

## **INQUIRY INTO 2018 REVIEW OF THE DUST DISEASES SCHEME**

**Organisation:** CFMEU

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# CFMEU

## CONSTRUCTION

7 November 2018

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Dear the Director of the Standing Committee on Law and Justice,

**Statutory review of the Dust Diseases scheme**

We refer to the above and **enclose** for your attention, Submissions of the Construction, Forestry, Mining and Energy Union (New South Wales Branch).

Please liaise with our industrial officer Mr Ben Kruse on Ph: \_\_\_\_\_ or on email: \_\_\_\_\_  
for any arrangements in appearing and or any further submissions.

Yours Faithfully

Darren Greenfield  
Secretary



**NEW SOUTH WALES  
PARLIAMENT LEGISLATIVE COUNCIL STANDING  
COMMITTEE ON LAW AND JUSTICE:**

**2018 REVIEW OF THE  
DUST DISEASES SCHEME**

**SUBMISSION BY THE  
CONSTRUCTION FORESTRY MARITIME MINING  
ENERGY UNION**

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## **1 Introduction**

The Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) welcomes the opportunity to make submissions to the 2018 Legislative Council Standing Committee on Law and Justice Review of the Dust Diseases Scheme. In addition to these submission we also support the submissions from Unions NSW and its affiliates.

The CFMMEU represents approximately 16,000 members in the building and construction industry. A large proportion of our members are workers who come from non-English speaking backgrounds with little or no education beyond the age of 15. Our members rely on the assistance of union delegates, health and safety representatives and union officials in navigating their way through day-to-day safety issues. The CFMMEU has a long history in advocating for safe workplaces that are free of dust contamination and in supporting employees who have acquired dust diseases as a result of occupational exposure. The CFMMEU has an active network of elected health and safety representatives, and offers its expertise to assist our members and their families.

These submissions are specifically targeted to address the emerging silicosis crisis that was a significant focus of the Standing Committee's First Review of the Dust Diseases Scheme (First Review) published in August 2018. While responses to some of the recommendations from the First Review are underway, a number of important high-level regulatory responses have not yet been implemented. A true picture is beginning to emerge regarding the nature and extent of the silicosis crisis.

More can be done to ensure that at-risk employees are screened and that health monitoring occurs in workplaces. The CFMMEU has also identified serious gaps in the current regulatory regime and remains frustrated at the lack of compliance and enforcement by the state regulator. We cannot afford to wait till 2019 or 2022 for a Taskforce to report or for a Roadmap to be written. Arguably, the destination has already been reached - in Queensland 22 new cases were lodged in the three weeks before 18 September 2018<sup>1</sup> - and from our discussions with respiratory physicians there is no reason to think that the crisis is any less acute in New South Wales. Sadly,

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<sup>1</sup> <https://www.abc.net.au/news/2018-09-18/silicosis-warning-kitchen-bench-trade-workers/10262958>

this is a young person's disease with many new cases of what is a terminal illness being reported in respect of workers in their late 20s or 30s. While controls, monitoring, reporting, compliance, enforcement and education are all important, it is also time to consider the prohibition of high silica content products and invest in the develop alternative safe products.

**[CFMMEU Case Study: Gary<sup>2</sup>]**

***Gary, a 31-year-old CFMMEU member has a defacto partner and two dependent children.***

***Gary worked for several years with a stone masonry company working with a team of mostly young men. Gary has worked with CaesarStone and other imported manufactured stone products. Dry cutting of manufactured stone for fitting or variations/adjustments occurred on site. Gary describes the work with manufactured stone as "putrid" - with dust everywhere.***

***There was no warning of danger, no information given about lung disease, no advice about use of respirators - respirators were often damaged and rarely replaced.***

***Gary has just been diagnosed with silicosis.***

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<sup>2</sup> Not the member's real name.

## 2 Background: is silicosis another asbestos?

Up until recently occupational dust exposure has largely been considered as a historical concern - with the NSW dust diseases scheme being required as a response to *past* failures in the regulation of asbestos and like contaminants. In its First Report the Standing Committee noted that the average age of claimants entering the scheme was then about 75 years and that the scheme had now passed the peak of asbestos-related claims.<sup>3</sup>

However, as the Standing Committee reported in 2017 emerging dust diseases remain a considerable concern, particularly silicosis.<sup>4</sup> The Standing Committee heard that in the absence of mandatory reporting mechanisms, concerns were held regarding the underreporting of dust diseases.<sup>5</sup> Mandatory reporting procedures have not yet been put in place raising the likelihood of ongoing under reporting of silicosis cases in New South Wales. Further, silicosis appears to be capable of a much earlier onset and affects a much younger population.<sup>6</sup>

The current government response to silicosis largely treats the issue as a matter for the application of appropriate workplace controls. This is not dissimilar to the approach taken towards asbestos in the first half of the 20<sup>th</sup> century. For many years asbestos industry representatives promoted the use of personal protective equipment, extractors and other controls as providing an adequate response to protect employees - and members of the public - from exposure. It was not until the 1980s that asbestos was banned from homebuilding and not until the early 2000s that the use of asbestos was proscribed altogether.

The CFMMEU remains concerned that the government and industry response to silica dust exposure remains similarly narrowly focused on control related responses and

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<sup>3</sup> Legislative Council Standing Committee on Law and Justice, First Review of the Dust Diseases Scheme, Report 61 August 2017 at 1.28

<sup>4</sup> Id, Particularly at 2.29 and Recommendation 1

<sup>5</sup> Id, at 2.44.

<sup>6</sup> RF Hoy, T Baird et al *Artificial stone-associated silicosis: a rapidly emerging occupational lung disease* Occupational Environmental Medicine, September 2017 pp3-5. This paper provides an informative summary of the recent medical and occupational history associated with artificial stone associated silicosis. A copy of the paper is annexed at **Annexure A**.

relatively narrow education initiatives. In some industries - such as in some tunneling, construction and stone masonry environments it may not be possible to eliminate all worker engagement with silica. In such environments stringent measures eliminating human exposure to silica dust through high-level engineering and other controls together with strict regulation remain an important response.

However in the case of the manufactured stone industry and other domestic and industrial applications real questions are to be asked as to whether these products are appropriate for continued use. Kitchen bench top installation is largely carried out by independent contractors and the employees of small businesses. In New South Wales a large percentage of this workforce is made up of employees from non-English-speaking backgrounds. This workforce also has a relatively low level of unionisation with workers being less likely to be supported through elected health and safety representatives. These factors combine to create an extremely vulnerable uninformed workforce with little knowledge and capacity to apply controls so as to minimise occupational dust exposure. Further, other workers and visitors engaged in everyday work activities where such installation work is occurring suffer secondary exposure. CFMMEU building and construction members are regularly exposed to silica dust during installation, clean up and waste disposal.

Disturbing parallels can be drawn with the asbestos experience in Australia in the 20<sup>th</sup> century.

Since the Standing Committee's August 2017 report the state government response has been to identify crystalline silica exposure as a key priority in the *SafeWorkNSW Work Health and Safety Roadmap for 2022*. A further initiative recommended by the Standing Committee's First Report, the *Manufactured Stone Industry Task Force* (the Task Force) is underway. The CFMMEU remains concerned that the responses emerging from these initiatives remain generic - and fail to address questions regarding underlying safety concerns over the continued use of these materials. While the CFMMEU is participating on the Task Force we are concerned that the commercial interests of industry manufacturing representatives in protecting income streams for imported



manufactured stone products not be preferred over the need to protect workers and eliminate workplace health hazards.

**[CFMMEU Health & Safety Representatives (HSRs) demand changes]**

***In September 2018 a meeting of CFMMEU HSRs called for the elimination of products containing high levels of silica.***

***HSR's emphasise that exposure is not just limited to those employees working directly with such products and effects all workers in the vicinity where such work is or has been carried out and where disposal of silica waste occurs.***

***HSRs are acting to cease dry cutting on building sites. HSRs are also concerned regarding conflicting information about appropriate workplace controls.***

### **3 Medical Screenings**

The August 2017 First Review reported that icare provides a free medical screening service for workers and retired workers with a history of exposure to occupational dusts.<sup>7</sup> In practice this involves a mobile bus service which visits various industry sites in metropolitan and regional areas in New South Wales. The CFMMEU has concerns regarding reports that silicosis is under reported amongst populations of vulnerable workers. The CFMMEU recommends the introduction of additional x-ray services particularly targeting workers in vulnerable populations in an effort to gain a better picture of the extent to which this disease affects these workers. In the context of low levels of employer initiated health monitoring, the CFMMEU recommends that SafeWork be required to compile a list of sites and employers for compulsory health monitoring. If employers will not conduct the tests, the government will have to step in and significantly expand the free medical screening service.

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<sup>7</sup> Legislative Council Standing Committee on Law and Justice, First Review of the Dust Diseases Scheme, Report 61 August 2017 at 1.55-1.57.

**[Recommendation 1]**

**The NSW Government expand the icare free screening service. That SafeWork compile a list of sites and employers for compulsory health monitoring.**

#### **4 Disease Registry**

The CFMMEU is aware that there are significant gaps between the reported instances of silicosis captured by SafeWork NSW statistics and the actual spread of the disease through the community as reported by the medical profession. Both the Thoracic Society of Australia and New Zealand (TSANZ) and the Australasian Faculty of Occupational and Environmental Medicine (AFOEM) have called upon Australian governments to establish the health surveillance and diseases registries necessary to support workers who have been exposed.<sup>8</sup> Silicosis is not presently a reportable injury for the purposes of health reporting. Workers often choose not to report such injuries themselves due to the likelihood that they will be dismissed from employment. Further, it is often simply the case that workers have insufficient knowledge regarding the nature of the dangers arising from dust exposure exposure. The combination of low standards of medical screening, together with low levels of reporting by the medical profession, by workers and employers means that the true extent and impact of this disease remains hidden. Urgent action is needed to capture this information to ensure that adequate treatment is provided to sufferers and for the purposes of obtaining epidemiological data to assist in state and national planning.

**[Recommendation 2]**

**That the New South Wales Government expedite measures to establish dust disease registries and the mandatory reporting of dust diseases.**

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<sup>8</sup> Legislative Council Standing Committee on Law and Justice, First Review of the Dust Diseases Scheme, Report 61 August 2017 at 2.40 ff.

### 5.1 Disease prevention: current regulatory inadequacies

A number of regulatory failures have contributed to the underreporting and lack of action on the silicosis crisis. Despite silicosis being recognised as an increasingly urgent health issue SafeWork NSW advise that the regulator has *never* received a dust related serious injury or illness notification pursuant to Part 3 of the *Work Health and Safety Act 2011* (NSW) (the Act). The definition of serious injury or illness at s35(3) of the Act is relatively narrowly defined, relating largely to immediate physical injuries arising from workplace accidents. At s35(3)(c) substance exposure related injuries are limited to circumstances where medical treatment has been received within '48 hours.' The nature of silicosis is such that medical treatment may not occur for months or years after exposure incident. While silica dust exposure might come under the definition of '*an uncontrolled escape, spillage or leakage of a substance*' for the purposes of defining a s35(5) '*dangerous incident*' in practice silica dust contamination is not generally addressed under this provision. The Act in its current form simply does not provide a straightforward mechanism for incident notification arising from silica exposure.

Whereas the *Work Health and Safety Regulations 2017* (NSW) (the Regulations) incorporate an entire chapter associated with the management of asbestos in the workplace, no provision in the regulations specifically address risks associated with silicosis. Chapter 3 Division 7 of the Regulations deal with '*managing risks from airborne contaminants*.' Regulation 49 includes a catchall requirement that a person conducting a business or undertaking '*must ensure that no person at the workplace is exposed to a substance or mixture in an airborne concentration that exceeds exposure standard for the substance or mixture*', and outlines penalties for contraventions of this requirement. However in practice, employers simply do not monitor for airborne contaminant levels. In the absence of monitoring there is no data - and in the absence of data the problem remains unidentified. These difficulties are exacerbated by the weak operation an application of Regulation 50. A person conducting a business or undertaking (PCBU) is only required to carry out air monitoring 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.*

The CFMMEU argues that any workplace where silica dust is present is a workplace where a risk to health exists - and air monitoring should be required. However, air monitoring is not inexpensive. Further, SafeWork routinely advise employers that provided engineering and personal protection controls are in place ongoing air monitoring is not required. Cost is clearly an issue motivating the regulator to recommend the use of controls as an *alternative* to air monitoring. In the absence of a specific regulatory requirement that that continuous air monitoring be carried out when silica related work is being conducted employers will simply not conduct air monitoring. The absence of monitoring is associated with a lack of data - completing the cycle whereby a convenient lack of knowledge is maintained regarding the actual nature of this hazard.

Even in relatively sophisticated workplaces where one would expect data to be available - such as in tunneling projects associated with Sydney's WestConnex employers still have a poor record in sharing air quality data with employees, unions and the regulator. The CFMMEU notes the continuing controversy regarding the failure of WestConnex and SafeWork to provide air monitoring data arising from a serious dust plume incident in WestConnex Haberfield in early March 2018, attached at **Annexure B** is a copy of our correspondence to SafeWork NSW dated 4 May 2018 together with a USB enclosing an accompanying video clip.

**[Recommendation 3]**

**The NSW State Government enact amendments to the Work Health and Safety Act and Regulations to require the reporting of exposure to silica dust.**

**[Recommendation 4]**

**The NSW State Government enact amendments to the Work Health and Safety Act and Regulations to require mandatory air monitoring *and* the use of controls in all circumstances where work is carried out where exposure to silica dust occurs. Further, the “reasonable grounds” defence under Regulation 50 be removed.**

**[Recommendation 5]**

**The State Government expand the asbestos related provisions of the Work Health and Safety Act and Regulations to address silica exposure risks.**

## **5.2 Disease prevention: homebuilding licence regulation**

There is an increasing awareness of the health risks associated with exposure to silica dust arising from homebuilding kitchen bench top installation. The issue was the subject of comment and recommendation by the Standing Committee in the report on the First Review of 2017. Nevertheless, in July 2018 the NSW Department of Fair Trading published *‘Easy and Transparent - Empowering Small Business’* which outlined a proposal to deregulate 13 homebuilding licences in New South Wales. This proposal was promoted by Matthew Keane MP, Minister for Innovation and Better Regulation as being at the forefront of a new ‘liberalism’ and deregulation of Australian businesses. The proposal was based on a misapprehension that the relevant homebuilding activities *‘involved trades which appeared to involve less complex tasks which, if done badly, are not likely to give rise to major safety risks or risks of significant financial detriment...’*<sup>9</sup>

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<sup>9</sup> NSW Department of Fair Trading published *‘Easy and Transparent - Empowering Small Business’* part 1.6.

The proposal was met with opposition from a wide range of stakeholders. The CFMMEU wrote to the Minister on 29 August 2018 highlighting concerns about the emerging silicosis crisis and urging the Government not to deregulate homebuilding licences. A copy of our correspondence to the Minister is annexed at **Attachment C**. The Dust Diseases Board also wrote to the Secretary New South Wales Department of Finance raising concerns about the proposal and recommending that the government not proceed with the proposal as it applies to kitchen bench top installation and splashback installation and recommending that further cross government consultation occur with the Taskforce. Correspondence dated 8 October 2018 from the Dust Diseases Board to the Secretary New South Wales Department of Finance is attached at **Attachment D**.

The CFMMEU now understands that the state government has withdrawn the proposed deregulation of home building licences. The CFMMEU supports this course of action. The CFMMEU does not support a *laissez faire*, or 'easy' approach to homebuilding safety regulation. The CFMMEU does however remain concerned there is a view in some areas of government and industry that the regulation of health and safety is principally a 'red tape' or cost issue.

### **5.3 Disease prevention: outdated workplace exposure standards**

The current regulatory failures partly arise due to seriously low workplace exposure standards (WES) currently in place for silica exposure.<sup>10</sup> The current WES level of 0.1/m<sup>3</sup> is twice that recognised by the United States Department of Labour. That individual WES values in Australia are outdated and do not reflect the most relevant scientific data or comparable exposure standards from international jurisdictions is well recognised. The issue is currently the subject of a regulatory review by SafeWork Australia.<sup>11</sup> However there is no immediate plan to urgently reduce the WES as it applies to silica exposure in New South Wales, the final revised standards are not due until December 2019 – in the meantime the underrating of the danger to workers continues.

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<sup>10</sup> <https://www.safeworkaustralia.gov.au/workplace-exposure-standards-review-methodology>

<sup>11</sup> <https://www.safeworkaustralia.gov.au/workplace-exposure-standards-review-methodology>

**[Recommendation 6]**

**The NSW Government take urgent action to ensure the review of workplace exposure standards as they apply to silica exposure.**

**5.4 Disease prevention: uncertainty regarding controls**

Mixed messages provided by industry and regulators regarding what might constitute 'safe' control mechanisms to protect workers from silica exposure constitute another contributing factor in the current silicosis crisis. A prevailing view amongst employers is that silica exposure can be safely controlled through various means which may include site or tool based extraction systems, wet cutting, together with various masks, suits and other personal protection equipment. However little scientific evidence is available on the adequacy of these controls and there is continuing uncertainty at the industry and workplace level. Is a respirator required for adequate detection? Is a respirator only required after four hours of exposure control? Is a half facemask required? Is wet cutting the 'answer' to reduce the level of exposure to airborne silica? Or is there emerging evidence that in many circumstances wet cutting can also result in dangerous levels of exposure to airborne silica.<sup>12</sup> In conditions where wet cutting is not suitable (e.g fine detail work associated with sandstone masonry) what controls are adequate?

Action is being taken by some employers and some industry sectors to apply relatively sophisticated engineering controls. For example, in some manufacturing settings inbuilt extraction systems can significantly reduce the extent of silica exposure. Some manufacturers are also introducing procedures that encourage or require materials to be cut in the factory so as to minimise the cutting required at commercial and domestic building sites where engineering controls are less likely to be in place. However the extent to which industry, which is largely self regulated in this area, actually develops

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<sup>12</sup> See RF Hoy, T Baird et al *Artificial stone-associated silicosis: a rapidly emerging occupational lung disease* at Annexure A pge 4.

and applies these initiatives across the board is variable and uncertain. Further, much of the work associated with dangerous exposure to silica dust occurs on building sites and in small domestic installation settings - particularly the case with kitchen bench top installation - where the recommendations of manufacturers and suppliers largely go unheeded.

*The Small Entity Compliance Guide for the Respirable Crystalline Silica Standard for Construction* published by Occupational Safety and Health Administration U.S. Department of Labour (OSHA) provides one source of guidance for engineering and personal protection controls that might be capable of implementation in installation settings. This publication analyses available engineering and respiratory protection equipment responses to silica exposure and identifies various recommended actions and exposure periods. For example in respect of workers utilising handheld grinders for mortar removal, recommended protections include:

- *commercially available shroud and dust collection system capable of capturing 25 cfm of airflow per inch of wheel diameter and having a filter with 99% or greater efficiency together with either a cyclonic pre-separator or filter cleaning mechanism.*
- *Where work may continue for four or more hours, respiratory protection with a minimum Apf of 25 is required.<sup>13</sup>*

While the work conducted by OSHA appears to be leading the field in establishing guidelines for engineering and personal protection controls, these requirements are well ahead of ordinary practice in New South Wales. Further, independent scientific testing should be conducted in the Australian context to review the adequacy of the controls outlined by OSHA. Additionally, question whether establishing safe working periods of four hours or less are appropriate in the context of lengthier working conditions clearly being designated as having adverse health implications?

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<sup>13</sup> Occupational Safety and Health Administration U.S. Department of Labour (OSHA) *Small Entity Compliance Guide for the Respirable Crystalline Silica Standard for Construction* pp 20-21.



The OSHA compliance guide represents an attempt to address the small entity sector - which presents significant challenges in terms of compliance. While it is understandable that efforts are made to establish guidelines for the use of hand tools, benchtop saws and other equipment the CFMMEU is not confident that many smaller employers and independent contractors will actually be motivated to acquire and make use of what remain quite complicated engineering and personal protection systems. In the meantime workers continue to suffer injury.

Small businesses are less likely to have the resources and administration systems in place to purchase and install engineering control systems in high-tech personal protection equipment. These businesses are also less likely to train and supervise employees to ensure compliance on the ground. While we should not derogate from the principle that all duty holders are required to provide a safe and satisfactory workplace free from health hazards, additional regulations could be put in place requiring principal builders to install and maintain suitable engineering systems and safe work practices for the elimination and control of dust on major sites.

Of significant concern to the CFMMEU and membership is that dangerous exposure to silica dust not only affects workers who are directly engaged in such activities, but all workers, occupants and visitors who are exposed to this work while that is being performed and while silica debris remains on-site and, significantly, while such debris is being removed.

**[Recommendation 7]**

**State Government research be conducted to gain a better understanding of the nature, extent and effects of silica exposure under dry cutting and wet**

**[Recommendation 8]**

**The New South Wales government amend the Work Health and Safety Act and Regulations to require principal contractors on building and construction sites to install, maintain and monitor the use of air monitoring equipment and dust engineering and other controls.**

### **5.5 Disease Prevention: Deterrence**

Why have there been no prosecutions? This is not simply an issue of failed regulation - the current crisis partly arises from a lack of action on the part of the regulator to act on specific deterrence initiatives and establish an appropriate level of general deterrence across industry. SafeWork reports an increase in the number of workplace visits targeting silica hazards.<sup>14</sup> There has also been an increase in the number of improvement notices. However less than a handful of prohibition notices have been issued, while the mortality rate appears poised to increase exponentially. The absence of prosecutions means that there is no general deterrent in place to steer employers away from the wilfully blind approach to silica safety that presently characterises the industry.

While employers continue to be sent the message that they can *either* conduct air monitoring *or* implement appropriate engineering and personal protection controls, employers will continue to seek solace from the 'reasonable grounds' defence embedded in clause 50 of the Regulations. Meanwhile workers will continue to be exposed to dangerous levels of dust.

#### **[Recommendation 9]**

**The NSW Government to provide targeted funding supporting the prosecution of work health and safety breaches relating to silica exposure and/or harm to workers.**

### **5.6 Disease Prevention: Reinstating a genuinely tripartite work health and safety regime**

The lack of action on the part of the regulator is partly explained by a failure in the statutory framework to provide mechanisms to apply external pressure to SafeWork

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where the regulator fails to take action. Part 12 Division 1 of the WHS Act does not provide unions with the right to seek internal or external reviews of decisions by SafeWork where the regulator fails to take action with respect to safety incidents. The WHS Act does enable individual workers and health and safety representatives (HSRs) to notify review proceedings against SafeWork - however it is rare for workers and HSRs to commence such proceedings themselves – the power imbalance between workers and the combined might of the employer and the regulator is just too great. In those circumstances where unions have sought to bring review proceedings before the New South Wales Industrial Relations Commission (IRC) - SafeWork routinely instruct the Government Solicitor to argue that no jurisdiction vests in the IRC to recognise industrial organisations as '*eligible persons*' for the purposes of internal or external reviews of decisions by SafeWork inspectors to act, or not act on safety issues.

This highly unsatisfactory state of affairs means that there is no effective external oversight with respect to decisions by the state regulator to act or not to act in relation safety matters. Query whether the Standing Committee was misled by SafeWork on this point during the course of the First Review? On Tuesday, 7 November 2017, in answer to questions specifically directed at the ability for unions to participate in external and review applications under the WHS Act 2011 Peter Dunphy, former Executive Director SafeWork New South Wales advised the Standing Committee that *anybody who has an interest in '(a) matter at a workplace (may) seek an internal review of that matter.'* This contrasts with the position communicated by SafeWork to the CFMMEU just one month later in response to an internal review application made by the CFMMEU concerning asbestos contamination at the state government Burrill Lake Bridge works on the south coast of New South Wales. In that context the regulator on 8 December 2017 wrote to the union advising that the CFMEU is '*not an eligible person to apply for internal review under s223 of the Act.'*

Until such time that the WHS Act is amended to enable unions, as of right, to apply for internal and external reviews of SafeWork decisions on behalf of their members, the regulator can continue to take action, or no action as it sees fit without fear of review. We may therefore have to wait for the third, fourth or fifth review of the dust diseases scheme to see practical, day-to-day actions taken by a regulator whose powers, and motivations to act, are balanced by an equal dialogue with employers and trade unions.

**[Recommendation 10]**

**The NSW Government to amend Part 12 Division of the Work Health and Safety Act to recognise unions as eligible persons for the purposes of internal and external reviews of decisions by SafeWork.**

**5.7 Disease Prevention: Prohibition of unsafe products; development of safe products**

As a society we are not adequately managing occupational exposure to silica. We do not have screening systems in place to identify workers who are injured or at risk - and the guidelines for dangerous exposure levels are hopelessly outdated. There is no medical register to ensure mandatory reporting of the disease. Regulations requiring employers to conduct air monitoring and report incidents are structured so as to provide an easy way out for employers *not to conduct* these activities. Many employers are lackadaisical at best in providing engineering and personal protection equipment controls - and the absence of prosecutions on the part of the regulator means that deterrence is not a motivating factor for employers to take action to protect their workforce.

The CFMMEU has sought to identify practical measures to improve practices in each of these areas. However, the question does have to be asked as to whether the dangerous nature of high silica products means that their use should be proscribed? In practical terms, the provision of stronger regulations and guidance around the use of these materials will not necessarily guarantee compliance in workplaces. The CFMMEU has drawn parallels with the asbestos experience in Australia. Hopefully we can learn from this experience - we recommend that it is now time to act to ban the use of high silica products where this is possible.

The CFMMEU understands that leading manufacturers are now developing low silica products in Europe. As the nature of the silicosis crisis becomes clear a market will emerge for low silica products, particularly in the area of kitchen bench top installation. This presents an exceptional export opportunity for Australian manufacturers. However this transformation is unlikely to occur without government intervention and support. Presently the overseas manufacturers of engineered stone products continue to advocate to protect their income streams for the sale and distribution of existing high silica products in Australia. This is an area where government, possibly through the CSIRO, could develop an alternative product.

Notably, the Dust Diseases Board has recently advised SafeWork NSW of the need to *“review the use of problematic materials that contribute to high-level exposures.”* The CFMEU supports that recommendation.<sup>15</sup>

We do not want to find ourselves, in 10 to 20 years time, looking back and asking why action was not taken earlier to stop the proliferation of high silica content products throughout New South Wales workplaces and homes.

**[Recommendation 11]**

**The New South Wales State Government take action to proscribe the use of high silica content products in commercial and domestic applications.**

**[Recommendation 12]**

**The New South Wales government take action to support the development and manufacture of alternative, low risk, low silica based products for the purposes of domestic and commercial use in New South Wales and for export.**

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<sup>15</sup> Correspondence from Dust Diseases Board of New South Wales to SafeWork 8 October 2018, attached at **Attachment D**.

## **5.8 Disease Prevention: Health Promotion**

In 2017 the Standing Committee rightly identified silicosis as an emerging and potentially urgent public health issue. While responses are presently underway through the Taskforce and Roadmap - the Taskforce is not due to report to Government until 30 June 2019. Further, outputs from the Taskforce are to be incorporated within the government's Work Health and Safety Roadmap by 2022. For a matter about which an urgent response is required these dates remain distant. In this context the CFMMEU has called upon the Government to take urgent and widespread health promotion action to address the crisis. The CFMMEU has called the government to undertake targeted awareness and education initiatives including a focus on non-English speaking background workers and incorporating broader public health initiatives such as education in workplaces and schools.<sup>16</sup> The Dust Diseases Board has also recommended that publications and broadcasting occur as soon as possible in community languages (including Mandarin and Korean) in local newspapers and radio.<sup>17</sup>

In the last fortnight the CFMMEU now understands that government has agreed to commence an interim radio broadcast and social media initiative. Query how extensive this initiative is, and the extent to which a budget has been allocated beyond the short-term ?

Despite some movement with respect to health promotion, it remains unclear as to what level of engagement has occurred with New South Wales Health with respect to health promotion activities. Presumably New South Wales Health holds significant expertise in dealing with the epidemiological aspects of health issues such as this that involve diverse demographics. While focused attention needs to be brought to the issue as it applies to vulnerable workers education also needs to occur through engagement with the younger population – who are an at risk group - through school-based programs.

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<sup>16</sup> CFMMEU correspondence to Minister Matthew Keane 29 August 2018, at Attachment C.

<sup>17</sup> Annexure E, correspondence from the Dust Diseases Board of NSW to SafeWork dated 8 October 2018.

**[Recommendation 13]**

**The NSW government liaise with New South Wales Health and the New South Wales education department to establish widespread health promotion and education initiatives targeting vulnerable workers and students in TAFE and schools to ensure a high level of community awareness regarding the dangers of silica exposure.**

**[Recommendation 14]**

**The NSW government take action in implementing the above CFMMEU recommendations at the earliest opportunity.**

**6 We cannot afford to wait for a national response.**

Numerous of the recommendations made by the CFMMEU are caught up in reviews and negotiations underway at the national level. While a consistent national response to work health and safety is an important goal, we cannot stand by and wait for the outcome of various reviews together with interstate and commonwealth agreements to be negotiated and implemented. The NSW legislature needs to act on these matters now.

## **Annexure E: List of Recommendations**

### **[Recommendation 1]**

**The NSW Government expand the icare free screening service. That SafeWork compile a list of sites and employers for compulsory health monitoring.**

### **[Recommendation 2]**

**That the New South Wales Government expedite measures to establish dust disease registries and the mandatory reporting of dust diseases.**

### **[Recommendation 3]**

**The NSW State Government enact amendments to the Work Health and Safety Act and Regulations to require the reporting of exposure to silica dust.**

### **[Recommendation 4]**

**The NSW State Government enact amendments to the Work Health and Safety Act and Regulations to require mandatory air monitoring *and* the use of controls in all circumstances where work is carried out where exposure to silica dust occurs. Further, the "reasonable grounds" defence under Regulation 50 be removed.**

### **[Recommendation 5]**

**The State Government expand the asbestos related provisions of the Work Health and Safety Act and Regulations to address silica exposure risks.**

### **[Recommendation 6]**

**The NSW Government take urgent action to ensure the review of workplace exposure standards as they apply to silica exposure.**

### **[Recommendation 7]**

**State Government research be conducted to gain a better understanding of the nature, extent and effects of silica exposure under dry cutting and wet cutting scenarios and in the context of various control environments.**



**[Recommendation 8]**

**The New South Wales government amend the Work Health and Safety Act and Regulations to require principal contractors on building and construction sites to install, maintain and monitor the use of air monitoring equipment and dust engineering and other controls.**

**[Recommendation 9]**

**The NSW Government to provide targeted funding supporting the prosecution of work health and safety breaches relating to silica exposure and/or harm to workers.**

**[Recommendation 10]**

**The NSW Government to amend Part 12 Division of the Work Health and Safety Act to recognise unions as eligible persons for the purposes of internal and external reviews of decisions by SafeWork.**

**[Recommendation 11]**

**The New South Wales State Government take action to proscribe the use of high silica content products in commercial and domestic applications.**

**[Recommendation 12]**

**The New South Wales government take action to support the development and manufacture of alternative, low risk, low silica based products for the purposes of domestic and commercial use in New South Wales and for export.**

**[Recommendation 13]**

**The NSW government liaise with New South Wales Health and the New South Wales education department to establish widespread health promotion and education initiatives targeting vulnerable workers and students in TAFE and schools to ensure a high level of community awareness regarding the dangers of silica exposure.**

**[Recommendation 14]**

**The NSW government take action in implementing the above CFMMEU recommendations at the earliest opportunity.**