

INQUIRY INTO 2021 REVIEW OF THE DUST DISEASES SCHEME

Organisation: CFMEU Construction, Forestry, Maritime, Mining and Energy
Union, Construction and General Division, NSW Divisional
Branch

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2021 Review of the Dust diseases

Scheme

Submissions

Construction, Forestry, Maritime, Mining and Energy Union, Construction and General
Division, NSW Divisional Branch



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1. Introduction

The Construction Forestry Maritime Mining Energy Union (CFMMEU) welcomes the opportunity to provide submissions to the *2021 Review of the Dust Diseases Scheme*. The CFMMEU represents approximately 20,000 members in the building and construction industry in New South Wales. 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 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.

2. Silicosis cases still rising

The incidence of silicosis amongst workers in New South Wales continues to rise. Since 2020, SafeWork NSW has been required to maintain a register of notifications of diagnosed cases of dust diseases. The inaugural annual report of the NSW Dust Disease Register provides a disturbing overview of the continuing increase in silicosis cases. From a relatively flat range of between 6 and 9 cases per year in the five years to 2017, diagnosed cases then increased to 40 in 2018/2019, and to 120 in 2019/2020.¹ Concerningly the demographic of workers most affected by silicosis is in the 30 to 60-year-old age group, being the very time that workers are at their peak working capacity.²

¹ *NSW Dust Disease Register Annual Report 2020-21* page 8.

² *Ibid*, p12.

In the manufactured stone sector the statistics are frightening. The final report of the National Dust Diseases Task Force published in June 2021 estimates “there is evidence to suggest that nearly one in four engineered stone workers (emphasis added) who have been in the industry since before 2018 are suffering from silicosis or other silica dust related diseases.”³ Screening by WorkCover Queensland in 2020 found that out of about 1000 stone masons working in the state, 186 (18%) had been diagnosed with silicosis.⁴ Closer to home the *Case Finding Study - Respirable Crystalline Silica Exposure in the New South Wales Manufactured Stone Industry* report submitted to SafeWork NSW in May 2021 states that between 6% and 9% of workers in the manufactured stone industry have silicosis.⁵ The CFMMEU is of the view that the incidence of silicosis in the engineered stone sector is probably underreported in NSW, partly due to a lack of on-site health monitoring.

There has been some limited progress in the regulation of dust diseases and silicosis in New South Wales. The *Work Health and Safety Amendment (Information Exchange) Act 2020* facilitates the sharing of medical practitioner diagnoses with NSW Health and SafeWork. The workplace exposure standard (WES) has been reduced to 0.05 mcg/m³, and some minor regulatory measures have been introduced to provide from the spot fines for uncontrolled cutting, grinding and polishing of manufactured stone. However, these regulatory changes have not stemmed the increase in silicosis. In practice, many small business installers are either ignorant of and/or do not follow the regulations and health advice. It is simply unacceptable, and should really be unthinkable, that somewhere between 10 and 25% of workers engaged with manufactured stone are slowly being killed by products which are imported into Australia. What other industry in Australia would allow itself to be characterised by such a high rate of disease and mortality?

Silicosis is an entirely preventable injury. Important and urgent work remains to be done by the NSW Parliament.

³ National Dust Disease Task Force: *Final Report to the Minister for Health*, p7.

⁴ Brisbane Times, *Calls for action after one in five stonemasons diagnosed with disease*, 20 January 2020.

⁵ *Case Finding Study - Respirable Crystalline Silica Exposure in the New South Wales Manufactured Stone Industry*. Report prepared for SafeWork NSW by Golder Associates, page ii.

3. Ban manufactured stone

CFMMEU members and delegates remain angrily frustrated at the rising increase in silicosis cases. Back in 2018 when the spike in silicosis cases was first evident CFMMEU health and safety representatives described manufactured stone as a “putrid product” and called for the elimination of products containing high levels of silica.⁶ This motion was reaffirmed in July 2019⁷ and has been consistently reported to the Standing Committee at subsequent reviews of the Dust Scheme. Since the death of Anthony White in 2019 there has also been increasing media focus for a ban on manufactured stone.⁸

Manufactured stone remains a product selected principally on the basis of aesthetics and is not critical to the survival and growth of the commercial or residential construction industry. Implementing a ban on manufactured stone would be far simpler to bring about than the phase-out of asbestos in the last century. Asbestos had been consistently used in mining, manufacture and construction and was integrated into the Australian economy. In the case of manufactured stone alternative less harmful and more sustainable products – such as sustainably grown wood benchtop products - can simply be substituted for high silica manufactured stone.

It is of continuing concern that the SafeWork regulator in New South Wales maintains a high level of engagement with the manufactured Stone industry peak body, the Australian Engineered Stone Industry Group, including taking the extraordinary step of supporting an AESIG application to the Australian Competition and Consumer Commission (ACCC) to develop an industry self-accreditation scheme. If implemented this scheme would have further secured oligarchic commercial control over an already concentrated market. Thankfully, the AESAG has since withdrawn the ACCC proposal.

⁶ CFMMEU Submission to the Legislative Council 2018 Review of the Dust Diseases Scheme, page 7.

⁷ CFMMEU Submission to the Legislative 2019 Review of the Dust Diseases Scheme, page 2.

⁸ See, for example: Sydney Morning Herald, *Ban on popular benchtops being considered as wave of deadly illness sparks alarm*, 17 April 2021; ABC News, *Workers diagnosed with silicosis push for ban on engineered stone after national dust disease task force report*, 15 July 2021; Network 10, *The Project*, “Kitchen Killer, 7 September 2021”; Network 10, *Fears for silicosis, the deadly dust disease in workers and more industries*, 5 December 2021.

Since the dissolving of the NSW Manufactured Stone Task Force in 2019 SafeWork's engagement with the union remains non-existent. The union remains concerned that manufactured stone importers and retailers continue to hold disproportionate influence over the development of policy responses to the silicosis crisis in NSW.

The nature of the silicosis crisis has reached such proportions that the National Dust Diseases Taskforce has identified a three-year pathway for the ban on the importation of some or all manufactured stone products.⁹ It is concerning that in evidence before a recent hearing of the Legislative Council budget estimates committee that Minister Kevin Anderson stated that in relation to banning engineered stone, "that is not something we would do."¹⁰ A ban on high silica level products remains a realistic and obvious response to the silicosis crisis. It is unclear why the state regulator and New South Wales government are so concerned to protect the interests of international investors and manufacturers over the health and safety of Australian workers.

Recommendation 1: That the New South Wales government immediately commence the phased discontinuance of the use of manufactured stone products in New South Wales.

4. Continuing non-compliance with NSW regulations

Data from the *NSW Dust Disease Register Annual Report 2020-2021* reveals an industry unable to comply with the basic requirements to maintain safe and satisfactory workplaces. Since launching a silica safety program in 2019 out of 1511 workplace SafeWork visits 945 improvement notices and 72 prohibition notices were issued.¹¹ This is an extraordinary level of non-compliance and begs the question as to why such sites are not simply shut down? Despite the extraordinary levels of non-compliance the only punitive action reportedly taken by SafeWork was the issuing of two penalty notices for uncontrolled dry cutting.¹² Despite the high level of disease, disability and seven silicosis related deaths in NSW since 1 July 2020 there appear to have been no

⁹ National Dust Disease Task Force: *Final Report to the Minister for Health*, p11

¹⁰ NSW Budget Estimates 2021 to 2022 *Supplementary questions, Better Regulation and Innovation*, 27 October 2021 p25.

¹¹ *New South Wales Dust Disease Register Annual Report 2021-2021*, page 8.

¹² *Id.*

prosecutions at all.¹³

Given the reliance placed in this jurisdiction on on the spot fines it is unclear how effective the ban on dry cutting has been in New South Wales. In November 2021 Minister Kevin Anderson reported that only “two on the spot fines” had been issued, despite also stating that “24 businesses...could not be confirmed as meeting the workplace exposure standard of 0.05.”¹⁴ The *Work Health and Safety Regulation 2017 (NSW)* (WHS Reg) now has specific provisions relating to the cutting of manufactured stone. Regulation 1850 includes a duty to ensure that workers cutting manufactured stone are protected by the wearing of respiratory protective equipment and make use of water dust suppression systems and/or dust extraction systems. However, it appears that only a very limited number of fines have actually been issued under the scheme. The new regulations are not acting as much of a deterrent and in the absence of prosecutions it is unsurprising that employers are not exactly shaking in their shoes at the current regulatory response.

Outside of New South Wales, there have been some improvements in the regulatory response. In Tasmania, in November this year Work Safe Tasmania secured a guilty plea to a Category 2 health and safety duty breach against Heritage Stone Pty Ltd following allegations that the company exposed six workers to the risk of inhaling respirable crystalline silica.¹⁵ On 20 April 2021 Ezystone Benchtops Pty Ltd was fined \$240,000. in proceedings brought by the Queensland Office of the Work Health and Safety Prosecutor following allegations that despite the prior issuing of improvement notices the defendant had a “reckless, ignorant, cavalier approach” to workers’ safety in not utilising dust suppression for electric grinders, not fit testing disposable respirators and failing to perform health monitoring.¹⁶ In Victoria the Victorian *Occupational Health and Safety Amendment (Crystalline Silica) Regulation 2021* (Victorian Regulation) has implemented a number of important initiatives as discussed below.

¹³ Ibid p6.

¹⁴ NSW Legislative Council Budget Estimates 2021- 2022 *Supplementary Questions, Better Regulation and Innovation*, 27 October 2021 p25.

¹⁵ ABC News, *in Tasmania's first, stonemasonry pleads guilty after workers exposed to risk of silicosis*, 16 November 2021.

¹⁶ Qld Office of the Work Health and Safety Prosecutor, *“Ezystone Benchtops Pty Ltd find \$240,000 for exposing workers to risk of silicosis”*, Court Report, 20 April 2021.

5. A licensing system for manufactured stone

The CFMMEU maintains that the New South Wales Parliament should mandate the staged phase-out of the sale and supply of manufactured stone in New South Wales. However, given what appears to be a strongly stated Government position against such an approach, there is a strong case for the introduction of a licensing system.

The recent Victorian Regulation establishes a new system requiring employers and self-employed workers to hold an engineered stone license. The licensing system applies across the supply chain with each supplier of engineered stone being required to record the name and address of other persons to whom engineered stone is provided together with information regarding the nature and quantity of the engineered stone supplied. Businesses are required to keep these records for five years.

The Victorian Regulation requires businesses to ensure that any workers and job applicants receive information and training about the health risks of working with silica. Specific information and training programs are required in the manufactured stone industry. The Victorian Regulation includes specific provisions concerning the health monitoring of engineered stone worksites including a requirement for health monitoring reports to be provided to the Victorian SafeWork authority within 30 days of such reports being received. On-site work with engineered stone is required to be performed in accordance with an engineered stone control plan. Workers leaving the employ of an engineered stone license holder must be provided a statement identifying the period during which the employee worked with engineered stone and providing advice about ongoing health assessment.

All of these elements contained in the Victorian engineered stone licensing systems should be replicated New South Wales. In the context of the continuing increase in silicosis and in the absence of an outright ban on the use of engineered stone, it is important that these products are able to be tracked and located as they circulate through the industry and that health monitoring and other data is shared with and held by the regulator. While the establishment of the dust disease register in New South

Wales has been an important development in monitoring the health of workers, it is equally important to track the circulation of manufactured stone products across industry and keep air-quality data regarding worksites and health monitoring data for workers. Rather than have businesses maintain the chain of supply records for five years, the Victorian scheme should be improved by requiring businesses to provide quarterly or annual reports to SafeWork regarding the distribution of manufactured stone products. While silicosis has an earlier onset than asbestos related diseases, silicosis still functions as a late onset disease and on that basis records should be kept by the regulator for 30 years. The New South Wales Government must be careful to avoid any proposal to implement an industry based self-accreditation scheme.

Recommendation 2: That the New South Wales Government introduce an engineered stone licensing system similar to that operating in Victoria with stronger recordkeeping requirements

6. Further reducing the workplace exposure standard

In 2018 SafeWork Australia received health advice recommending that the WES for respirable crystalline silica be reduced from 0.1 mcg/m³ to 0.02 mcg/m³ to protect workers from fibrosis and silicosis and to minimise the risk of lung cancer.¹⁷ Due to concerns about the ability of current air monitoring equipment to measure rates at 0.02 mcg/m³, as an interim measure the national regulator recommended the interim adoption of a 0.05 mcg/m³ standard. Since 2016 the American equivalent of the WES has included an “action level” above 0.25 mcg/m³.¹⁸

That silica dust is so dangerous it causes serious health problems at levels difficult to accurately measure is further evidence for a ban on engineered stone. It is of real concern that the legally recognised exposure standard of 0.5 mcg/m³ in New South Wales operates in a way that nevertheless recognises that illness, injury and death can occur at exposure rates more than 50% below that level. Medically it has been known at

¹⁷ CFMMEU Submission to the Legislative 2019 Review of the Dust Diseases Scheme p6.

¹⁸ Occupational Health & Safety Administration, *Small Entity Compliance Guide for the Respirable Crystalline Silica Standard for Construction*, p34

least since 2002 that “workers exposed to levels of silica, equivalent to 0.05 mcg/m³ for their working lifetimes (40 to 45) years still have significant risk of developing chronic radiographic silicosis.”¹⁹ The existing WES standards are dangerously misleading and send the message that working in relatively high density levels of respirable crystalline silica is safe when in fact federal and state governments know that working in such exposures can lead to death or disability. New South Wales needs to lead the way in implementing a timetable ensuring that expeditious technological advances are made in monitoring, supporting a further halving of the WES within the next 12 months.

Recommendation 3: The New South Wales Government implement an urgent review of air monitoring technology supporting the introduction of a silica workplace exposure standard of 0.02 mcg/m³ by December 2022

7. The need for silica specific regulations and duties

Asbestos is such a notorious deadly (and now banned) building material that the WHS Reg incorporates an entire chapter (Chapter 8) outlining prohibitions, general duties, health monitoring requirements, training and licensing requirements etc for this material. Despite the increasing incidence of silicosis, in New South Wales the existing regulations addressing safe working requirements for silica are contained in the General Risk and Workplace Management provisions of the WHS Reg. The continuing health risks associated with silica exposure indicate that the WHS Reg needs to be amended to incorporate specific duties applying to working with silica.

At the national level in June 2021 (after two years of deliberations) the Dust Diseases Taskforce recommended “an urgent regulatory impact analysis” of regulatory mechanisms occur.²⁰ Regulatory change can no longer be the subject of ongoing taskforce reviews and end of the rainbow administrative analyses – this simply delays a process that needs to get underway now. The recent Victorian Regulation includes a new subdivision relating to “high risk crystalline silica work” applying to all building

¹⁹ Mannetje et al, 2002 reported in Salamon et al, *Occupational Exposure to Crystalline Silica in Artificial Stone Processing, Journal of Occupational and Environmental Hygiene* 2021 (accepted manuscript.)

²⁰ National Dust Disease Task Force: *Final Report to the Minister for Health*, p11.

and construction work (not just work with engineered stone) and requires risk identification and assessment, the keeping of records and the use of hazard control statements. There are also specific provisions requiring sample analysis in quarrying and tunneling. Comprehensive regulations are required in New South Wales addressing silica exposure risks across the construction, demolition, quarrying, and tunneling sectors, as well as the engineered stone sector.

For some years now the CFMMEU has expressed concern about the ambiguity and uncertainty surrounding the duty to monitor airborne contaminant levels under the WHS Reg - a business is required to conduct air monitoring “where the person is not certain on reasonable grounds whether or not the airborne concentration of the substance or mixture at the workplace exceeds the relevant exposure standard.” This poorly expressed duty acts as a disincentive for employers to conduct air monitoring and needs to be simplified to provide an express duty for air monitoring in dusty environments.

Recommendation 4: The New South Wales Work Health and Safety Regulation 2017 be amended to incorporate silica specific duties of care and risk management requirements across the construction, demolition, quarrying, tunnelling and engineered stone sectors.

Recommendation 5: The New South Wales Work Health and Safety Regulation 2017 be amended to incorporate a simply stated duty for air monitoring to occur in dusty working environments.

8. Training

The CFMMEU takes action to ensure union delegates and members are trained regarding the dangers of silica exposure. Since 2019 CFMMEU building and construction enterprise agreements have included a requirement that asbestos and silica awareness training occurs within three months of the making of an agreement and that training occur for newly all engaged employees. The *Work Health and Safety Act 2011* (WHS Act), at s 19(3)(f), states a general duty that businesses must provide “training, instruction and supervision necessary to protect persons from risks to their health and safety

arising from work carried out by (the) business.” However this requirement is buried amongst a range of other general duties at section 19 of the WHS Act. The silicosis crisis is now sufficiently advanced as to require specific work health and safety provisions mandating silica awareness training for all workers exposed to health risks associated with exposure to silica dust.

Our experience is that at building and construction worksites not regulated by CFMMEU enterprise agreements silica awareness training is patchy at best. The response by many employers is to simply incorporate a short unaccredited silica awareness training component into the general on-site induction.

The WHS Reg needs to be amended to specifically require training regarding health risks associated with exposure to silica dust. Reg 319R of the recent Victorian Regulation requires that any employee “likely to be exposed to risks associated with high risk crystalline silica work (is) given information, instruction and training in:

- (a) The health risks associated with exposure to crystalline silica dust; and
- (b) the need for, and proper use of, any risk control measures required under these regulations; and
- (c) how the risk control measures are to be implemented.”

Similar regulations need to be passed in New South Wales. Compulsory training provided by businesses should be nationally accredited through the Australian Skills Quality Training Authority.

Recommendation 6: The New South Wales Work Health and Safety Regulation 2017 be amended to require businesses to provide training regarding the health risks associated with exposure to crystalline silica dust similar to those at Regulation 319R of the Victorian regulations. Such training to be nationally accredited.

9. CT Scan Screening

The 2019 Review of the Dust Diseases Scheme heard evidence regarding the reportedly high level of false negative results associated with the use of x-ray scanning as the principal health monitoring mechanism for silica exposure.²¹ The use of chest x-rays is embedded in the New South Wales WHS Act and Regs. However it is becoming increasingly apparent that x-rays are not the best means of diagnosing silica related health concerns.²² From the evidence provided to the 2019 enquiry it appears that iCare is increasingly using CT scan referrals, particularly in situations where employees report a three-year history of having worked in dusty workplaces. Recommendation 3 of the 2019 Review of the Dust Diseases Scheme stated that CT scan should be the preferred diagnostic measure for any person who has had “significant exposure” to silica dust from the manufactured stone.²³

It is increasingly apparent that silica related illnesses can arise from relatively short periods of exposure. In January this year the Western Australian Government amended Schedule 5.3 of the *Occupational Safety and Health Regulation 1996* to require respirable crystalline silica health monitoring to be carried out using a “low dose high resolution computed tomography (HRCT) scan supervised by an appointed medical practitioner.”²⁴ Similar reforms are needed in New South Wales. The stated problems with the installation of a CT scanner on the iCare lung bus need to be overcome and iCare should report on the extent to which a network of regionally based CT scan providers has been identified and is now being used.

Recommendation 7: That the NSW Government mandate the use of CT scans as the principal diagnostic measure for persons exposed to significant silica dust exposure.

Recommendation 8: That technical difficulties concerning the installation of CT scans in

²¹ Parliament of New South Wales Legislative Council Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme: Silicosis in the Manufactured Stone Industry*, Report 73 March 2020, p99.

²² Royal Australian and New Zealand College of radiologists, *Imaging of occupational lung disease*, October 2019; The Age, *X-Rays “fail to reliably detect” lung disease and stone workers: radiologists*, 15 October 2019.

²³ Ibid, p40.

²⁴ The Hon Bill Johnston MLA, *Health surveillance requirements for silica strengthened*, 15 January 2021.

the iCare lung bus be overcome.

10. 2021 case finding study

Section s276A of the WHS Amendment Act 2020 required SafeWork NSW to conduct a case finding study to investigate respirable crystalline silica exposure in the manufactured stone industry and to gather information to improve the identification and assessment of workers at risk of exposure. SafeWork engaged consultants Golder Associates Pty Ltd to prepare a report. The *Case Finding Study - Respirable Crystalline Silica Exposure in the New South Wales Manufactured Stone Industry* (Golder Report) was submitted to SafeWork NSW in May 2021 and was based on a data triangulation of New South Wales Government agency information. It is unclear from the Golder Report the extent to which stage 2 of the SafeWork NSW inspection campaign (July 2019 - April 2021) was successfully conducted during the widespread lockdown periods associated with the Covid pandemic. It appears that much of the case finding study is essentially based upon a desktop review of existing data resting with iCare, NSW Health and SafeWork NSW.

The Golder Report includes some helpful data, some of which is concerning. The estimate that up to 9% of all employees in the manufactured stone industry have silicosis is a major concern. Of further concern is the report that at least 14% of manufacturers stone facilities were identified as “not having met their duty to provide health monitoring” -this last statistic suggests that the actual incidence of silicosis may in fact be much higher than nine percent.

The Golder Report is based upon an assumption that “a limited number of workers/businesses focus on only installation work (subcontractors)” and the idea that “the industry can be seen as mainly stonemason fabricators who control the flow of work to the installers.” The CFMMEU is not comfortable with the assumption that only a small number of businesses are active in installation only. It is our experience that there are a large number of small installation businesses operating in this area. These smaller operators are at the coalface of silica dust exposure and it is people working in these businesses that most often perform manual dry cutting finishing work using hand

held cutting tools such as angle grinders. It is well known that on-site workers involved in manual finishing tasks are exposed to the highest levels of respirable dust. Installers are also notorious for not applying controls, including not wearing respirator masks correctly, or at all during operations.

The case finding study as it was originally conceived was to have involved a forensic, investigative approach, led by the medical profession and NSW Health, with access to worksites being secured by SafeWork NSW. The evidence of Dr Susan Miles to the 2019 enquiry made it clear that the concern related to fact that “without such an intervention at the moment we cannot go out necessarily on the site as a doctor, and meet these people ... there are numerous cases of people being frightened of losing their working visas are not understanding what this represents... it is very difficult for people to want to present in the first place, a case finding, especially if it is mandatory, would allow us to do that.”²⁵ The CFMMEU also gave evidence about the investigative nature of the case finding study.

The Standing Committee 2019 recommendation was for the case finding study be conducted by Health NSW in conjunction with SafeWork NSW. Unfortunately, s276A as it was passed placed the obligation for the carrying out of the case finding study onto SafeWork NSW. It is unclear whether SafeWork NSW engaged with Health NSW and/or the medical profession about the study. There was no engagement with the CFMMEU. Unfortunately, the Golder Report does not demonstrate that a proper case “investigation”, in the true forensic sense, has been carried out as required pursuant to s276A(1)(a). It may have been the case that the opportunity to conduct such investigations was limited during the Covid lockdown, although notably, the installation of fabricated stone bench tops continued through the pandemic as it fell within the classification of essential work.

While the 2021 case finding study may have been a failure, in the absence of an outright ban, the introduction of a licensing system for manufactured stone would present a perfect opportunity for a case finding study to be implemented which follows supply

²⁵ New South Wales legislative Council Standing Committee on Law and Justice; *2019 review of this dust diseases scheme – silicosis in the manufactured stone and industry*, page 99

chain right the way through to each installation. At least then we can track these deadly products as they cut a swathe through our workforce.

Recommendation 9: Associated with the introduction of a licensing system for manufactured stone, that NSW Health, in conjunction with SafeWork NSW, conduct a case finding study following the supply chain of manufactured stone in New South Wales, ensuring that health monitoring data is collected at each point in the supply chain including on site residential and commercial installation.

11. Dust Diseases Care underpayments and overpayments

The CFMMEU has followed with some interest the discovery of underpayments and overpayments within Dust Diseases Care. We understand that the underpayments related to some retired and disabled workers having been paid a statutory rate, rather than their actual rate of pay in the first 26 weeks of incapacity. Overpayments were also made with respect to some dependent allowances despite changes to such benefits having occurred after 1987. Price Waterhouse Coopers of been engaged to identify employees who may have been underpaid and provide remediation.

The CFMMEU is concerned that the Government not take steps to reduce benefits as a means of avoiding future overpayment scenarios. The government should not apply a lowest common denominator approach to the resolution of such issues. Further, caution needs to be exercised over the engagement of consultants to perform work that otherwise would be performed in-house by iCare. Increases in consultancy fees can place pressure on the scheme's bottom line. Further, it is important that iCare develop and maintain the knowledge and systems necessary to deal with such matters internally.

12. Lump Sum Compensation for sufferers of Dust Diseases

Workers afflicted with injuries to their lungs from dust diseases often face reduced life expectancies and terminal illness. The provisions of the *Dust Diseases Act 1989* and

Workers Compensation Act 1987 were implemented with the purpose of enabling suffering workers to have their claims for lump sum damages assessed quickly and readily without unnecessary delay or cost. The intended expeditious nature of this process has broken down where a worker's occupational exposure has been caused by a former employer insured by a workers compensation insurer whose liabilities paid from the Insurer's Guarantee Fund (IGF). The IGF is established under Division 7 (sections 225 to s229) of the *Workers Compensation Act 1987* and was created to support injured workers and meet the liabilities of defunct employers who have previously paid their insurance premiums.

SIRA has responsibility for managing and paying claims out of the IGF under s236. Unfortunately there is a serious and real hole in these particular provisions, as while a worker is entitled to join SIRA to proceedings in relation to a claim against a former employer in the Dust Diseases Tribunal, such a claim cannot proceed and be finalised until the worker has also gone through the onerous and costly task of applying to the Corporations List of the Supreme Court of New South Wales and obtaining leave for the deregistered company to be reinstated on the ASIC registry - for the sole purpose of the worker's dust disease claim. This requirement provides no utility to anyone including SIRA in terms of assessing the worker's claim. However the process does add an extraordinary burden and cost in terms of time and money to the worker, the IGF and SIRA to resolve what should be a simple claim filed in the Dust Diseases Tribunal.

Commencing proceedings in the Corporations List of the Supreme Court and obtaining leave to reinstate a deregistered corporate employer is not a straightforward process, especially where there is a race against time for someone suffering and dying of a dust disease. The process requires the worker to put ASIC and directors of the former employer on notice of the proceedings, despite ASIC and former company directors themselves having no legal liability or role to play in determining the claim. While such orders are normally granted, these applications still require the Supreme Court to exercise its discretion under sometimes archaic and complicated statutory provisions of current or past corporations laws or company codes. A good example is *In the Matter of Richards Contracting Co Management Pty Ltd* [2021] NSWCA 3, a Supreme Court case involving a labourer suffering silicosis following dust exposure on construction sites.

The Richards Contracting case went all the way to a hearing before the full bench of the NSW Court of Appeal and illustrates the unnecessary and complicated legal issues that can arise in reinstating a deregistered corporate entity .

Further, even once leave is granted by the Supreme Court it is mandatory under corporations law that a court appointed liquidator be put in place for the newly reinstated former employer. The combined filing fees, legal costs and costs of the liquidator easily run into tens of thousands dollars for each application in the Supreme Court. The inconvenience and disruption these Supreme Court applications cause to the quick and efficient resolution of such claims handled by SIRA is enormous. The CMFMEU strongly recommends this lacuna in the provisions dealing with SIRA's capacity to manage claims on the IGF be remedied. The *Workers Compensation Act 1987* needs to be amended so that any claim made by a worker on a former employer covered by the IGF can be managed and satisfied by simply naming SIRA in the proceedings in the Dust Diseases Tribunal without also having to also obtain leave from the Supreme Court Corporations List to reinstate a long gone and deregistered corporate employer.

Recommendation 10: The Workers Compensation Act 1987 be amended so that any claim made by a worker on a former employer covered by the IGF can be managed and satisfied by naming SIRA in the proceedings in the Dust Diseases Tribunal without also having to also obtain leave from the Supreme Court Corporations List to reinstate deregistered corporate employers

13. Conclusion

The CFMEU would welcome the opportunity to participate in any further consultation in relation to the matters addressed above, including any interviews or hearings that may take place.

APPENDIX: CFMMEU RECOMMENDATIONS

Recommendation 1: That the New South Wales government immediately commence the phased discontinuance of the use of manufactured stone products in New South Wales.

Recommendation 2: That the New South Wales government introduce an engineered stone licensing system similar to that operating in Victoria , with stronger recordkeeping requirements.

Recommendation 3: The New South Wales Government implement an urgent review of air monitoring technology supporting the introduction of a silica workplace exposure standard of 0.02 mcg/m³ by December 2022

Recommendation 4: The New South Wales Work Health and Safety Regulation 2017 be amended to incorporate silica specific duties of care and risk management requirements.

Recommendation 5: The New South Wales Work Health and Safety Regulation 2017 be amended to incorporate a simply stated duty for air monitoring to occur in dusty working environments.

Recommendation 6: The New South Wales Work Health and Safety Regulation 2017 be amended to require businesses to provide training regarding the health risks associated with exposure to crystalline silica dust similar to those at Regulation 319R of the Victorian regulations. Such training to be nationally accredited.

Recommendation 7: That the NSW Government mandate the use of CT scans as the principal diagnostic measure for persons exposed to significant silica dust exposure.

Recommendation 8: That technical difficulties concerning the installation of CT scans in the iCare lung bus be overcome.

Recommendation 9: Associated with the introduction of a licensing system for manufactured stone, that NSW Health, in conjunction with SafeWork, conduct a case finding study following the supply chain of manufactured stone in New South Wales, ensuring that health monitoring data is collected at each point in the supply chain including on site residential and commercial installation.

Recommendation 10: The Workers Compensation Act 1987 be amended so that any claim made by a worker on a former employer covered by the IGF can be managed and satisfied by naming SIRA in the proceedings in the Dust Diseases Tribunal without also having to also obtain leave from the Supreme Court Corporations List to reinstate deregistered corporate employers