator or Comcare if it relates to a workplace regulated by Comcare.

5. Purpose

Purpose of the MOU

This MOU sets out how NSW Health and SafeWork NSW will share and use information about silicosis. It specifies the method by which NSW Health will share the information, how information will be received, processed and stored by SafeWork NSW, and how and when sensitive information will be destroyed.

The MOU will be published on the SafeWork NSW website.

Purpose of each party

NSW Health will receive notifications of diagnosis of silicosis under the *Public Health Act 2010*.

Upon receiving a notification of a diagnosis of silicosis, NSW Health will consider whether the information received is necessary to enable SafeWork to exercise its functions. In most cases, it would be expected that a diagnosis of silicosis that involved a person who worked in NSW will be relevant to enabling SafeWork NSW to exercise its functions. However, based on an assessment by NSW Health, information in some sections of the Silicosis Notification Form may not be provided to SafeWork NSW if the provision of that information is not necessary to enable SafeWork NSW to exercise its functions or if NSW Health considers that there is an overriding public interest in not disclosing the information.

SafeWork NSW will receive and securely store any information provided by NSW Health.

SafeWork NSW may then use the information received to perform its functions under the WHS Act, which may include investigating the worker's current and former place or places of work, and sharing the information with the NSW Resources Regulator or Comcare.

Relevant Acts and Regulations

The WHS Act provides for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by protecting workers and other persons against harm to their health, safety and welfare through the elimination of risks arising from work. It establishes a regulatory framework which sets out the rights and duties of workers and PCBU's. The WHS Regulators secure compliance with the WHS Act through effective and appropriate compliance and enforcement measures.

6. Principles

- 6.1 This MOU is not intended to create, and does not create, any legally binding obligations between the parties, nor is this MOU enforceable in any court or tribunal.
- 6.2 The parties acknowledge that this MOU is a voluntary statement of the intent of the parties at the time of signature and they will endeavour to conduct themselves in a manner consistent with the intention of the MOU.
- 6.3 Legislation, as amended from time to time, takes precedence where there is any inconsistency between this MOU and the legislation.
- 6.4 This MOU provides the framework for cooperation between the parties in relation to their statutory, operational and administrative interactions.
- 6.5 The parties acknowledge that they each have separate and independent regulatory mandates and roles and nothing in this MOU can affect respective statutory duties, discretions and powers under relevant legislation.
- 6.6 While recognising each party's independent regulatory mandate and role, the parties are committed to a constructive and cooperative relationship in the common pursuit of public and workplace health.
- 6.7 The parties share an understanding of the scope of their individual obligations under this MOU.
- 6.8 The parties shall each bear their own costs of administering this MOU.
- 6.9 This MOU supersedes all previous arrangements in relation to the same or similar subject matter whether or not such previous arrangements were recorded or reduced into writing and signed by the agencies that are party to this MOU.
- 6.10 Any identified conflicts of interest, whether they be actual or perceived, must be immediately disclosed to the other party for consideration and appropriate action.
- 6.11 The parties agree to act ethically and comply with all applicable legislation, directives and policies.

7. Term

- 7.1 The MOU will commence on execution by the parties.
- 7.2 This MOU will remain in effect from the date of commencement until such time as terminated by the Parties effected by the exchange of letters signed by the appropriate officers.

8. Roles and responsibilities

NSW Health will:

- Receive, collect and store personal and health information provided to NSW Health under part 4 of the *Public Health Act 2010* relating to a diagnosis of silicosis made by a medical practitioner in NSW.
- Consider, following a notification about silicosis, whether to share information about the notification with SafeWork NSW
- Where it is considered appropriate to share information to enable SafeWork NSW to carry out its functions under the WHS Act, the following information may be shared:
 - patient details;
 - the type of silicosis;
 - the level of impairment (as a percentage of lung function);
 - the types of tests or scans completed to confirm diagnosis;
 - the date of diagnosis;
 - the primary industry where the exposure occurred;
 - whether the patient continues to work in the industry;
 - the name and contact details of the patient's current or most recent employer;
 - the name of the medical practitioner who made the diagnosis; and
 - any other information that is necessary to enable SafeWork NSW to carry out its functions under the WHS Act.
- Share this information via secure file transfer at monthly intervals.
- If no notification has been received in the previous month, or no information about the notification has been identified as necessary to enable SafeWork NSW to carry out its functions, inform SafeWork NSW each month.

SafeWork NSW will:

- Establish a method of securely receiving information from NSW Health about silicosis via a secure file transfer.
- Receive personal and health information from NSW Health via secure file transfer.
- Transfer the received information to the SafeWork NSW secure database.
- Notify NSW Health of receipt of the information.
- Receive, store and destroy personal and health information from NSW Health in accordance with relevant legislation and SafeWork NSW WHSDOM Obtaining Health Information (Medical Records and Reports) Procedure D20/130527.
- Use and disclose the information provided to it under this agreement only for its purposes as the WHS Regulator under the WHS Act.
- Share personal and health information it receives under this agreement with the NSW Resources Regulator under section 271A of the WHS Act, if the worker is from a workplace regulated by the Resources Regulator.
- Share personal and health information it receives under this agreement with Comcare in accordance with section 271 of the WHS Act, if SafeWork NSW believes it is necessary for the administration or enforcement of the *Work Health and Safety Act 2011* (Cth).
- Publish information on the SafeWork NSW website including aggregate, non-identifiable data on silicosis.

9. Key contacts

9.1 The key contacts will manage the day to day operations of the MOU and be the main contact point for any enquiries.

	<i>SafeWork NSW</i>	<i>NSW Health</i>
Main contact		
Name		
Position		
Phone number		
Email address		
Manager/Coordinator (for issue escalation/dispute resolution)		
Name		
Position		
Phone number		
Email address		

10. Reviews

- 11.1 The parties agree to review this MOU on an annual basis or more frequently if the circumstances so require.
- 11.2 SafeWork NSW will initiate the annual reviews.

11. Issue resolution

- 12.1 Any issue that is related to the content or operation of this MOU will be referred to the agencies' main contact person for resolution promptly and in good faith.
- 12.2 Issues that cannot be resolved by the main contacts either within an agreed timeframe (to be established when the issue is identified) or to the satisfaction of the parties, are to be escalated to the Manager/Coordinator, as identified in the Key Contacts above.

12. Information sharing, privacy and confidentiality

- 13.1 The parties will ensure that any information exchanged or provided under this MOU will be kept confidential and only used and disclosed for the purposes specified in this MOU and relevant legislation.
- 13.2 The parties will consult with each other before issuing any media release or other public statement that relates to this MOU.
- 13.3 SafeWork NSW will keep any information obtained under this MOU securely.

13. Termination

- 14.1 This MOU can be terminated with 30 days' notice at any time by either party and will be effected by the exchange of letters signed by the appropriate officers.

14. Variation

- 15.1 Extensions, Schedules and other amendments and variations to this MOU, or pursuant to this MOU, must be evidenced in writing and signed by the appropriate officer of each party.
- 15.2 Should the parties seek to vary the MOU in accordance with this Part, the parties agree to consult the NSW Information and Privacy Commission.
- 15.3 The exception to 15.1 and 15.2 is the change of Key Contacts which can be effected by the exchange of emails between the parties.

15. Execution

Execution by SafeWork NSW

Execution by (other party)

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Signature

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Signature

.....
Name

.....
Name

.....
Position

.....
Position

.....
Date

.....
Date