

**INQUIRY INTO WORK HEALTH AND SAFETY
AMENDMENT (INFORMATION EXCHANGE) BILL 2020**

Organisation: Construction, Forestry, Maritime, Mining and Energy Union
(CFMMEU)

Date Received: 17 August 2020

14 August 2020

The Hon Wes Fang MLC.
Committee chair
Law and Justice Committee
Legislative Council
Parliament of New South Wales

Dear Mr Fang,

Re: CFMMEU Submission concerning the Legislative Council Inquiry into the Work Health and Safety Amendment (Information Exchange) Bill 2020

A: Introduction

The Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) welcomes the opportunity to make submissions to the 2019 Legislative Council Inquiry into the provisions of the *Work Health and Safety Amendment (Information Exchange) Bill 2019*.

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 continuing concerns regarding the increasingly high incidence of silicosis in New South Wales. The CFMMEU has made comprehensive submissions regarding the increasing incidence of silicosis in both the *2018 Review of the Dust Diseases Scheme* (2018 Review) and the *2019 Review of the Dust Diseases Scheme* (2019 Review). In the financial year ending July 2020 106 workers were diagnosed with silicosis and accepted into the NSW Dust Diseases Scheme - this contrasts with an average of eight or nine workers per year five or six years ago. Most of these workers (85%) were diagnosed with chronic silicosis followed by accelerated silicosis (12.2%). Of real concern is that this is a young person's disease, with 45% of diagnosed workers being aged less than 50 and therefore still working in the industry.

The CFMMEU has repeatedly argued for reforms to both improve safety standards and establish improved pathways for both diagnosis and treatment. While there have been improvements in awareness and education and some regulatory responses, several important recommendations from past Legislative Council enquiries have not yet been implemented.

B: Consultation

We understand that the bill presently before Parliament is a response by the government to implement recommendations arising from the 2019 Review. We are concerned that the bill has been introduced with little or no consultation. As the union representing manufactured stone workers,

joiners and on-site building and construction workers, we are concerned that the first real engagement we have had from the government on this important legislative initiative was the invitation received on Monday, 10 August 2020 to make a submission to this enquiry.

We are concerned that a range of issues remain unclear about the impact of the Bill, while there is some urgency in implementing dust disease reforms, care needs to be taken that the legislation achieves the right outcomes.

Breadth of the legislation.

The Bill simply provides a power or mechanism for the Secretary of the Ministry of Health to provide information to the regulator where the Secretary considers the provision of the information is necessary to enable the regulator to exercise the regulations functions under the Act. SafeWork's functions under the Act are extremely broad and certainly not limited to the regulation of dust diseases and silica exposure.

Parliament needs to consider the implications of handing such broad powers to NSW Health and SafeWork. The Minister's second reading speech indicates that the Bill "will enable information sharing between New South Wales health and WHS regulator is in relation to other conditions if it becomes necessary"

Parliament should give due consideration to the broad nature of the powers contained in this legislation, particularly in light of the operation of the proposed s271B(2) and the manner in which this new power overrides privacy legislation.

Privacy Concerns - memorandum of understanding

The Bill provides that information may be provided by NSW Health to SafeWork, despite the privacy provisions of the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.

Legislation is required to ensure that SafeWork has access to sufficient health records to enable the safety regulator to take action at workplaces associated with silicosis diagnoses. However, the use of this power does have significant privacy implications and the Bill does not clarify what privacy protections will be available for workers. Of significant concern is the proposal that these privacy protections be addressed through the negotiation of a memorandum of understanding between SafeWork and NSW Health. The CFMMEU is concerned that Parliament proposes to leave it to SafeWork and NSW Health to identify and develop appropriate privacy protections. SafeWork particularly has a poor history of consultation with the CFMMEU. We are not confident that the interest of workers will be protected by leaving this up to the regulators.

Given the extremely broad powers associated with the proposed amendment, the framework of these privacy protections should be the subject of consultation with the union movement and incorporated within this legislation.

Case finding study

The proposed Bill and second reading speech do not address Legislative Council recommendations that a case finding study be conducted into the New South Wales manufactured Stone industry.

Recommendation 1 of the 2018 Review recommended that a proactive case finding study be conducted in this area. The following year the Legislative Council committee heard that while inspections and monitoring occurred at manufactured stone fabrication sites, a more comprehensive case finding study needed to occur focusing on installers and subcontractors not directly associated

with fabricators. In reporting on the 2019 Review the Legislative Council committee again made a recommendation, as follows

***“Recommendation 11:** That health New South Wales, in conjunction with SafeWork, New South Wales, coordinate a case finding study for respiratory or crystalline silica exposure in the manufactured stone industry, to improve the identification and assessment of workers at risk of exposure.”*

Since the making of recommendation 11 and 2019, the CFMMEU understands that SafeWork, have actively opposed a case finding study being implemented outside the manufactured stone fabrication sector, arguing that most installers are associated with fabricators and that such a study is not necessary. This is simply not good enough as a significant cohort of installers perform such work as independent contractors and/or as employees of small enterprises. The purpose of a case finding study is to actively locate these further at risk workers and ensure that they are screened and educated regarding the dangers of silica.

It is unclear what action New South Wales Health have taken in relation to this initiative. Nothing in the proposed Bill, or in the second reading speech gives us confidence that this important legislative Council recommendation will be implemented.

Other important reforms

It remains unclear how the proposed reform will assist in implementing a national dust diseases register. Nor is it clear that the reform is intended to apply to a broader range of dust diseases other than those associated with silicosis.

While the government has reduced the respirable crystalline silica workplace exposure standard to 0.05 mcg/m³, the 2019 review made a very clear recommendation that the Minister for Better Regulation should ensure that steps are taken to further reduce the workplace exposure standard to an average of 0.02 mcg/m³ as soon as possible. It is only after this reform is implemented that Australia will fall into line with international best practice standards. This reform is particularly relevant in the tunneling industry, being an area in which the New South Wales government has significant involvement through infrastructure development.

It also remains unclear how regulatory reforms have explicitly banned the dry cutting of high silica content substances including manufactured stone.

Yours faithfully

Darren Greenfield
State Secretary