

**Submission
No 5**

INQUIRY INTO 2019 REVIEW OF THE DUST DISEASES SCHEME

Organisation: Construction, Forestry, Mining and Energy Union (CFMEU)

Date Received: 12 August 2019

CFMMEU

CONSTRUCTION

12 August 2019

The Director
NSW Legislative Council Standing Committee on Law & Justice
Parliament House
MaCQUARIE Street
Sydney
NSW 2000

Dear Sir/Madam

Re: CFMMEU submission concerning the 2019 Review of the Dust Diseases Scheme

The Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) welcomes the opportunity to make submissions to the 2019 Review of the Dust Diseases Scheme (the **2019 Review**).

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.

In August 2017 the New South Wales Parliament legislative Council Standing Committee on Law and Justice (the **Standing Committee**) recommended the New South Wales Government establish a taskforce to address deeply troubling concerns arising from the reappearance of silicosis as an occupational disease, particularly affecting employees in the manufactured stone industry.

The CFMMEU has since participated in the NSW Manufactured Stone Industry Taskforce (the **Taskforce**) and has provided an independent report to SafeWork and the Minister in response to the draft report issued by the SafeWork. The *Manufactured Stone Industry task force: CFMMEU Final Report* (the **CFMMEU Report**) was submitted to the regulator and the NSW Government in July this year. The CFMMEU Report raises concerns that SafeWork are treading water on the silicosis crisis associated with the use of manufactured stone. A copy of the report is attached for your information.

While there has been significant work carried out in raising public awareness about silica

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hazards, the CFMMEU remains concerned that the regulatory responses to the manufactured stone crisis are moving far too slowly.

Our members remain concerned that state and national responses to the silicosis crisis in the manufactured stone industry are avoiding a key underlining concern - namely that efforts need to be taken to eliminate this hazard from workplaces - substituting hazardous materials for safe alternative materials. CFMMEU health and safety representatives (**HSRs**) passed a resolution to this effect in September 2018 calling for the elimination of products containing high levels of silica. This was reported to the Standing Committee on our submission to the 2018 Review of the Dust Diseases Scheme (the **2018 Review**). CFMMEU HSRs have again passed a similar resolution in July this year.

With respect to mandatory reporting, a suitable precedent exists in the Queensland Parliament's *Health and Others Legislation Amendment Act 2019* which was assented to on 11 April 2019. This issue is discussed paragraphs 23 to 27 of the attached CFMMEU Report. A similar response in New South Wales is now well overdue.

The CFMMEU also remains concerned about continuing delays with respect to the adoption of lower workplace exposure standards. This issue is discussed and paragraphs 28 to 29 of the attached report. While we understand there is widespread support for the reduction of the current silica WES from 0.1 mcg/m³ to 0.05 mcg/m³, the new standard continues to fall well short of the American construction industry standard (0.25 mcg/m³) and well behind the recommended health standard of 0.02 mcg/m³. Further, it could take as long as three years for the 0.05 mcg/m³ standard to actually be implemented through the cascading process associated with the adoption and implementation of work health and safety between Commonwealth and State work health and safety agencies. Given that the 0.05 mcg/m³ is now relatively noncontroversial, the state Parliament should have no difficulty in adopting that standard at the very earliest opportunity. The CFMMEU continues to argue for the earliest possible adoption of the lower, health-related standard, of .02 mcg/m³.

The attached report also includes a status update on recommendations made by the CFMMEU to the 2018 Review. Unfortunately, most of the issues that remain current in the attached CFMMEU report were also raised in our submission to the 2018 Review.

Also attached is a copy of the paper referred to at paragraph 12 of the CFMEU Report, *Artificial Stone Associated Silicosis: A Systematic Review*.

We look forward to hearing further from the Standing Committee regarding these important initiatives to protect work health and safety of employees in the building and construction industry. We would welcome the opportunity to provide evidence at the hearing.

Yours faithfully

Darren Greenfield
Secretary



MANUFACTURED STONE INDUSTRY TASK FORCE

CFMMEU Final Report

A: Introduction

1. In August 2017 the New South Wales Parliament Legislative Council Standing Committee on Law and Justice (the **Standing Committee**) made the following recommendation:

That the relevant minister urgently convene a task force 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.

The Taskforce was considered necessary due to “deeply troubling” concerns held by the Standing Committee regarding the return of silicosis as an occupational disease evidencing “a significant failure in our work health safety regime.”¹ The Standing Committee identified the need for “a review of what has gone wrong, whether at workplace level or at a state regulatory level, that has caused the disease to return.”²

2. The Manufactured Stone Industry Task Force (the **Taskforce**) was established in July 2018. The Taskforce has been convened by SafeWork NSW (**SafeWork**). The Construction Forestry Maritime Mining Energy Construction and General Division New South Wales Branch (**CFMMEU**) has participated on the Taskforce.
3. The CFMMEU has had the opportunity to review the Draft SafeWork NSW Report (the **Draft SafeWork Report**). At the time of writing this report SafeWork has submitted the SafeWork Final Report to the Minister. The union has not yet sighted the SafeWork Final Report. This report responds to the Draft SafeWork Report as provided to the union on 1 July 2019.

B: Response to Executive Summary

4. The Draft SafeWork Report executive summary, at page 3, states that all Taskforce members recognised that “regulation alone and/or any one agency could not solve the problem on their own.” While this is correct, the CFMMEU is concerned that SafeWork have significantly played down the need for urgent regulatory responses required at a state level.
5. The executive summary observes that while the scope of the Taskforce was limited to the manufactured stone industry, silica is present in a range of other materials such as sandstone and concrete blocks and remains a concern in other industry sectors such as tunnelling, mining, foundries and moulding etc.³ While this is correct the CFMMEU remains concerned that there are distinctive high priority workplace health and safety issues associated with the manufactured stone industry which require urgent, targeted State government responses.
6. Particular work health and safety challenges face society due to the proliferation of manufactured stone products. We disagree with SafeWork’s conclusion that these are

¹ New South Wales Parliament, Standing Committee on Law and Justice: *First review of the Dust Diseases Scheme* August 2017 page 24, Recommendation 1.

² *Ibid*, pp23-24.

³ Draft SafeWork NSW Report, p3.

necessarily “solvable” through the use of controls.⁴ The SafeWork response to the manufactured stone silicosis crisis conflates the health hazards associated with silica exposure from manufactured stone with silica exposure from other substances such as Sydney sandstone.

7. The CFMMEU is of the view that manufactured stone may need to be treated in a manner similar to asbestos - with the use of controls being a relevant response while existing high silica content manufactured stone is phased out, with legacy arrangements put in place for future use similar to the arrangements applying to asbestos.

C: Background

8. The SafeWork background discussion identifies where silica dust is found, including in sandstone, concrete, brick, fibre cement sheets, as well as manufactured stone.⁵ SafeWork’s approach to manufactured stone is to treat this product (with 93% or higher silica density) as being essentially similar to other silica laden building materials, such as sandstone (70 to 100% density) - arguing that it is therefore appropriate to apply similar regulatory and other work health and safety responses to manufactured stone as apply to sandstone and concrete. The CFMMEU does not agree that a simple comparison can be made between manufactured stone and other high silica density products.
9. In September 2018 CFMMEU health and safety representatives (**HSRs**) called for the elimination of products containing high levels of silica.⁶ This motion was re-affirmed at the July 2019 meeting of CFMMEU HSRs. CFMMEU HSRs describe manufactured stone as a “putrid product” presenting clear health threats to workers. Our members describe the silica dust produced by working with manufactured Stone as being particularly fine and presenting unacceptably high risks to the respiratory system. Whereas sandstone is a geographical feature within the Sydney basin and therefore unable to be eliminated from many construction environments (such as tunnelling) manufactured stone is an imported engineered product created in just the last few decades. While the product has a certain utility in kitchen environments, the proliferation of manufactured stone is partly due to aesthetics and social trends. The failure of SafeWork to address concerns about the use of manufactured stone represents a departure from the first order principle in the hierarchy of work health and safety management - namely the *elimination* of hazards and the *substitution* of unsafe materials and products for *safe* materials and products.⁷

⁴ Id.

⁵ Ibid, p4 ff.

⁶ As reported in the *CFMMEU submission to the Legislative Council 2018 Review of the Dust Diseases Scheme*, p7.

⁷ See, for example Regulation 36, Hierarchy of Control Measures, *Work Health and Safety Regulation 2017*. Risk minimisation through substituting, isolating or controlling hazards only applies where it is not reasonably practical to eliminate the risk to health and safety. The present debate in New South Wales simply ignores the prospect of eliminating high silica content manufactured stone, or substituting these materials for safe products. The current public awareness campaigns, such as “*which mask will you use?*” are directed at the provision of personal protective equipment, this being the lowest response in the hierarchy of control.

10. The SafeWork background states that silicosis arising from the use of manufactured stone products is “a disease that is entirely preventable if correct safety measures are in place.”⁸ This is correct – to the extent that the same can be said of asbestos use. The SafeWork report does not adequately identify the practical difficulties associated with avoiding unsafe usage of manufactured stone, particularly amongst installers.
11. The SafeWork background glosses over the escalating health crisis associated with manufactured stone. The silicosis health crisis continues in a disturbingly high upward trajectory. In November 2018 the CFMMEU reported to the Standing Committee that 22 new cases of silicosis had been identified in Queensland in the prior three weeks.⁹ Since then, an audit by the Queensland government had identified 98 cases of which 15 were considered terminal.¹⁰ By the close of March 2019 135 cases had been identified across Queensland and Victoria. As at June 2019 medical professionals advised the CFMMEU that the figures in Queensland were then at 140, of which one third are critical. While the extent of the problem continues to remain hidden in New South Wales, medical professionals advise that in recent weeks four new cases have been identified in the Newcastle district.
12. A recent journal article, *Artificial Stone Associates Silicosis: A Systematic Review*, published in the International Journal of Environmental Research and Public Health reviewed the relationship between artificial stone derived silica exposure and silicosis development.¹¹ In the international context the article notes a relatively low adoption of engineering controls (ineffective in 54.3% of Spanish workplaces) accompanied by relatively low adoption rate for personal protective equipment (32.6% of cases).¹² This is further evidence that the elimination and/or substitution of the hazard should be a priority response.
13. Throughout the 18 months that the Taskforce has met the silicosis crisis has been the subject of significant media reporting. In July 2018 Channel 10 reported on the case of Anthony White, a 36-year-old Gold Coast stonemason.¹³ Mr White died in March 2019, drawing widespread public attention to the issue.¹⁴ By May 2019 the media reported the case of Joel Goldby, diagnosed with the disease at age of 28.¹⁵ In June 2019 a follow-up report by Channel 10 into the manufactured stone industry highlighted the case of stonemason Dean Morris, raising concerns about manufactured Stone as “a new asbestos” and asking whether the product should be “on the market.”
14. Not just the union movement, medical profession and media are raising concerns. In October 2018 the Chair of the NSW Dust Diseases Board (DDB) wrote to the NSW State government expressing the view that, that amongst other matters, the Taskforce should

⁸ Ibid p4.

⁹ CFMMEU submission to the Legislative Council 2018 Review of the Dust Diseases Scheme, p3.

¹⁰ <https://www.abc.net.au/news/2019-02-21/silicosis-death-dust-audit-reveals-major-epidemic-worse-asbestos/10830452>

¹¹ Lesco, Fontana et al *Artificial Stone Associated Silicosis: A Systematic Review*, International Journal of Environmental Research and Public Health 2019, 16. 568

¹² Ibid, at p10

¹³ <https://twitter.com/theprojecttv/status/1016158673645682689?lang=en>

¹⁴ <https://www.abc.net.au/news/2019-03-13/silicosis-victim-dies-from-disease/10895774>

¹⁵ <https://www.smh.com.au/national/at-28-jason-struggles-to-breathe-and-doesn-t-know-what-s-next-20190530-p51sva.html>

“review the use of problematic materials that contribute to higher-level exposures.” Neither the response by the Minister, nor the SafeWork response, have adequately addressed the concerns held by the DDB. Indeed following the death of Mr White in March 2019 the CFMMEU was criticised for seeking to broaden the scope of the Taskforce’s deliberations.

15. The SafeWork response to the manufactured stone crisis - which essentially relies on the application of controls and without any serious examination of substitution initiatives - remains inadequate.

D: The Taskforce

16. The Taskforce included diverse interest groups, including representatives of manufacturers, medical professionals and unions. The CFMMEU participated as the principal union representing manufactured stone workers, including installers in the joinery and buildings trades. The CFMMEU also represents building workers more generally including on-site construction workers who commonly suffer incidental exposure when manufactured stone is cut and installed on domestic and commercial building sites. This exposure is an increasing source of concern for CFMMEU members.
17. On being appointed to the task force union representatives received correspondence from public relations firm *Daylight* representing Caesarstone Australia. Caesarstone was concerned with “some comments in the media that try to portray the issue as being about quartz stone products rather than the broader based risk to trades persons and workers exposed to silica dust.”¹⁶ The correspondence stated there was a “risk that fabricators may be persuaded into thinking the issue is around a particular form of manufactured stone rather than workplace safety practices and regulation, which is the focus of the taskforce.” The correspondence then asked if union representatives “would be interested in talking to the media around the issue” and whether Daylight could “refer media to you on the broader health and safety concerns.” The CFMMEU did not take this offer up and from early on in the process it was clear that the importers were concerned to keep the Taskforce focused on control related responses and protecting brands rather than reviewing the use of problematic materials.
18. While early Taskforce meetings occurred in a collaborative environment, as the work progressed it was our experience that the proceedings were increasingly controlled through reports from SafeWork to Taskforce members and rulings on procedure rather than through debate and creative engagement.

E: Regulatory Responses

19. Recommended regulatory responses are discussed at part five of the Draft SafeWork report. The Draft SafeWork report emphasises that NSW operates under National model WHS laws and that changes to model work health and safety laws need to be referred to SafeWork Australia for national decision-making.¹⁷ While a national approach to work health and

¹⁶ Daylight: Promoting and Protecting Brands, *Working with Caesarstone Australia on the silicosis issue*, Correspondence to Taskforce Representatives, 23 October 2018.

¹⁷ Draft SafeWork Report p8.

safety laws and regulation has benefits in terms of consistency the CFMMEU remains concerned that unacceptable delays will arise in responding to the silicosis health crisis should reform initiatives be referred up the line to wait for a national review of the regulations. The national approach to work health and safety does not prevent jurisdictions from enacting or giving effect to additional provisions in *the Work Health and Safety Regulation 2017 (NSW) (WHS Regulation)*.¹⁸ Responsibility for work health and safety ultimately rests with the states.

20. The national *Review of the Model Work Health and Laws (the Boland Review)* reported in December 2018.¹⁹ The Boland Review made no specific recommendations regarding legislative amendments to address silicosis hazards - this is not surprising as workplace exposure hazards are largely dealt with in the model work health and safety regulations rather than the legislation. A national regulatory response may rest on the outcome of further national *Review of the Model Work Health and Safety Regulations*.²⁰ However, this review has barely commenced and is not due to conclude for at least another year. The nature of the silicosis crisis is such that urgent regulatory action needs to be taken in New South Wales at the initiative of the NSW Parliament.
21. Specific responses to the recommendations outlined at paragraphs (a)-(h) of the Draft SafeWork Report are addressed below.²¹

Amending incident notification requirements at sections 35 and 36 of the WHS Act to require notification of dust exposure to SafeWork

22. The Taskforce heard that employers and other duty holders under the *Work Health and Safety Act 2011 (WHS Act)* - described in the WHS Act a "person conducting a business or undertaking" (PCBU) - simply do not report injury notifications arising from dust exposure.²² This is partly due to the inadequate definition of a notifiable injury and serious injury or illness at Part 3 of WHS Act. The existing definition requires immediate hospital or medical treatment within 48 hours to have occurred before notifications required. The existing definition does not adequately address long latency diseases. There is strong argument for the WHS Act to be amended in that regard.

Requiring medical practitioners to notify adverse health reports.

23. Due to privacy obligations the medical profession is constrained from reporting adverse health findings to regulators. There appears to be widespread support for mandatory reporting. This will ensure sufferers are registered and obtain access to treatment and services through the DDB. This will also assist in targeting work health and safety responses at problematic workplaces. There has been some discussion as to whether the mandatory report should be made either to NSW Health or SafeWork - there appears to be broad

¹⁸ Clause 5.1.8 *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health & Safety 2008*.

¹⁹ <https://www.safeworkaustralia.gov.au/doc/review-model-whs-laws-final-report>.

²⁰ Recommendation 1 of the Boland Review.

²¹ Draft SafeWork Report p8.

²² The WHS Act imposes duties on all persons conducting the business or undertaking at a worksite, this is particularly important in the highly segmented construction industry where work carried out at any particular construction site may be performed by a complex array of subcontractors, builders and professional service providers. Each of these participants, including the workers themselves, have duties under the WHS Act.

consensus that the necessary legislative amendments should require reporting to the Department of Health - with data then shared with the WHS regulator.

24. A precedent exists for this legislative initiative. The *Health and Other Legislation Amendment Bill 2018* was introduced before the Queensland Parliament on 13 November 2018.²³ 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;'

25. 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.'

26. 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.

27. The Queensland model may be suitable for application in New South Wales. The CFMMEU has previously reported this initiative in our November 2018 *Submission to the 2008 Review of the Dust Diseases Scheme*. Our members are concerned to learn when these amendments will be progressed.

Expedite the review of the Australian workplace exposure standards (air monitoring limits) with priority placed on silica. The United States is half that of Australia at 0.05 mcg/m³ compared to Australia's 0.1 mcg/m³ and lower limits of 0.025 mcg/m³, have also been advocated.

28. The *Review of the Workplace Exposure Standards Framework under the Model Work Health and Safety Laws (WES Review)* is due to report at the end of July 2019 - with implementation not due to take effect until at least March 2020.²⁴ We understand that the health recommendations currently under consideration propose a reduction of the standard to 0.02 mcg/m³ on the grounds that exposure above this limit compromises health. This amounts to

²³ <https://www.legislation.qld.gov.au/view/html/bill.first/bill-2018-035/lh>

²⁴ <https://www.safeworkaustralia.gov.au/workplace-exposure-standards-review-methodology>

a reduction *five times below the current standard*. A complicating factor is that in practical workplace settings it is not technically feasible to measure limits at 0.02 mcg/m³ with currently available commercial monitoring technology. The Band-Aid solution under consideration is the recommendation of an interim standard of 0.05 mcg/m³ - to be implemented until such time that technology is able to “catch up” with the recommended health standard.

29. There is an underlying flawed logic in this approach. If silica exposure is so toxic that it compromises health at levels below those which are capable of accurate monitoring, this supports the argument that the application of workplace controls (and monitoring their effectiveness) will remain problematic. Instead, where possible the elimination of the unsafe substances from the work environment should be the priority response. We cannot stand by and wait until March 2020 for an inadequate interim arrangement to be finalised.

Develop clearer requirements for when air monitoring and health monitoring is required in the WHS regulation. Terms such as “significant risk” or “on reasonable grounds” has created inconsistent understanding and as a result in monitoring is not undertaken.

30. The failure of the current and proposed WES is also a factor in the failure of current health monitoring regulations. The Taskforce heard that air monitoring just does not occur at many workplaces where manufactured stone is being cut and installed.
31. Firstly, if it is accepted that a standard of 0.02 mcg/m³ is the required limit to satisfy appropriate health standards, monitoring for a safe limit at the current standard of 0.1 mcg/m³ is clearly unacceptable. We also have concerns that monitoring for an alternative limit of 0.05 mcg/m³ may provide a false sense of security to workers given that health recommendations appear to recommend a limit of 0.02 mcg/m³.
32. Secondly, the existing regulation enables PCBUs to be wilfully blind about the dangers of dust exposure. Regulation 49 of the WHS Regulations mandates that the PCBU 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.” Regulation 50 provides that air monitoring must be carried out where the PCBU “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.” As the CFMMEU reported to the *2018 Review of the Dust Diseases Scheme* this creates a situation where should the PCBU fail to implement monitoring the PCBU remains conveniently unaware whether the WES (however inadequate it may be) may be breached.²⁵ In the absence of data confirming the likelihood of a breach, the PCBU remains conveniently uncertain as to whether the WES has been exceeded. The PCBU then concludes that air monitoring is not required. While the regulations *should not* be applied in this manner this is how they are in fact applied (or ignored) in many workplaces. As a result monitoring is not carried out in many environments where manufactured stone is cut and installed.
33. The regulation should simply provide that health monitoring must occur in dusty environments. This is opposed by employers on the basis of cost. Notably, the guidance currently provided by SafeWork continues to focus on PCBUs having to be “not certain” about a WES breach “on reasonable grounds” for monitoring to be required.

²⁵ CFMMEU submission to the Legislative Council 2018 Review of the Dust Diseases Scheme p9.

34. The regulations need to be reviewed to ensure that silica exposure is treated in a manner similar to asbestos.
35. Rather than waiting for a national review which may or may not result in action one to two years from now, this issue should be addressed by the New South Wales Parliament.

Include the requirement for the employer to notify the WHS regulator when the Australian workplace exposure standard (air monitoring limit) has been exceeded. Currently employees only need to notify the WHS regulator of an adverse health report, when it is too late to prevent harm.

36. Subject to our concerns about the effectiveness of the current WES and Regulations 49 and 50 the CFMMEU supports this initiative. However, as the national review of the WHS Regulations has not yet commenced, this too has been deferred until the conclusion of the national regulatory review.

Develop a national code of practice for working with silica

37. A code of practice addressing for working with silica is a necessary tool that should improve safe work practices and improve regulatory outcomes. The development of a national code of practice should not be seen as an alternative to the review of problematic products.

Consider the previous NSW CFMMEU's submission to the review of the model WHS laws in relation to providing unions with the right of review of the actions taken by a WHS regulator. Currently only the employer or the worker can request to review.

38. The Boland Review of model WHS Laws has made certain recommendations supporting right of entry for union officials to assist HSRs and the performance of their duties. However, no action has been proposed to address the inability for unions to appeal internal and external SafeWork reviews. Our experience is that individual employees, including elected HSRs, find the process of challenging SafeWork inaction on safety issues intimidating. Providing unions with the ability to initiate internal and external reviews of SafeWork inaction will improve accountability and bring a more genuinely tripartite approach to the regulation of workplace safety.

F: Health responses

Increase the health practitioner requirements to undertake health monitoring to ensure there is suitable training, accreditation and expertise to detect silicosis

39. The CFMMEU supports the proposal that silicosis become a notifiable disease, and supports the introduction of an occupational lung disease register. There is no reason why this initiative should await national regulatory reviews.
40. We understand that the detection of silicosis is a particularly specialised field within radiology - more practitioner training in B reading techniques is required. This training has become an essential feature in Queensland's response to the black lung crisis - where for many years the disease was potentially detectable but remained unnoticed due to lack of training and expert knowledge in appropriate reading techniques. Increased funding for the training of health

professionals at all levels, including general practitioners, will assist in early detection and prevention.

Case finding study

41. The Queensland government case finding study has greatly improved knowledge concerning the incidence of silicosis in the broader population. The Queensland case finding study was a resource intensive process, involving entry into workplaces, hospitals and other public and private locations where silicosis sufferers may be found. The findings in Queensland have turned the public debate towards questioning the suitability of manufactured stone as an ongoing commercial product.
42. The requirement for icare and SafeWork NSW to conduct a case finding study for silicosis in the manufactured Stone industry in New South Wales was a key recommendation in the *2018 Review of the Dust Diseases Scheme*.²⁶ However in debate before the Taskforce, SafeWork declared this initiative to be out of scope. The case finding study recommendation is not feature in the Draft SafeWork Report.
43. Recognising silicosis as a public health issue and not simply as an argument about the application of workplace controls is essential in arresting the growth in the number of cases and is crucial in ensuring that sufferers are referred for appropriate support and treatment.

Trade education

44. The CFMMEU supports the proposal for units of competency addressing silica awareness to be included in all trade related courses including white card induction courses.

Awareness and education

Community awareness campaign

45. Considerable effort has been made over the last 18 months in the rollout of awareness campaigns concerning silica hazards and encouraging safe work practices – particularly the use of personal protective equipment. The phase I advertising campaign has been implemented across a range of media in five community languages. The second phase of the community awareness campaign is now underway and will assist in raising general community awareness concerning the hazards of working with manufactured stone. While there are real benefits in encouraging the use of appropriate personal protective equipment through the “which mask will you wear” campaign, the awareness campaign is not a panacea. The debate still needs to be had about the ongoing suitability of manufactured stone products for commercial use.

Silica symposium & Manufactured Stone Industry Forums

46. The nature and purpose of the silica symposium was a point of contention for Taskforce representatives. The symposium was principally directed towards employer and industry

²⁶ Legislative Council Standing Committee on Law and Justice, *2018 Review of the Dust Diseases Scheme: Report 69*, pp viii and 19.

representatives rather than workers. The symposium did gain the attention of major participants in the building and construction industry, including major on-site building and civil infrastructure companies. This is improving awareness at some major building sites.

47. The final program for the symposium as presented on 7 May 2019 excluded employee representation from the manufactured stone industry and unnecessarily narrowed the focus of the symposium on controls, completely ignoring the substitution debate. The CFMMEU proposed a presentation entitled *"Silica exposure, manufactured stone and tunnelling: When are controls a sufficient response? Is silica the new asbestos?"*²⁷ The rejection of this proposal by SafeWork meant that no presentation went before the symposium focused on the employee experience in the manufactured stone industry. This issue was the subject of contentious debate before the Taskforce - particularly given that the symposium program was in the process of being approved not long after the death of Anthony White in March 2019.
48. The manufactured stone forums have similarly censored any discussion around the suitability of manufactured stone as a product for commercial and domestic construction.
49. The CFMMEU continues to raise awareness amongst members with work health and safety updates. Silica awareness training is a standing item in CFMMEU delegate training.

Compliance and enforcement

50. The SafeWork statistical summary of inspector notices issued during the operation of the Taskforce shows an extremely high level of non-compliance across manufactured stone fabricators.²⁸ Across 246 manufactured stone sites some 596 inspector notices were issued. Manufactured stone sites made up 93% of all inspector notices (596/640). The data bears out the CFMMEU's concerns regarding health monitoring (118 improvement notices) and raises concerns about personal protective equipment training (73 notices) and even the provision of personal protective equipment (44 notices.) There were 19 improvement notices issued with respect to airborne contaminant exposure and five total prohibition notices concerning airborne contaminants.
51. The Taskforce heard that incidental, non-silica related notices were issued at some sites (e.g. fall hazards, electrical improvements etc). If non-silica related issues are filtered out the data still shows a high level of non-compliance with respect to hazardous chemicals (silica & asbestos) being 470 of 557 improvement notices²⁹ and 21 of 39 prohibition notices.³⁰

²⁷ Synopsis: "The experience of workers and unions regarding silica dust exposure from manufactured stone and tunnelling in workplaces, and the emerging silicosis crisis. Overview of the experience of union officials and on-site safety representatives in implementing controls on commercial and domestic building and in tunnelling operations. Is the use of controls always inadequate response? Should high silica products be discontinued and should there be a focus on the manufacture and use of safe products."

²⁸ Draft SafeWork Report p.20.

²⁹ Excludes high risk work license (1), general workplace management – unsafe workplace (10), general workplace management – provide facilities (26), general work health and safety notice – primary duty of care (1), general workplace management – information, training, instruction (2), general WHS safety notice – management of risks (8), fire and explosion (4), falls – other (9), falls – construction (1), falling objects (1), emergency plan inadequate (1), electrical (22).

³⁰ Excludes mobile plant (three), falls (13), electrical (2).

52. The Taskforce heard that SafeWork inspectors were unable to identify any sites that could be promoted as exemplars of best practice. The Draft SafeWork Report notes that some sites required more than one visit. No prosecutions are yet to have commenced as a result of the inspections raising questions about the government's commitment to deterrence.
53. It is important to note that the SafeWork inspections focussed exclusively on factory based fabrication sites - with inspections yet to commence on that subsector of the industry presenting the greatest challenge, namely manufactured stone *installation and joinery operations*. This subsector of the industry is extremely mobile (constantly moving from site to site in the domestic and commercial construction industry) and largely consists of small businesses. The installation and joinery subsector is by far the largest participant in terms of numbers of workers exposed to silica dust. This group of workers also make up a significant cohort of those persons injured through manufactured stone dust exposure.
54. The picture emerging from the SafeWork data is of a manufactured stone industry exhibiting a high level of non-compliance. This is of serious concern given that the fabrication sites subject to the existing initiative are based in fixed locations and at least in that respect are relatively easy to locate and deal with. The Taskforce heard that the 514 visits conducted to date took up significant SafeWork inspector resources – with concerns that it may just not be possible for SafeWork to conduct an ongoing campaign across NSW fabrication sites.
55. The CFMMEU has been informed that Phase 2 of the Taskforce will involve attempts to locate and inspect joinery and installation and businesses. Inspectors complain that this initiative presents real practical difficulties as more often than not inspectors arrive onsite to find the installers have moved on. Further, no estimate is presently available of the large number of sites and businesses involved.
56. The SafeWork claim that “all manufactured stone sites in NSW were visited during the operation of the Taskforce”³¹ is simply not true.³² The absence of inspection initiatives directed at installers means that inspections so far have only covered the tip of the iceberg. With the exception of some top tier building companies, inspections have yet to get underway NSW on building sites where exposure to manufactured stone dust largely continues unabated.

Industry accreditation scheme in advertising

57. The Australian Engineered Stone Industry Group (**AESIG**) is promoting an industry self-accreditation scheme. While the scheme is directed at improving safety standards, on one view the scheme is also directed at further securing oligarchical commercial control over what is already a concentrated market. Notably, the scheme proposes a licensing arrangement controlled by the manufacturers. There are inherent conflicts of interest in such an arrangement. SafeWork and the government should take care not to abrogate responsibility for regulation to the manufacturers.

³¹ Draft SafeWork Report p20.

³² This is later clarified at page 22 of the Draft Safework Report which states, “all fabrication workshops (emphasis added) in NSW were... visited by SafeWork NSW.”

Federal health initiatives

58. The federal government is establishing a national dust diseases task force which is due to report at the end of next year. It is possible that this task force may break the slow moving response to regulatory amendments. However the CFMMEU remains concerned that the NSW government not wait until 2020/2021 to act on these health issues.

Research

59. Research is improving into prevention and treatment initiatives. In addition to the studies referred to in the Draft SafeWork report, the NSW DDB is presently advertising for focused research applications concerning the prevention and treatment of silicosis.

60. The inability to monitor for silica levels at the recommended health exposure standard of 0.02 mcg/m³ is also an area requiring research. This requires proactive interventions to improve monitoring technology. Industry research is also necessary to develop and promote new low silica products. Presently all manufactured stone is imported. This is not like the asbestos crisis of the last century where restrictions on product sales had implications for Australian mining and manufacturing industries. Investment in novel Australian manufacturing initiatives has the potential to open up significant export opportunities. Ruling eradication and substitution debates as out of scope, and promoting self-regulation by manufactured stone importers does not assist these important areas of enquiry research and development.

CFMMEU Motions

61. In November 2018 the CFMMEU sought Taskforce support for the prohibition of manufactured stone. The minutes of the November meeting did not identify which government, interest, and advocacy groups supported or opposed this initiative. Unsurprisingly, the AESIG was opposed to the idea. Taskforce medical professionals appeared open to a discussion around this initiative. The initiative was opposed by SafeWork- on the basis that it was out of scope. The CFMMEU remains of the view that the use of problematic products needs to be part of the discussion about the health and safety risks associated with manufactured stone. The CFMMEU raised these concerns with the Minister in December 2018. The Minister indicated that a ban on the use or control of the product is not presently being considered by the State government.

62. The CFMMEU also proposed that the state government proactively adopt a lower WES standard for silica exposure rather than wait for the outcome of the national WES review. This too was declared out of scope by SafeWork.

Status Review of CFMMEU Recommendations to the 2018 Review of the Dust Diseases Scheme

63. Necessary responses to address the current silicosis crisis had previously been outlined by the CFMMEU in our submission to *2018 Review of the Dust Diseases Scheme*. A status update concerning these recommendations is attached at **Appendix A** to this report. With the exception of Recommendation 1 (the expansion of icare free screening services),

Recommendation 7 (research) and Recommendation 13 (widespread community awareness initiatives) the vast majority of these recommendations of either been ruled out of scope by SafeWork or have been referred “upstairs” to become the business of ongoing national reviews.

Conclusion

64. SafeWork are treading water on the silicosis crisis associated with the use of manufactured stone. Since the Taskforce was formed the nature of the crisis has escalated and it is now clear that this disease affects young workers at the prime of their working lives. SafeWork remains unwilling to question the orthodoxy promoted by the manufacturers - namely that the work health and safety crisis in the manufactured stone industry arises from working *with* the product, rather than due to any concerns over the product itself. This narrow approach has denied the Taskforce the opportunity to address the crisis through the application of the objective problem-solving techniques embedded in our work health and safety system. Until such time as SafeWork apply an appropriate problem-solving approach to manufactured stone hazards we are unlikely to make true headway in addressing this health crisis. Our response needs to include a genuine examination of elimination and substitution initiatives.
65. The available data from SafeWork inspections, consistent with the international experience, demonstrates a high level of non-compliance in the application of necessary controls in fabricator settings. No safety data is yet available from the NSW installation sector - being a segment of the industry presenting high rates of risk and injury. Concerns are held that it just may not be possible to appropriately manage and implement control based initiatives in the installation sector.
66. There is widespread support for several health responses, including the conduct of a NSW silicosis audit together with the establishment of a disease register and mandatory reporting mechanisms. These are capable of fairly immediate implementation, however Queensland remains well ahead of NSW in this regard.
67. It is time to move ahead with regulatory changes necessary to achieve safe and satisfactory work health and safety outcomes in manufactured stone in workplaces. This means getting on with amendments to the state WHS Regulations, engaging in proactive health initiatives and properly examining proposals to limit the use of high silica content manufactured stone products.

CFMMEU – Construction and General Division, NSW Branch

July 2019

APPENDIX A

Status Review of CFMMEU Recommendations to the 2018 Review of the Dust Diseases Scheme

CFMMEU Recommendation 1

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

IMPROVING: icare has improved the level of free screening services. Apart from screening services, improved education for medical practitioners in the detection of silicosis needs to occur. Inspections of fabrication sites have seen improvement and prohibition notices directed towards health monitoring at some locations. Specific sites are not identified in the SafeWork data.

CFMMEU Recommendation 2

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

DELAYED: Two options are presently under consideration by the NSW Minister for Better Regulation and Innovation and the NSW Minister for Health to consider an appropriate response. There appears to be broad support for regulation through NSW Health - with data to then be shared with the SafeWork regulator. The Federal government Taskforce is not due to report on this issue until December 2020. The Standing Committee has recommended that in the event that a national dust disease registry is not established by the end of 2019, that the NSW government take action. However, the NSW government response to the Standing Committee indicates that action may not occur until a report is received from the Australian Health Ministers Advisory Council.

CFMMEU Recommendation 3

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

INACTIVE/DELAYED: No existing plans by the New South Wales government to amend the act or regulations pending responses from various national committees.

CFMMEU Recommendation 4

4. *The NSW 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:*

INACTIVE/DELAYED: No existing plans by the New South Wales government to amend the act or regulations pending responses from various national committees.

CFMMEU Recommendation 5

5. *The State government expand the asbestos-related provisions of the work health and safety act and regulations to address silica exposure risks*

INACTIVE/DELAYED: No existing plans to amend the act or regulations pending responses from various national committees.

CFMMEU Recommendation 6

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

INACTIVE/DELAYED: No existing plans to amend the act or regulations pending responses from various national committees.

CFMMEU Recommendation 7

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

PROGRESS: Research initiatives are underway through some academic institutions and with encouragement from the NSW Diseases Board. No specific initiatives are underway sponsored through the NSW government. The medical profession and the Standing Committee have recommended that a case finding study for silicosis in the NSW manufactured stone industry be conducted similar to that which has occurred in Queensland. The government's position is that icare will work with government agencies to determine the best way of identifying instances of silicosis in the manufactured Stone industry in NSW, however how this is to be achieved remains uncertain.

CFMMEU Recommendation 8

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 their monitoring equipment and dust, engineering and other controls*

INACTIVE: No progress has been made with respect to this initiative.

CFMMEU Recommendation 9

9. *The New South Wales government to provide targeted functioning supporting the prosecution of work health and safety breaches relating to silica exposure and/or harm to workers*

INACTIVE: No prosecutions have occurred.

CFMMEU Recommendation 10

10. *The New South Wales government to amend part 12 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.*

INACTIVE: No plans to act on this initiative.

CFMMEU Recommendation 11

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

INACTIVE/OPPOSED: This proposal was ruled out of scope by Safework for task force consideration. The NSW Minister for Better Regulation and Innovation Minister confirms the state government is not presently considering this response.

CFMMEU Recommendation 12

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.*

INACTIVE: While it is possible that some work may be underway in industry, this issue was not discussed during the Taskforce, there are no known government initiatives in this area.

CFMMEU Recommendation 13

13. *The New South Wales 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 intakes and schools to ensure a high level of community awareness regarding the dangers of silica exposure*

SIGNIFICANT PROGRESS: Phase 1 of a community awareness campaign has been rolled out across a range of media. Silica awareness campaigns been conducted in community languages. The “which mask would you wear campaign” has focused on educating employees regarding the need for personal protected action equipment. More work needs to be done to ensure that installers are being reached in the campaign.