

**Submission  
No 8**

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

**Organisation:** SafeWork NSW

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# **Response to the Legislative Council Inquiry into the Work Health and Safety Amendment (Information Exchange) Bill 2020**

**SafeWork NSW**

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# 1. Introduction

SafeWork NSW welcomes the opportunity to provide a submission to the Legislative Council's Law and Justice Committee's Inquiry into the provisions of the Work Health and Safety Amendment (Information Exchange) Bill 2020 (**the Bill**).

The NSW Government believes that no worker should suffer from a lifelong illness as a result of their work, and that inter-agency cooperation is key to ensuring this goal is achieved. The Bill introduces reforms that will enable the Secretary of the Ministry of Health to provide information to a NSW work health and safety (**WHS**) regulator, if the Secretary considers that the information is necessary to enable the WHS regulator to exercise its functions under the *Work Health and Safety Act 2011* (**WHS Act**).

The Government intends to use the information-sharing power in this Bill to share information between NSW Health and SafeWork NSW about cases of silicosis. The Minister for Health has declared silicosis to be a scheduled medical condition, with the effect that all medical professionals who diagnose a patient with silicosis in NSW must notify the Health Secretary. This Bill will enable NSW Health to share those notifications with SafeWork NSW. WHS Regulators will then be able to use that information to investigate and detect non-compliant workplaces. This will assist WHS Regulators to prevent further cases of silicosis.

The Bill was introduced by the NSW Government to the Legislative Assembly on 18 June 2020 by the Minister for Better Regulation and Innovation and passed the Legislative Assembly with no amendments on 29 July 2020. The Bill was then referred to the Legislative Council's Law and Justice Committee on 4 August 2020.

This submission provides further information about the amendments contained in the Bill and the expected benefits for workers, businesses and the broader NSW community.

## 2. Policy Context

### How WHS is regulated in Australia

WHS is regulated in Australia under an inter-jurisdictional harmonised legislative framework which takes a risk prevention approach. Harmonisation is achieved through a set of 'model' WHS laws (an Act, Regulation and Codes of Practice) underpinned by an Intergovernmental Agreement. The model laws are implemented in each jurisdiction through its own laws. The WHS Act commenced in NSW on 1 January 2012.

The Commonwealth and most States and Territories have enacted the model WHS legislation, except for Victoria and Western Australia.<sup>1</sup> There are some differences in the approaches across the jurisdictions but, overall, support for harmonised WHS laws remains strong. Each jurisdiction is able to tailor aspects of the WHS laws to suit their specific jurisdictional requirements. An amendment such as this, which governs information-sharing arrangements between two NSW Government agencies, is not considered to be a material departure from the harmonised WHS framework.

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<sup>1</sup> The Western Australian Government introduced a Work Health and Safety Bill 2019 into Parliament in late 2019 with the aim of moving closer to the model WHS laws. This Bill has not yet been passed.

Safe Work Australia (**SWA**) is the statutory body established to develop national WHS policy and has responsibility for maintaining the model laws. All jurisdictions are members of SWA along with representatives from employers and employees.

In NSW, the WHS Act is risk-based legislation that has the primary objective of securing the health and safety of workers and workplaces through the elimination or minimisation of risks arising from work.<sup>2</sup> The WHS Act creates a strong framework to assist businesses to manage risks in their workplaces by requiring that risks to health and safety be eliminated or otherwise minimised through an assessment of the risks in a workplace, and use of control measures to create a safer workplace.

The NSW Government is committed to a harmonised WHS regulatory framework. The harmonised framework has had many benefits for NSW businesses, particularly by enabling those which operate across NSW borders to apply a consistent approach to WHS issues regardless of their location. Through SWA, NSW WHS Regulators will continue to work with WHS Regulators in other jurisdictions on potential reforms, research, and other initiatives to stop the rise in silicosis cases.

In NSW, the WHS Regulators are:

- SafeWork NSW – responsible for regulating WHS at all NSW workplaces except for mines and petroleum sites; and
- the NSW Resources Regulator – responsible for regulating WHS at mines and petroleum sites.

## **NSW Government Silica Strategy**

The Government has a four-pronged strategy for addressing the harms caused by respirable crystalline silica:

- Continued implementation of the 2017–2022 Hazardous Chemicals Exposures Baseline and Reduction Strategy (**Hazardous Chemicals Strategy**), under which silicosis is a top-two priority chemical. (*Being implemented*)
- Amending the WHS Regulation to explicitly ban dry-cutting of manufactured stone and enable WHS Regulators to issue on-the-spot fines to those engaging in this dangerous practice. (*Achieved*)
- Adoption of a lower Workplace Exposure Standard for crystalline silica with effect from 1 July 2020. (*Achieved*)
- The information-sharing arrangement contained in this Bill. This will ensure that WHS Regulators are informed of all diagnoses of silicosis in NSW notified to NSW Health and can target their educational, compliance and enforcement efforts. (*In progress*)

The first aspect of the Government's Strategy is well underway. Following research and pilot visits in 2015/16, SafeWork NSW launched the NSW WHS RoadMap 2022 in September 2016. Under the Roadmap reducing exposure to hazardous chemicals and material is a key priority area. In October 2017, SafeWork NSW launched its Hazardous Chemicals Strategy, to help protect

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<sup>2</sup> Section 3, Work Health and Safety Act (NSW) 2011.

workers against injuries and illness from these chemicals and materials. The Hazardous Chemicals Strategy has four components: raising awareness and education; compliance; research; and legislative reforms.

Crystalline silica is a top-two priority chemical for SafeWork NSW under the Hazardous Chemicals Strategy.

To deliver the education/awareness component of the Hazardous Chemicals Strategy in relation to silica, SafeWork NSW has conducted wide-reaching campaigns across a variety of media. Other work includes the development of best practice guidance materials, 'on demand' webinar series, targeted industry presentations at 110 locations, and the distribution of 3000 safety factsheets in five languages.

Rebates of up to \$1000 were available to businesses in the manufactured stone industry from January 2020 to 30 June 2020 to enable the purchase of safety equipment to protect workers from silica exposure. The rebate programme closed on 30 June 2020, with 80 rebates paid – a total of \$75,942. 34 per cent of manufactured stone sites received a rebate. This resulted in a \$135,185 investment in safety solutions in the industry. Businesses continue to be able to access the \$500 rebate offered by SafeWork NSW to small businesses. 41 silica-related small business rebates were paid during 2019/20 – a total of \$19,373. This reflects a safety investment in industry of \$24,243. In total, SafeWork has paid out 121 rebates, at a cost to SafeWork of \$95,315, and a total investment of \$159,428 in safety solutions for working with silica.

To deliver the compliance component, SafeWork has conducted extensive and thorough compliance and enforcement activities, with a particular focus on the manufactured stone industry. The Hazardous Chemicals Strategy sets an ambitious target of 9,000 business interactions in relation to silica compliance by 2022. It is well on the way to meeting that target, with 5,707 interactions as at 30 June 2020. There have been 1218 inspector visits across all industries, and 644 inspector visits in the manufactured stone industry. All 246 manufactured stone fabrication sites have been visited. In 2018/19 and 2019/20, 493 visits were conducted across other industries that work with silica, including tunnelling, domestic and civil construction, and foundry work.

Across all industries, SafeWork NSW has issued 857 notices, of which 699 were in the manufactured stone industry. SafeWork has issued 656 improvement notices, of which 531 relate to silica, 127 improvement notices for health monitoring, and 27 prohibition notices relating to silica.

Follow-up visits in the manufactured stone industry indicate that 99 per cent (692 of 699) of all notices have been fully complied with. Follow-up visits are being completed for the remaining 7 improvement notices. Some relate to health monitoring and there have been delays with screening as the clinic has been closed due to COVID-19.

In the past twelve months, SafeWork NSW has completed a review of 55 silicosis cases. Of these, 5 have progressed for full investigation and 6 are still under review.

An independent mid-point review of the Strategy has reported that 90% of workers noticed at least one change in their management's safety approach following inspector visits, and three in four reported that new safety equipment or tools had been purchased.

SafeWork has extensive plans for work under the Hazardous Chemicals Strategy in 2020, including 2400 silica-specific business interactions (inspector visits, webinars, workshops, and presentations) across all industries, including tunnelling, major infrastructure, construction and foundries. A second round of visits to manufactured stone sites has begun, with 118 visits so far completed (48% of the 246 sites).

The research component of the Hazardous Chemicals Strategy includes the world-leading research being conducted by the Centre for Work Health and Safety on the development of a wearable silica exposure detection device. The prototype of a 'real-time' silica dust detector is expected to be developed by the end of 2020.

This Bill forms part of the legislative reforms component of the Hazardous Chemicals Strategy, as do the other aspects of the Silica Strategy discussed below.

The second aspect of the Government's Silica Strategy is an explicit ban on dry-cutting of manufactured stone. Dry-cutting has always been prohibited in NSW under the WHS Act because it is a practice which exposes workers to an unacceptable level of risk, in breach of general health and safety duties. However, like Queensland and Victoria, NSW has explicitly banned the practice to make that clear to everyone working with silica-containing products and to enable inspectors to issue on-the-spot fines.<sup>3</sup>

The third aspect of the Silica Strategy is the Government's decision to halve the Workplace Exposure Standard (**WES**) for crystalline silica. Under the *Work Health and Safety Regulation 2017* (**WHS Regulation**) it is an offence for a person conducting a business or undertaking (**PCBU**) to expose a worker to a substance or mixture in an airborne concentration that exceeds the WES for the substance or mixture.

The WES for crystalline silica was previously set at a time-weighted average of 0.1mg/m<sup>3</sup> over eight hours. In mid-2018, SWA Members agreed to the methodology for the review of the WES for airborne contaminants. The WES for respirable crystalline silica was prioritised for review. Following consultation and agreement by SWA Members in July 2019, the Chair of SWA sought agreement to a reduced WES by WHS Ministers. In late 2019, a two-thirds majority of WHS Ministers agreed that the WES for crystalline silica should be reduced to a time-weighted average of 0.05mg/m<sup>3</sup>, and that further investigation should be undertaken by SWA into measurement and practical considerations that would enable a future reduction to 0.02 mg/m<sup>3</sup>. At present, there are technological and practical difficulties with measuring an exposure level 0.02mg/m<sup>3</sup>, which makes ensuring compliance impossible. However, work is underway through Safe Work Australia on research to resolve those technological and practical difficulties.

In the meantime, the Government has halved the WES for crystalline silica well before the deadline set for implementing that change at a national level, with effect from 1 July 2020.

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<sup>3</sup> *Work Health and Safety Regulation 2017* cl 184O.

The NSW Resources Regulator's approach to implementing the new WES is set out in a position paper released in March 2020, and includes sampling and monitoring assistance through the Mine Safety Technology Centre and active engagement with industry on the change.

## **Silicosis is a scheduled medical condition**

On 22 June 2020 the Minister for Health and Medical Research made an order under s 51(2) of the *Public Health Act 2010* (**Public Health Act**) which added silicosis to the list of Category 2 scheduled medical conditions in Schedule 1 of the Public Health Act. On 26 June 2020, the Minister for Health and Medical Research amended the *Public Health Regulation 2012* (**Public Health Regulation**) to prescribe the particulars which are required to be notified to the Health Secretary by a medical practitioner who diagnoses a person with silicosis. These particulars are contained in the Silicosis Notification Form published by the Ministry of Health which was published on the NSW Health website on 1 July 2020.

The effect of these reforms is that any practitioner in NSW who diagnoses a patient with silicosis is now required to complete the Silicosis Notification Form and send it to the Health Secretary. The Silicosis Notification Form was designed in consultation with SafeWork NSW to ensure that it collects the information that WHS Regulators need to perform their functions under the WHS Act. It includes the information necessary to enable the WHS Regulator to identify the worker's current and former workplaces.

The reforms effectively create a register of silicosis cases in NSW, in that information will be centrally collected by NSW Health and shared with SafeWork NSW. Both agencies will have access to the repository of information collected from silicosis notifications and be able to draw on that information to fulfil their respective functions – the regulation of work health and safety and the protection of public health. The database of information can be used both to monitor and analyse the incidence of silicosis, and to investigate individual cases.

The information NSW Health receives through the notifications will be shared with SafeWork NSW, in accordance with a Memorandum of Understanding which NSW Health and SafeWork NSW will enter into when this Bill is law. Once this is in place, any notifications received since the requirement to notify commenced on 1 July 2020 will be shared with SafeWork NSW. SafeWork NSW will then lawfully be able to use the information to investigate a worker's past or present workplaces.

Relevant information is proposed to be shared by SafeWork NSW with the NSW Resources Regulator if the information relates to mining or petroleum sites, or with Comcare if it relates to workplace regulated by Comcare in NSW. The NSW Resources Regulator will securely manage any information received from NSW Health via SafeWork.

## **Approach in other jurisdictions**

The Government is aware of steps taken in Queensland to address the re-emergence of silicosis. This is the only other jurisdiction within Australia that has made silicosis a notifiable health condition.



Queensland has made silicosis diagnoses notifiable through amendments to its *Public Health Act 2005* to create a Notifiable Dust Lung Disease Register. The purposes of that register are to monitor and analyse the incidence of notifiable lung diseases, and enable information about notifiable dust lung diseases to be exchanged with an entity of the State.<sup>4</sup> The NSW Government approach makes use of existing powers in NSW's Public Health Act to achieve the same ends.

Under the Queensland scheme, certain medical practitioners are required to notify Queensland Health of diagnoses of: cancer (e.g. mesothelioma); chronic obstructive pulmonary disease, including bronchitis and emphysema; pneumoconiosis, including asbestosis; coal worker's pneumoconiosis; mixed-dust pneumoconiosis, and silicosis. These obligations came into effect on 1 July 2019.

Queensland, although it is part of the nationally harmonised WHS scheme, introduced its own Code of Practice, *Managing respirable crystalline silica dust exposure in the stone bench top industry*, which commenced on 31 October 2019. SafeWork NSW has been working with SWA and other jurisdictions on the development of the national model Code of Practice for working with manufactured stone. A draft is expected to be provided to SWA Members for review and comment shortly.

Contrastingly in NSW, the information-sharing power in this Bill is sufficiently flexible to enable NSW Health to share any information it holds with a WHS Regulator. The NSW Government is taking a targeted approach to address the spike in silicosis cases, which, as this Committee identified when it decided that its 2019 Review of the Dust Diseases Scheme should focus on silicosis, is the pressing issue in NSW now. icare identified 107 cases through its screening services in the last financial year. That is a very significant increase from the previous year, when only 40 cases were identified. That figure represents 107 workers who have been diagnosed with a disease which could have been prevented. That is why the Government is focused on ensuring that no further workers are exposed to a risk of contracting this life-altering disease.

This targeted approach is also consistent with the early findings and recommendations of the National Dust Diseases Taskforce. Its second early recommendation – which has been accepted by the Commonwealth Government – is for the staged establishment of a National Dust Disease Registry which should in the first instance focus on accelerated silicosis related to engineered stone. The evidence received by the National Dust Diseases Taskforce underscores the importance of acting swiftly to prevent any more workers – some tragically young – contracting this preventable disease with long-term medical, financial and mental health implications.

## **Co-ordinated work on silicosis**

### **NSW Manufactured Stone Industry Taskforce – July 2018**

The NSW Manufactured Stone Industry Taskforce (**the Taskforce**) was convened by SafeWork NSW in response to recommendation 1 of the First Review of the Dust Diseases Scheme and operated from 1 July 2018 to 30 June 2019. It provided a final report to the Minister for Better Regulation and Innovation in June 2019. The Taskforce was composed of industry, regulatory and

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<sup>4</sup> Public Health Act 2005 (Qld) s 279AC.

workforce representatives and the terms of reference were to review safety standards in the manufactured stone industry and consider regulatory changes necessary to protect workers in the industry.

The Taskforce made findings and recommendations, many of which have since been acted on to improve protections for workers in the manufactured stone industry. These included a recommendation that silicosis should become notifiable – a reform this Bill seeks to implement.

The Taskforce also made findings in relation to trade education and recommended that silica syllabus be part of all trade courses. Brick and Block and Stonemasonry qualifications now contain silica awareness components, and other construction qualifications are under review.

SafeWork NSW will continue to monitor and report on the implementation of the Taskforce's recommendations.

### **National Dust Disease Taskforce**

The National Dust Disease Taskforce (**the National Taskforce**) was established in July 2019 by the Commonwealth Health Minister. The terms of reference for the National Taskforce were to develop a national approach to the prevention, early identification, control and management of occupational dust diseases in Australia. In December 2019, it released its early recommendations and findings. It identified five national actions which could be taken in the immediate and short-term to address specific issues related to the re-emergence of silicosis.

These are:

1. The development and implementation of a prevention strategy, with an initial immediate targeted education and communication campaign.
2. A national approach to understand the extent of occupational dust diseases in Australia through identification and capture of data, information collecting and sharing, including the staged establishment of a National Dust Disease Registry that is initially focussed on accelerated silicosis related to engineered stone.
3. A strategic approach to research to better understand accelerated silicosis.
4. Development of national guidance on an approach to actively search for people at risk from crystalline silica in the workplace.
5. A strategic national approach to improve Australia's ability to detect and rapidly respond to any future emerging occupational diseases of significance.

The NSW Government supports a coordinated national approach to addressing the harm of silicosis and occupational lung diseases more broadly. On 17 August 2020, the Minister for Better Regulation and Innovation wrote to Professor John Wilson, AM, the President of the Royal Australasian College of Physicians, indicating his in-principle support for the National Taskforce's recommendation that a National Dust Disease Registry be established, and noting his intention to approach the Commonwealth to request that the Registry be listed as an agenda item at the next national WHS Ministers' meeting.

The new silicosis notification system will place NSW in a strong position to contribute to a National Dust Disease Registry, if one is developed. Passage of this Bill is a first step that NSW can take to establish a central repository of information about silicosis cases, shared between regulators, which could later be drawn on for the purpose of the proposed National Registry. The information will be valuable to WHS Regulators in protecting workers now, and can also support a strategic national approach to silicosis. The recommendation that the National Registry should initially focus

on accelerated silicosis in the manufactured stone industry is consistent with the Government's decision to focus on silicosis in bringing forward this Bill.

Due to the COVID-19 pandemic, the delivery of the final report of the Taskforce has been extended by six months, with the final report expected to be provided by 30 June 2021.

### **3. About the *Work Health and Safety Amendment (Information Exchange) Bill 2020***

#### **What the Bill entails**

The Bill amends the WHS Act to authorise the Secretary of the Ministry of Health to provide information to a NSW WHS Regulator, if the Secretary considers that the provision of that information is necessary to enable the regulator to exercise their functions under the WHS Act.

#### **Why the Bill authorises, rather than requires, the Health Secretary to share information**

This is a broad information-sharing power which will enable Government agencies to respond swiftly and flexibly to health challenges in NSW workplaces. Because the information-sharing power is broad and flexible, it is important that the Health Secretary has discretion to provide or withhold information based on an assessment of whether the information is necessary for WHS Regulators to monitor and enforce compliance with WHS laws.

NSW Health is the custodian of a large volume of information, including personal health information. In most circumstances, there is an overriding public interest against disclosure of personal information collected for another purpose. Therefore, it is important that the Health Secretary retains discretion to determine if the benefit of release of information held by NSW Health outweighs the harm of breaching individuals' privacy. This discretion is particularly important because the Bill provides that the information may be shared despite any prohibitions or requirements in the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.

Further, there is a danger that, depending on the drafting, if the Bill were to require rather than authorise the Health Secretary to share information, the Health Secretary may be in breach of the law if there was any information held by NSW Health that WHS Regulators could have used to perform their functions which had not been provided. This would require the devotion of considerable resources by NSW Health to assessing information it holds for its potential value to WHS Regulators, and considerable resources on the part of WHS Regulators to assess the information's usefulness once provided. This use of resources would be disproportionate to the likely value of the information exchanged to the work performed by WHS Regulators.

Removing the capacity for discretion would considerably reduce the flexibility of the information-sharing power and constrain WHS Regulators' ability to adapt and respond to emerging workplace challenges which require co-ordinated Government action.

## **Proposed uses of the information-sharing power**

As noted above, the Bill establishes a framework for sharing information between NSW Health and the NSW WHS Regulators which is not limited to any one disease or medical condition. The Government's intention in the first instance is to use the information-sharing power in the Bill to transfer information about silicosis cases. But the Government knows that new health challenges can emerge at any time, or re-emerge, as silicosis has. That is why it is setting up a framework for information-sharing which can be flexible and responsive to other risks to the health of workers in NSW. Discussions can continue between NSW Health and WHS Regulators about how best to use the information-sharing power in this Bill to protect workers.

## **Why the Government is pursuing the Bill**

### **Re-emergence of silicosis as an occupational disease**

The Government wants to ensure that no workers in this State contract a life-altering disease as a result of their work. Recent developments in industry have made addressing silicosis a key priority for WHS Regulators. It is a disease that is caused by inhaling dust particles, usually when products or materials containing crystalline silica are cut, sanded, drilled or ground. It was once relatively rare. But in recent years NSW has seen a steep increase in workers – particularly in the manufactured stone industry – being diagnosed with the disease. The disease is permanent and irreversible, and progressively causes respiratory impairment and reduced lung functionality. In the most serious cases, it is fatal.

However, with proper controls in place, this disease is also preventable. That is why the Government has developed the Silica Strategy, of which this Bill is a crucial component.

The rise in cases appears to be linked to the growth in popularity of a particular material, manufactured stone, which has become popular as a countertop in kitchens, bathrooms, and laundries. The Government is responding to the specific WHS challenge created by the increased exposure of workers to this material, which contains a higher quantity of crystalline silica than many traditional materials.

There are three types of silicosis: chronic, accelerated, and acute. Chronic silicosis is typically observed in workers exposed to low levels of silica dust 15 years or more after their first exposure. Accelerated silicosis appears in workers who have had high levels of exposure over 5 to 10 years. This was once very rare but is now being observed in workers in the manufactured stone industry and is of particular concern. Acute silicosis is observed in workers within a few months to two years after they have been exposed to very high concentrations of silica dust. It remains very rare.

Between 1 July 2019 and 30 June 2020, 107 new cases of silicosis were identified by icare in NSW. In the financial year 2018/19 there were 40 new cases. Over the previous three years together, there were only 24 cases. This represents a sharp spike. Of the 107 cases identified in 2019/20, 79 were diagnoses of chronic simple silicosis, 13 had chronic complicated silicosis, or pulmonary massive fibrosis, 13 had accelerated silicosis, and 2 had acute silicosis.

The Government wants to halt the spread of this disease and make it once more a thing of the past.

### **Use of the information-sharing power to address silicosis**

The Government intends to use the information-sharing power in this Bill to address the increase in reported cases of silicosis. In order to address silicosis, WHS Regulators need a complete picture of the extent and prevalence of silicosis in NSW. At present, the information-gathering tools available to WHS Regulators do not show this complete picture. Partial information about diagnoses of silicosis can be obtained by SafeWork NSW by issuing investigative notices to icare. This provides information about workers diagnosed with silicosis through icare's screening services. But workers may also be diagnosed through their own doctors, privately, or through health monitoring conducted elsewhere. In that case, WHS Regulators may not be informed of the diagnosis. A PCBU has an existing obligation to inform a WHS Regulator of an adverse health monitoring report, including a diagnosis of silicosis, but PCBUs also have an incentive not to comply with an obligation which may trigger an investigation of their work practices.

When this Bill is law, NSW Health will be in a position to provide SafeWork NSW with information about all diagnoses of silicosis in this State. This is the complete picture which WHS Regulators need to be able to target their educational, compliance and enforcement efforts at workplaces which are not working safely with silica. SafeWork NSW will then be able to use the information it receives from NSW Health to investigate each case of silicosis that is diagnosed in NSW. The investigation can cover past work practices which might have resulted in exposure to dangerous levels of silica dust, and include investigation of the worker's past workplaces. Where appropriate, SafeWork NSW may be able to take further enforcement action in relation to breaches of WHS laws.

The NSW Government already has important data gathered through existing requirements for health monitoring of workers working with silica dust, along with information gathered through an extensive compliance and enforcement regime. The information sharing power will assist in closing the gap, so that WHS Regulators have a complete picture of the extent and prevalence of silicosis in NSW. It will assist them to target their ongoing efforts in education, enforcement and compliance at the workplaces where workers are contracting silicosis.

SafeWork NSW and NSW Health are in the process of finalising a Memorandum of Understanding (**MOU**) that will set out how the agencies will share, use and store the information they receive from health practitioners about the silicosis diagnoses received. This MOU is being developed in consultation with the Information and Privacy Commissioner, to ensure that workers' personal information is treated appropriately. The information will be held in a secure database, with restricted accessibility and access auditing, as is the process for all Government storage of personal and health information. Under the MOU, NSW Health will regularly share information about silicosis notifications with SafeWork NSW. The agencies are working towards a technological solution which will enable a swift transfer of information between NSW Health and SafeWork NSW databases. Subject to finalisation of the notification system, the MOU will be signed once this Bill is law.

As noted above, an additional advantage of the approach taken by the Government to addressing silicosis, is that SafeWork NSW can collate the information provided by NSW Health in a register. Should the National Dust Disease Taskforce progress with developing a national registry, the information provided by NSW Health may be able to be incorporated into the National Registry. At this stage it is unclear exactly what information may be held in the National Registry, but the legislative framework for the silicosis notification system and the information-sharing arrangements introduced in this Bill are sufficiently flexible to be extended to capture any particular data or

information in relation to silicosis sought by the National Registry, if appropriate. In the meantime, the Bill addresses the urgent need to identify which workplaces in NSW are not working safely with silica so that WHS Regulators can take appropriate compliance and enforcement action to protect workers.

## **Reviews of the Dust Diseases Scheme**

The Government notes that the rise in silicosis cases has been of great concern to this Committee, in both its 2018 and 2019 Reviews of the Dust Diseases Scheme. The Government acknowledges the Committee's thorough consideration of the issues involved, which reflect the fact that this is a multi-faceted problem requiring a whole-of-Government response.

The Government supported three recommendations of the 2018 Review of the Dust Diseases Scheme and supported the remainder in principle. In particular, the Government supported in principle a recommendation that if a National Dust Diseases Register is not established by the end of 2019, the NSW Government establish a New South Wales Dust Diseases Register.

In the time since the Committee made that recommendation, it has to some extent been overtaken by events. In July 2019, the Commonwealth Health Minister established the National Dust Diseases Taskforce, and before the end of 2019 the National Taskforce made a recommendation for a National Dust Diseases Registry which initially focuses on accelerated silicosis.

The steps the Government has taken this year on this recommendation are intended to address the urgent need in NSW now for action in non-compliant workplaces, and the future need to feed information into the National Dust Diseases Registry. In making silicosis a scheduled medical condition, the Government has effectively established a register, in that information about silicosis diagnoses will be centrally held by NSW Health. This central repository of information performs the same functions as the Notifiable Dust Lung Disease Register established in Queensland, in that it will enable NSW agencies to monitor and analyse the incidence of notifiable dust lung diseases, and enable information about notifiable dust lung diseases to be exchanged with an entity of the State.

Subject to the passage of this Bill, the information held by NSW Health about silicosis will be provided to NSW WHS Regulators to enable them to take appropriate action. But it will also be a body of information which can be drawn on for the purposes of the National Registry in due course. The advantage of the approach taken by the Government to implement this recommendation is that it draws on existing public health infrastructure. This meant the Government was able to have the notification system in place from 1 July this year, which is particularly important given the delay to the final report of the National Taskforce as a result of COVID-19.

Action has already been taken to address a number of the Committee's recommendations in its 2019 Review of the Dust Diseases Scheme. The Government has introduced an explicit ban on dry-cutting, as proposed by recommendation 9, and it has reduced the WES for crystalline silica. The Government is continuing to consider the recommendations of the 2019 Review of the Dust Diseases Scheme and will table a full response in due course.

## **What will the Bill achieve?**

### **A whole-of-government response to silicosis**



The Bill is one component of a broader package of reforms the Government has developed to address the spike in silicosis in NSW.

Making silicosis a scheduled medical condition is supported by many stakeholders, including respiratory physicians. WHS regulators need to know which workplaces are not complying, which means they need to know where workers are getting sick. Notification will also assist with early and appropriate support for those diagnosed with silicosis. This may include actions that can be taken to improve the health of the worker: whether ongoing monitoring or treatment is required, and whether the worker continues to work with silica or need to be re-assigned to a different area to avoid exposure. The examining doctor, if not an icare Dust Diseases doctor, can provide the worker with contact information for Dust Diseases Care and can assist with ongoing medical examinations and any eligibility for compensation.

Although the WHS Act creates a strong framework for protecting workers health from exposure to hazardous materials, there is currently a gap in the information-gathering power of WHS regulators. PCBUs are obliged to tell WHS regulators when a person is diagnosed with silicosis through mandatory health monitoring, but this is not always happening. PCBUs may have a self-interest in concealing diagnoses of silicosis, which raise questions about their work practices. WHS regulators have been able to gather information about some silicosis diagnoses through icare, which provides health monitoring services to workers exposed to hazards like silica, but this process does not show the full extent of silicosis in NSW.

Medical professionals involved in treating patients with occupational disease or providing health monitoring do not have the same incentive as PCBUs may have to conceal diagnoses. That is why requiring them to notify NSW Health is expected to be a more effective information-gathering tool than the existing obligation on PCBUs under the WHS Act. Once this Bill is law, SafeWork NSW will not have to rely on PCBUs to advise when a worker has been diagnosed with silicosis. It will be able to take action to intervene in workplaces which may not be working safely with silica, which will benefit all workers in silica-exposed industries.

### **A flexible and responsive information-sharing framework**

Although the Government is bringing forward this Bill to address silicosis, there may be other scenarios where information-sharing between NSW Health and WHS Regulators can improve health and safety outcomes in NSW. The Bill authorises the Health Secretary to share any information that is necessary for WHS Regulators to perform their functions under the WHS Act. The result will be an agile and responsive information-sharing framework which can address new health challenges, while protecting patients' privacy.

## **4. Conclusion**

SafeWork NSW is committed to a risk-based preventative framework for addressing threats to workplace safety. The Bill's information-sharing power will put SafeWork NSW and NSW Health in a stronger position to respond to the current increase in silicosis cases.

The Bill will enable the NSW WHS regulators to identify any cases of silicosis not detected through the health monitoring PCBUs are required to provide under the WHS Act and the screening services provided by icare. Many workers have been diagnosed outside of those processes, by their own doctors. It will strengthen the ability of SafeWork NSW to support businesses and workers to prevent people from suffering from this preventable disease. This Bill also lays the

groundwork for national cooperation to address the rise in silicosis through the proposed National Dust Diseases Registry.

NSW Health and WHS Regulators can continue discussions about how best to use the information-sharing power in this Bill to protect workers. The Government wants every worker to go home safe at the end of the day, and every workplace using hazardous materials to do the right thing by its workers.



