REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

2019 REVIEW OF THE DUST DISEASES SCHEME

CORRECTED

At Macquarie Room, Parliament House, Sydney, on Wednesday 2 October 2019

The Committee met at 9:00

PRESENT

The Hon. Niall Blair (Chair)

The Hon. Anthony D'Adam
The Hon. Greg Donnelly (Deputy Chair)
The Hon. Wes Fang
The Hon. Trevor Khan
The Hon. Rod Roberts
Mr David Shoebridge
The Hon. Natalie Ward

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The CHAIR: Welcome to the third hearing of the 2019 Review of the Dust Diseases Scheme. This review is focusing on the response to silicosis and the manufactured stone industry in New South Wales. Before I commence I acknowledge the Gadigal people, who are the traditional custodians of this land. I would also like to pay respect to elders, past and present, of the Eora nation, and extend our respects to other Aboriginals present. Today we will hear from representatives of SafeWork NSW and NSW Health

Before we commence I will make some brief comments about the procedures for today's hearing. Today's hearing is open to the public and is being broadcast live by the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing. I urge witnesses to be careful about any comments they may make to the media or to others after you complete your evidence, as such comments would not be protected by Parliamentary privilege if another person decided to take an action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

There may be some questions that a witness could answer if only they had more time or with certain documents to hand. In those circumstances witnesses are advised that they can take a question on notice and provide an answer within 21 days. Witnesses are advised that any messages should be delivered to Committee members through the Committee staff. secretariat. To aid the audibility of this hearing may I remind both Committee members and witnesses to speak into the microphones. The room is filled with induction loops, compatible with hearing aid systems that have tele-coil receivers. In addition, several seats have been reserved near the loud speakers for persons in the public hearing who have difficulty hearing. Finally, would everyone please turn their mobile phones to silent for the duration of the hearing.

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PETER DUNPHY, Acting Deputy Secretary, Better Regulation Division, SafeWork NSW, affirmed

ANDREW GAVRIELATOS, Executive Director, Specialist Services, SafeWork NSW, affirmed and examined

MEAGAN McCOOL, Director, Hazardous Chemical Facilities and Safety Management Audits, SafeWork NSW, sworn and examined

The CHAIR: Do you want to make a brief opening statement?

Mr DUNPHY: Yes. Good morning and thank you for the opportunity to appear before the Committee. Firstly I would like to apologise to the Committee for SafeWork not having accepted the previous invitation to attend the hearing. As the Committee may be aware, we followed previous arrangements whereby State Insurance Regulatory Authority [SIRA] attended on behalf of SafeWork. However, given the focus of the Committee's inquiry, it was the wrong call and we recognise it would have been beneficial for SafeWork to have accepted.

In 2015, the responsibilities of the former WorkCover were divided among icare, SIRA and SafeWork which is the independent Work Health And Safety Regulator. Our role includes providing advice and information to duty holders and to the community, promoting and supporting education and training, monitoring and enforcing compliance, investigating incidents and taking prosecution action against breaches of work health and safety laws.

A main object of the Work Health and Safety Act is to protect workers and other persons against harm to their health, safety and welfare by eliminating or minimising the risks arising from work. In the case of silica, the risks can be controlled through appropriate control measures. We take the increased incidence of silicosis very seriously and we identified priority hazardous chemicals, such as silica, in our Work Health and Safety Roadmap which was launched in August 2016. Further to that in October 2017, SafeWork launched its five-year Hazardous Chemicals Strategy. The strategy has four components which includes: interactions, legislation, awareness and research.

In delivering this strategy SafeWork NSW has delivered three awareness campaigns, a symposium to 350 industry and worker representatives, as well as over 40 industry presentations. Our inspectors have visited all 246 manufactured stone fabrication sites in the State, and issued more than 600 notices for unsafe work practices. We have also visited another 450 sites that work with silica, such a tunnelling, construction and foundries, with a further 50 notices issued. We have a target of over 9,000 interactions with businesses by the end of the five-year strategy so we will continue to follow our compliance and awareness activities through that period. We work closely with icare to identify incidences of silicosis to inform compliance and enforcement measures.

Over the 12 months to July 2019, we also convened the Manufactured Stone Industry Taskforce. The recommendations of the taskforce included reviewing the health monitoring and air monitoring requirements, considerations for making silicosis a notifiable disease and establishing a silica unit of competency for all construction trade training. The issues identified by the taskforce require co-ordinated action by ourselves together with other government agencies including the departments of Health and Education, SIRA and icare.

We have progressed recommendations of the taskforce with each of those agencies through discussions and correspondence with NSW Health as to the prospect of making silicosis a notifiable disease that is reportable to a register. Through engagement with NSW Education to mandate a silica syllabus in all trade courses. SafeWork NSW is contributing to the whole of government response to address the risks of silica and reverse the recent increase in silicosis cases. I am very happy to answer any questions from the Committee today.

The CHAIR: This is a good opportunity to ask specific question in relation to this area. It is probably better that SafeWork is appearing alone today. We have also questioned Health. I thank you for the acknowledgement of the bumpy process to get here today.

The Hon. TREVOR KHAN: Is dry cutting of manufactured stone prohibited?

Mr DUNPHY: In terms of the prohibition on dry cutting of stone, under clause 49 of the Work Health and Safety Regulation people conducting their business or undertaking must ensure that no person is exposed to a substance in an airborne concentration that exceeds the exposure standards. That means any dry cutting would exceed the exposure standards so it is automatically prohibited by that clause specifically in terms of the exposure standard. Further to that, when we have gone to any sites, and all of the 600 inspections we have done of all of the 249 manufacturing facilities, if there was any dry cutting we immediately issued a prohibition notice to confirm that that activity is prohibited and it is not to be undertaken in the works. The work that is being carried out has to cease immediately until they can provide adequate information to us to ensure us that they have got systems in place. Ultimately it is prohibited in terms of the work, health and safety legislation.

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The Hon. TREVOR KHAN: This is the third year this Committee has held hearings where the issue of manufactured stone and silica dust has been a point of interest and not one representative who has appeared before this Committee has asserted that the dry cutting of manufactured stone is prohibited.

Mr DUNPHY: It is true that if you look at the legislation you cannot point to a clause and say "dry cutting is prohibited".

Mr DAVID SHOEBRIDGE: Because it is not there.

Mr DUNPHY: It is not there. What is there though is the requirement you cannot do any work that would take you over the exposure standard. We know that dry cutting takes you over the exposure standard. So that automatically stops the allowance of that type of activity.

The Hon. TREVOR KHAN: Under the legislation I think it could be safe to say it is generally prohibited to undertake a dangerous activity that harms the health of your workers. So you could catch anything with a generic phrase. I think we even had the Master Builders here last week and I thought they were being genuinely helpful. I think they would be surprised by a bald assertion that dry cutting is prohibited.

Mr DAVID SHOEBRIDGE: Because you have not made that clear like has happened in Queensland and Victoria, and I will read you from your Queensland equivalent. This is their statement on their action alert:

> Persons conducting a business or undertaking must not allow uncontrolled dry cutting, grinding or polishing of artificial/engineered stone bench tops.

Why does not SafeWork NSW make the same unambiguous statement?

Mr DUNPHY: We do in terms of the work that we have been doing with our complaints program in terms of going in—if there is any dry cutting we will immediately issue a prohibition notice to confirm that. We can only implement what is in the law, and I pointed to the provision in the law that does make it clear that you cannot do any sorts of activity that would put you over the exposure standard. We know that dry cutting, if you do do dry cutting, would go over the exposure standard; so that clause immediately prohibits that type of activity.

Mr DAVID SHOEBRIDGE: Sorry, you are the regulator, you can issue an immediate guideline, you could seek an immediate change to the regulation to expressly prohibit it. Have you done either of those things?

Mr DUNPHY: We do not make amendments to the regulation.

Mr DAVID SHOEBRIDGE: Yes, but you advise the Minister. Have you advised the Minister about making an urgent change to the regulations, like has happened in Queensland and Victoria, to expressly prohibit dry cutting?

Mr DUNPHY: The silica task force which was set up did go through a range and looked at a range of recommendations in terms of the legislation.

Mr DAVID SHOEBRIDGE: It is a simple question: Have you advised the Minister to urgently pass a regulation to expressly prohibit dry cutting like your equivalents have done in Queensland and Victoria?

Mr DUNPHY: In terms of what we are doing we have certainly made it very clear that dry cutting is not acceptable. We are happy to clarify that and we are happy to put out a statement if that is required and we are very happy to take that on board. But in terms of the legislation—

Mr DAVID SHOEBRIDGE: I am taking that as a no unless you tell me otherwise. Is it a no? You have not?

Mr DUNPHY: Could I just clarify your question and—

Mr DAVID SHOEBRIDGE: Have you expressly requested—

The CHAIR: Order! Let us do this in a calm and civil way.

Mr DAVID SHOEBRIDGE: He was asking for clarification. I accept your point, Mr Chair.

The CHAIR: Maybe just do not jump across while he is speaking. Let us do this in an orderly fashion.

Mr DAVID SHOEBRIDGE: Do you require me to ask you a third time the same question, Mr Dunphy?

Mr DUNPHY: I am just trying to make sure I understand what your question is. Your question was, have we made recommendations in terms of putting in a prohibition for—

Mr DAVID SHOEBRIDGE: Dry cutting.

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Mr DUNPHY: —dry cutting. As far as I am aware, with the silica task force, which was led to look at the legislation and look at the reviews, that was not a recommendation that came from the task force review. So I do not believe that it was something that was put forward to actually make a change.

The CHAIR: Can I follow up? We have heard from some of the industry groups that a majority of the cutting of manufactured stone is done in a controlled environment these days, but there still may be cases where a piece of stone gets to a work site—a one-off—and there may be an issue or a problem and there may need to be some alterations done onsite. We have had evidence that there is a whole range of control measures available, from ventilation systems right through to personal protective equipment [PPE]. But even with those measures in place, let us say a tool with a ventilation or a vacuum system, with a worker wearing appropriate PPE, if they undertake that, is that prohibited?

Mr DUNPHY: To carry out modifications to the actual bench?

The CHAIR: To the stone, to dry cut that bench.

Mr DUNPHY: At the workplace?

The CHAIR: At the workplace.

Mr DUNPHY: At the actual point of installation?

The CHAIR: With ventilation and with, let us say, a full respiratory et cetera. Is that prohibited?

Mr DUNPHY: The guidelines do allow you to carry out work if it has appropriate controls in place, and the controls would include—

The CHAIR: Do you see where we are getting a problem now where someone puts out that dry cutting of stone is prohibited full stop? I have seen some advice from the agency in the last two weeks where it says dry cutting of stone is prohibited full stop. Are you saying though that if you reduce the risks to below the exposure standards through the use of other control measures under the hierarchy then that activity may then continue or not? Ms McCool?

Ms McCOOL: Dry cutting is banned in terms of it is in the media, it is in a practice note that is issued to all inspectors that have been trained—there are 184 across the State. Whether it is in a factory, whether it is onsite, all through the process if it is evidenced that it is uncontrolled dry cutting, a prohibition will be issued.

The CHAIR: So is it clear now: uncontrolled?

The Hon. TREVOR KHAN: What is that caveat? Yes?

Ms McCOOL: If it is not a water-fed tool or a tool with a dust capture collection, meaning it is on-tool, it will be a prohibition.

The CHAIR: I accept now that uncontrolled dry cutting is prohibited. I accept that. The advice that I saw that came from the agency just said dry cutting is prohibited. Are we clear that uncontrolled dry cutting is prohibited? Is that the clarification?

Ms McCOOL: It is, however—

The CHAIR: Because that would put you above the exposure standards.

Ms McCOOL: Yes. Also, all the education sessions that we are doing—we are in the middle of a roadshow across the State as well—it goes through the control measures, so it is very clear in terms of what is and is not allowable.

The CHAIR: I agree with the control measures that are about, it is just that we are starting at the very top because there seems to be a misunderstanding as to whether even dry cutting is prohibited or not prohibited because of the first question from Mr Khan. I was produced a document that came from the agency that said dry cutting is prohibited full stop—not uncontrolled dry cutting; just dry cutting. So I think we need to address the issue of—I know that there are roadshows, there is education, but there seems to still be some misunderstanding. Are you okay, Mr Khan?

The Hon. TREVOR KHAN: Yes, I am much more informed than from that document.

Mr DAVID SHOEBRIDGE: Can you explain why the task force—it issued a report in July, is that right?

Mr DUNPHY: It completed its report in July and reported back to the Minister—we have now provided the reports, which we have provided to the Committee.

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Mr DAVID SHOEBRIDGE: To be clear, Mr Dunphy, we did not get the report from you. We got the report from other participants. You did not provide it to us; we got it from you after we already got it from other participants and only a few days ago. I cannot understand how you did not provide us with the conclusions from the task force. Why did you not think that was appropriate to provide to the Committee?

Mr DUNPHY: I believe the secretary has written to the Committee with a copy of the report over the last week.

Mr DAVID SHOEBRIDGE: Yes, but we had already got it, and you would have seen, if you had read the transcript, we got it from other participants. You did not provide it to us proactively. Why did you not provide us with a copy of the task force's reports and recommendations?

Ms McCOOL: I can answer that. Essentially it went to the Minister for consideration. There was discussion around whether it needed to go through a full Cabinet process. We got approval to issue the report to this Committee.

Mr DAVID SHOEBRIDGE: Did you seek it before the embarrassing disclosure in the previous Committee? Did you seek permission to give it to us before the embarrassing disclosure in the previous Committee hearing?

Mr DUNPHY: From what I understand, we sought permission as soon as the report was ready that it was released, it was prepared.

Mr DAVID SHOEBRIDGE: In February of this year this Committee made a recommendation about a case-finding study. Are you aware of that?

Mr DUNPHY: A case—

Mr DAVID SHOEBRIDGE: A case-finding study for silicosis.

Ms McCOOL: The New South Wales Government accepted that recommendation on 8 July.

Mr DAVID SHOEBRIDGE: Was that eight days after you shut down the task force?

Ms McCOOL: The task force was around looking at the regulatory requirements, not a case-finding study.

Mr DAVID SHOEBRIDGE: Was it eight days after you shut down the task force?

Ms McCOOL: That would be eight days—8 July was when the New South Wales Government accepted that recommendation, with icare to coordinate it, which was after the task force had finished on 30 June.

Mr DAVID SHOEBRIDGE: Given the recommendation had been made in February and one of the obvious places to drive that recommendation would be the task force, why did you shut down the task force eight days before the Government responded to that recommendation? What is the thinking that feeds that decision? Why shut down the obvious place to do it?

Mr DUNPHY: The task force had finished its work.

Ms McCOOL: The agreed terms of reference.

Mr GAVRIELATOS: That task force was set up for a specific purpose. It had its terms of reference, it had a period to conclude a report and provide that report, which it did. The additional work could well be for another group to look at but that task force had specific terms of reference, which it met.

Mr DAVID SHOEBRIDGE: Did that say it had to finish on 30 June?

Ms McCOOL: Yes.

Mr GAVRIELATOS: It had a date to provide a final report by, which it did.

Mr DAVID SHOEBRIDGE: I have read the task force report. I cannot see a single action that has been completed. I have the recommendations—they are on page 22 of the report. Not a single one has been completed. Why would you shut down a task force before a single one of the recommendations had been implemented?

Mr GAVRIELATOS: The task force was required to report back on work health and safety regulation and its adequacy in this area and make some recommendations to improve that regulatory response. It has done so and it is awaiting the deliberation around that. In addition to that work, the specific terms of reference for that task force, SafeWork NSW during that period also undertook additional work around compliance and conducted those inspections that have already been mentioned—those 500-odd inspections—of manufactured stone sites or fabrication sites and other workplaces that deal with silica. It also began and continues to deliver on education

and awareness around silica and working with manufactured stone. I believe that quite significant work has been done by SafeWork NSW, which was probably initiated through the deliberations of this task force but not necessarily within the specific terms of reference for that task force, which was around the work health and safety regulations and recommendations around those.

The Hon. TREVOR KHAN: With regards to the locations that were inspected—and there may be a simple answer to this—how did you identify them and how confident are you that you have now identified all sites where manufactured stone is cut?

Ms McCOOL: There were a number of sources but the most robust or definite is the list from all the suppliers.

The Hon. TREVOR KHAN: Right. So you have gone back to the importers and worked back from there?

Ms McCOOL: Correct.

The Hon. TREVOR KHAN: What is the ongoing program of inspection of those sites?

Ms McCOOL: The strategy is for five years, as Mr Dunphy mentioned earlier. We are looking at over 9,000 interactions that will happen with businesses over those five years. In terms of the fact that it is across all industries, it is from fabrication through to what is done on site, through to tunnelling, through to foundry sites—anywhere where you are cutting bricks, cutting concrete, cutting manufactured stone, the visits cover all those programs. Much like the inspector practice note I mentioned, the same practice note applies: If they see dry cutting, prohibition. If when they walk in they see a broom, that is evidence of dry sweeping. There are other notices that are issued for that so that continues right through the five-year strategy.

The other components that support that are the education side and looking at the legislation which, as I said, is part of the task force recommendations, but also the awareness program and research. There are a number of research elements that support this whole program—we are looking at the adequacy of health monitoring tests, looking at the difference between dry and wet cutting and also looking at, through the Centre for Work Health and Safety, having a real-time detector that will detect silica at the point of the work, because at the moment you have to wait for the test results.

The Hon. TREVOR KHAN: Thank you for that, but what interests me is this: You have obviously put in a significant effort—and I congratulate you for it—in inspecting all those premises, which must mean a reallocation of your resources in order to do this. Having put in this significant effort to inspect all those premises, it must mean that some other area of safety has been, I cannot say discarded, but less priority for this task. I am interested in how you now build into your work program a continuing focus on inspection of these without taking emphasis off other areas. I may be wrong—

Mr DUNPHY: We are a risk-based regulator so we always have to come up with priorities—

The Hon. TREVOR KHAN: Absolutely.

Mr DUNPHY: —and identify which are the most significant. As part of the chemical strategy, silica was identified as one of the top 10—the second—most important chemical or hazardous substance that we needed to focus on so we have certainly made sure that we have prioritised our resourcing around that and it is the key focus of our interventions and inspection activity at present. Every year we work out a plan of what we are going to be doing in terms of inspections and in terms of prevention activities and we will move things around to make sure that we are focusing on those priorities. Priorities change over time, but it allows us to reallocate resources to the particular priorities that we are working on at the time so that we can fit that in within our schedule of works.

Mr DAVID SHOEBRIDGE: To go back to the task force recommendations, the task force was chaired by SafeWork NSW.

Mr DUNPHY: That is correct, yes.

Mr DAVID SHOEBRIDGE: I found it remarkable that not a single one of the recommendations required follow-through by SafeWork NSW—none of them were directed to SafeWork NSW. They either went to Safe Work Australia, or to NSW Health or to trade and skills. Did you consider that a win—coming away without a recommendation that required direct implementation from SafeWork NSW?

Mr DUNPHY: No, absolutely not. We identified that there were three areas and that was really what came out of the task force and the deliberations of the task force. What we have done is identified that there are a range of recommendations in terms of changes to the work health and safety legislation and obviously our work

health and safety legislation is part of the national model legislation so we need to liaise with Safe Work Australia on that. It does not mean that we cannot still take action once we have feedback from them and we are certainly working very closely and monitoring what will come out of the national review in terms of those issues. It is not the end of the process for us; we will continue to monitor and we will continue to see what comes out of the national process. In terms of health, we are working very closely with NSW Health on both the issue of the notifiable diseases register and will continue to work with them on that issue.

The Minister has recently met with the health Minister to follow up on that and ensure that there is progress being made in terms of that issue. In terms of the other recommendation, which was around the curriculum for tradies, again, we have been working closely with in New South Wales Education and will continue to. That recommendation has been agreed to and it has been implemented. That has commenced and we have agreement to go forward and we will continue to monitor that. We continue to have a very strong role in all of those because we recognise that it is part of the overall control framework for silica. We will not walk away from the recommendations, we will continue to monitor and take action when we can, in terms of them.

Mr DAVID SHOEBRIDGE: The recommendation to establish the task force was 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. That was the committee's recommendation. Does that ring a bell?

Mr DUNPHY: Yes, it does.

Mr DAVID SHOEBRIDGE: When the CFMEU proposed a motion to the task force to write a letter to the Minister for New South Wales to adopt SafeWork NSW's proposal for the silica exposure standard for all New South Wales Government construction contacts, it was ruled out of order and did not fit within the terms of reference of the task force. How on earth did the terms of reference from the task force exclude something as obvious is that?

Mr DUNPHY: In terms of that case—and I might get some advice from Ms McCool, who was a member of the task force, on that—my understanding was that it was beyond the scope of the regulatory reforms in which we were doing—I guess you could argue that it was within the scope—

Mr DAVID SHOEBRIDGE: To review safety standards in the manufactured stone industry—

The Hon. TREVOR KHAN: Let him answer.

Mr DAVID SHOEBRIDGE: —and consider regulatory changes necessary to protect workers in the industry.

Ms McCOOL: The motion from the CFMEU was to apply the exposure standard to just construction projects that the Government is running. It did not have any connection to manufactured stone and the majority of task force members did not support that to be applied to the work of the task force.

Mr DAVID SHOEBRIDGE: When they proposed considering a ban you also said it was outside the terms of reference.

Ms McCOOL: It was not outside the terms of reference. The majority of task force members did not support it with the available evidence. However, they did offer to the CFMEU to approach the Minister directly, which they did.

Mr DAVID SHOEBRIDGE: What was the Minister's response?

Ms McCOOL: That at the time there was a review of the work, health and safety laws it was requested that they put a submission to request that, which they did.

Mr DAVID SHOEBRIDGE: One thing that astounded me about the report of the taskforce was that I could not identify a single instance where SafeWork had expressly suggested a regulatory change to address the fact that workers as young as 23 years are dying of silicosis. Can you point to a proposed regulatory change that has been supported by SafeWork NSW out of the taskforce?

Mr DUNPHY: SafeWork as the chair of the taskforce put forward all of the recommendations in the report. All of the recommendations that relate to regulatory change were recommendations that were recommended under the chair of SafeWork.

Mr DAVID SHOEBRIDGE: Have any of them gone to your Minister? Have you put them to the Minister to say, "Change this regulation, freeze the dry cutting, reduce the exposure standard. Do it now in New South Wales"? Has one of those gone to the Minister with a recommendation?

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Mr DUNPHY: An interim report was provided to the Minister in terms of the task force. Because it is a national framework we need to work with SafeWork Australia. Part of the submission was tabled at SafeWork Australia and it was referred to SafeWork Australia as part of the review.

Mr DAVID SHOEBRIDGE: Queensland and Victoria have moved and changed their regulations. Why not New South Wales?

Mr DUNPHY: Queensland has not changed its regulation. It has put in place a code of practice. Victoria has not actually adopted the national legislation yet, so it still has not got the same controls that we have in terms of the national model legislation. It has made decisions to change its legislation but again, as I said, it does not have the same protections that other jurisdictions have in terms of the model work, health and safety legislation.

The Hon. GREG DONNELLY: I will go back in history. The 2017-2022 Hazardous Chemicals and Materials Exposure Baseline and Reduction Strategy, dated October 2017, has crystalline silica at number two out of 10 items as a priority chemical. Formaldehyde is the only one above it. The document states, "The initial focus of the project will be on the top two priority chemicals: Formaldehyde and Crystalline Silica." I am confused and want to get a perspective. I am not apportioning blame, although others might want to. Is the situation that we have the issue of silicosis as an occupational health and safety hazard of some increasing interest to which people are giving a lot more attention.

One only has to look around and spend half an hour to see that this interest has been aroused over the past few years. The website of the International Labour Organisation has material about it, so at the international level it is being looked at very carefully. The bell has very much been rung. In the context of the work that you are submitting has been done in New South Wales with respect to safe work, you would argue that your response is in line with that. So you are on track, so to speak, in being alive to what is happening and are moving along. But within that we obviously have matters of silica associated with tunnelling, for example, in Sydney sandstone. We have the silica exposure associated with the cutting of tiles, for example, as mentioned by Ms McCool. One can probably go on and list a number of other examples of exposure to silica.

This Committee is specially giving particular and significant attention to engineered stone benchtops or manufactured stone. As I said, I am not passing judgement but am making an observation. But it appears that in New South Wales attention is being given to the issue of exposure to silica. One can point to documents and reports and what have you to suggest that that is happening. But this issue of engineered stone exposure which has gathered a lot of attention and focus by this Committee just does not seem to be making SafeWork as agitated as we are around this table. I am struggling with why that is the case.

We understand that as a regulator you want to deal with the whole issue of silicosis and what flows from that but what about this particular subset of exposure from the manufactured stone. I will go to this quick comment and leave it to you. I am making a statement more than asking a question. Last night I went to your website and the relevant equivalent websites in Queensland and in Western Australia. Queensland has a document issued on 18 September 2018, which states, "Immediate action required to prevent exposure to silica for engineered stone benchtop workers." It could not be much more clear and definitive than that. In November 2018 in Western Australia the Department of Mines, Industry, Regulation and Safety issued a safety alert 11/2018, which states, "Stone benchtop workers at risk of silicosis." I am from Western Australia so they will not mind me reflecting on them but the sandgropers pulled a fair bit of stuff from the Queensland alert, which is fair enough. That brings me to the point that the regulatory bodies in Queensland and Western Australia are not just belling the cat but belting the bell, making it loud and clear.

Why is there a disconnect with New South Wales where your website has material that, I have to say, is reasonably tepid. It has headings like "Do you work with manufactured stone? Over the last five years there has been an average of nine reported cases of silicosis a year in New South Wales." It is very generic, dare I say, gentle language and gentle reflections on an issue that seems to be pretty bloody serious. I will finish on this point. Why elsewhere in the Commonwealth of Australia some jurisdictions are standing on the tops of buildings and saying loudly, "We have got a pretty bloody big problem here", but when we turn our ear to New South Wales—and we are all around the table here in New South Wales—the bell just does not seem to be ringing.

Mr DUNPHY: I am happy to respond to that. We take the issue of silica exposure in the manufactured stone industry very seriously. I take your point about the website. We are certainly happy to have a look at that. We have taken a multi-channel approach—

The Hon. GREG DONNELLY: That is not going to make me happy, Mr Dunphy. You do not have to say to me, "We will take a look at it."

Mr DUNPHY: No, I am just saying we always appreciate feedback. If we are getting that feedback we are certainly happy to have a look at how information on the website is being presented. What I wanted to point

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out, I guess, that we have taken a multichannel approach. We started doing inspections in manufactured stone manufacturing facilities before anybody did that. If you look at the figures we actually observed every site at least twice on average. We have been out. We have been very vigorous in terms of ensuring that the industry is complying with the requirements. We have issued more than 600 notices. I do not think we can be more emphatic in terms of our approach. There is no other industry that we have had that level of touch in terms of being very close to monitoring and doing very timely enforcement action in terms of ensuring that people are complying.

Part of our approach has been not just the web; we actually have run three awareness campaigns, which included radio, TV, social media, to ensure that the messages were getting through. So it is not just the web information that you should be looking at. On the web you will also notice that we did a video alert; we know a lot of people do not read web material so we have done YouTube videos as well to try to make sure we are covering all the younger generations who may not read a fact sheet or read the messaging that might be in text on the web page. So we have certainly tried to do that. We held safety forums; we have had safety forums around the State to bring in people to really make them aware of the issues and, as Ms McCool as already pointed out, make it very clear about what the requirements are and our approach to how silica should be managed.

We have held a silica symposium, which brought in 350 industry worker representatives to really make it clear what it is we are trying to achieve in the silica space and particularly in the manufactured stone space as well. We had experts in a range of areas in which we did that. We are doing a roadshow at the moment between August and October. We are going to areas of Orange, Liverpool, Ballina, Newcastle, Tamworth, Queanbeyan to really make sure that the message gets out there. So we are not just putting stuff on the website—it is easy to put a few messages on a website—we have been in this for the long run, we have been doing this for a couple of years now of really trying to work very closely with the industry, make them aware of their obligations, make it very clear what needs to be required, step in and intervene where we believe workers have not been protected. So for us that has been quite critical.

The CHAIR: I want to give some other members a quick go.

Mr GAVRIELATOS: Can I just add one thing just to respond to that? I think it is right, sometimes you do need to be a bit more hard-hitting to get the message across to people. We did look at our advertising to do that and our awareness and education campaign, which was a multichannel campaign, actually asked the question, "Which mask will you wear?" showing either PPE or an oxygen mask which people require for health. It was a fairly hard-hitting ad, and that has not only been run through in 2018, we have also more recently run similar ads and tried to use a face that might sort of resonate with people, Dr Karl Kruszelnicki. So we are trying to really get that message out there about "which mask will you wear". It is a pretty hard-hitting campaign.

The Hon. ANTHONY D'ADAM: First of all I want to ask what the status of the workplace exposure standard changes are? Where is that up to in terms of the deliberations of SafeWork Australia?

Mr DUNPHY: That is still apparently being reviewed by SafeWork Australia. That will go back, I believe, for final consideration shortly to SafeWork Australia.

The Hon. ANTHONY D'ADAM: And that is to reduce to what?

Mr DUNPHY: To 0.05 is the recommendation.

Mr DAVID SHOEBRIDGE: Over three years?

Mr DUNPHY: Over three years. There are two elements to the recommendation. One is, and we certainly support, the reduction from 0.1 to 0.05. The other part of the recommendation also is for SafeWork to continue to investigate around the issue of management and the practical considerations of being able to in the future reduce it further and looking at potentially reducing it to 0.02, but further investigation needs to be done around both the measurement approaches at the moment and the feasibility of being able to measure at that level consistently and also the practicalities of being able to do that.

The Hon. ANTHONY D'ADAM: Is New South Wales capable of reducing the standard in its own right?

Mr DUNPHY: It is part of the national model work health and safety legislation. We are part of the intergovernmental agreement where New South Wales has signed up to the national model work health and safety legislation. There is a process for going it alone and that process involves first consulting with SafeWork Australia members, but then there is an option for governments to make their own decisions as well.

The Hon. ANTHONY D'ADAM: Have you read the other submissions to the inquiry?

Mr DUNPHY: Yes.

CORRECTED

The Hon. ANTHONY D'ADAM: I want you to draw your attention to the Maurice Blackburn submission because it raises an issue around not only the issue with dry cutting but also suggests that wet blade cutting also has an exposure standard that is higher than the State level.

Mr DAVID SHOEBRIDGE: Fifty times the current standard.

The Hon. ANTHONY D'ADAM: Does SafeWork have a view about that evidence? Do you contest that? Do you agree?

Ms McCOOL: We do contest it. When you look, the maths in the table is incorrect; the average exposure in table 2 with a wet blade is 2.9, not 4.9. What is more important though, this was experimental results and not indicative of an actual work environment. It does say that the full-time time-weighted average is under actual working conditions, which would likely be much lower than the levels measured in our experiments. But what is happening is there is research being done with the University of Wollongong, as I mentioned earlier, on the difference between dry and wet cutting. So this was an experimental research study that was referred to.

The Hon. ANTHONY D'ADAM: So it is inconclusive, in fact? There is still ongoing research about whether wet cutting does provide the level of safety that is—

Ms McCOOL: From our site inspections we have been to various manufactured stone sites. So I guess where it is looked at, some of these sites cannot be compliant. As much as the ones that we have issued notices, there are ones that are compliant; there are ones that are operating completely with automated workplaces, under water, also manual processes, where they are working well within the requirements. So it is not an issue where it cannot be complied with; it is an issue where it is not complied with, that is where we issue the notices to make sure that the requirements are met.

The Hon. ANTHONY D'ADAM: Just coming back to the inspections that you have done, you have gone to the fabricators, but the evidence that we have heard is that the sort of high-risk activity is actually with installers. What measures has SafeWork taken to reach the installers to ensure that they are complying?

Ms McCOOL: We have also done 450 visits in other industries and, as I mentioned, over the course of the five years we will continue to do that. Obviously the focus was on making sure that we have seen every fabrication site in New South Wales and we have done that. We are working through whether it is construction, whether it is tunnelling, whether it is a foundry site, and that will continue. In terms of what we are seeing, we are seeing, again, some good practices and some bad practices. We have also issued prohibition notices in other industries as well. Again, the compliance approach is the same and there is not an industry that will not be looked at.

The Hon. ANTHONY D'ADAM: That does not really answer what I am getting at. I want to know what actions you have taken to reach the installers in the manufactured stone industry, not tunnellists—installers.

Mr DUNPHY: There are the issues about installation onsite in people's minds, yes.

Mr DAVID SHOEBRIDGE: Multilevel residential building sites.

The Hon. ANTHONY D'ADAM: Because it seems that that is where the real problem is in terms of noncompliance and the real hazards.

The Hon. TREVOR KHAN: I do not know if we can say that. It is one of the areas.

Ms McCOOL: We visit those sites. So whether it is a multistorey building, a domestic home, we are seeing people cutting things on sides of the road, wherever it is, as I said, if it is a workplace it will be inspected. As I mentioned, the kind of work it is exactly the same—we will look for if it is being cut with water-fed tools or dust collection tools, we will look at what protection they are wearing. It is exactly the same process.

The Hon. ANTHONY D'ADAM: Are there statistics on that aspect of compliance? Your statistics in the task force report seem to focus on the fabricators.

Ms McCOOL: It is on 448 other visits where there have been another 50 notices issues.

The Hon. ANTHONY D'ADAM: Are you able to break those down for us? Are you able to provide those statistics in terms of how many of those other visits apply to tunnelling as opposed to onsite installation?

Mr DUNPHY: We should be able to break that down.

Ms McCOOL: Yes, we can do that.

The CHAIR: To renovate a residential home today in Goulburn as a kitchen installer—

The Hon. TREVOR KHAN: Or Tamworth.

CORRECTED

The CHAIR: —or in Tamworth, to put in a manufactured stone top that may require some modification is not a notifiable activity.

Mr DUNPHY: That is correct, yes.

The CHAIR: There would be a lot of residential work happening that has not been inspected. Would that be fair to say?

Mr DUNPHY: In terms of residential—

The CHAIR: What was the number—400 and something other.

Mr DUNPHY: The 400 and something other are across—this is construction, so it may be picked up in construction inspections; that is technically a construction site if you are doing installation work, particularly in multi-residential. We can certainly have a look at the breakdown of what we have done, but the 400 includes tunnelling and—

Mr DAVID SHOEBRIDGE: You are trying to tell us you have a handle on this. I am going to read from your task force report about the nature of the problem. These are your own words:

> There is uncertainty within the industry regarding the responsibilities of employers to protect workers from silica dust exposure, in relation to air monitoring and health monitoring. The WHS regulator (SafeWork NSW) is also not being notified when cases of silica dust-related disease are diagnosed or adverse health monitoring reports are received by the employer. Employers are not identifying when workers are at significant risk of exposure; there is no clear picture of the number of silicosis cases in the community; and the WHS regulator does not have the information to investigate where workers are at risk of further harm from silica dust.

That is from your own task force report. You are sitting here telling us you have a handle on it, that you have inspected all the sites, that it is all under control—which is directly contrary to your own task force report. How do we square that circle?

Mr DUNPHY: We are responding, I think, to what was picked up in the task force and that is why we have gone out and have visited, as I said, every site on average two times. That was part of the reason to ensure that we were confident—

The CHAIR: We are relatively comfortable with the fixed sites, where it is coming from a container to a fixed site. I think we also have some level of comfort, even with the master builders, that a high-rise being built has a cutting room because there are going to be 50 kitchens installed and they are all cut onsite under controlled measures. We are also getting evidence of people saying this should be treated like asbestos. We do not know how many people today are out there—with kitchen installers putting this dust through residential homes, putting this stuff through the lungs of apprentices, who are in regional towns—because the horse has bolted, to a degree, on a product that has been here for 10 years or 20 years. This is the issue.

You need to start where you can—at the top. We have a level of discomfort in these other areas where we think that there is a lot more happening. We will have some people telling us that we should just ban this product in New South Wales. That is, I guess, what we are asking for. Maybe you can take it on notice because we are running out of time. There are 400-odd other sites across all of these other industries. There is not the awareness happening at that level. We even have had people suggesting on a development application or a building certificate at a council level that that should be notified. We are needing to look at how we raise the awareness in the broader community and what recommendations we can make there.

The Hon. NATALIE WARD: Thank you for coming along and we appreciate your submissions. I would like to pick up on the point about installers. I note that your task force membership has lots of unions and lots of people from SafeWork NSW but does not seem to have any installers or industry workers on it. Do you care to comment on that?

Mr DUNPHY: I might just get Ms McCool to talk about the membership.

The Hon. NATALIE WARD: Where is the representation from the people on the ground?

Ms McCOOL: In terms of representation, you had the Australian Industry Group as well and the medical providers. Again, the focus was on manufactured stone. Where we looked at that aspect of it, it had all the right people in the room who looked at it from the disease aspect and from the education aspect and also going back to when we identified what the problem statement was. That was in meeting two. We went down the vertical analysis of each government department that is involved and unions and medical professions and then we went across the horizontal to not only look at if there were failures in the vertical, were there failures in linking up across the horizontal. When you look at all of that, we covered all the areas—

CORRECTED

The Hon. NATALIE WARD: Who in your task force is advising or giving some input about how this happens on the ground? It is great for the medical profession and for industry groups and unions to talk about after the fact. Who is talking about before the fact, onsite, with installers? Who is feeding that perspective into the task force?

Ms McCOOL: You have the CFMEU and TAFE NSW that are in the building industry and you also have the Australian Industry Group. From the experience there, there were not any areas that were not covered within that task force membership.

The Hon. TREVOR KHAN: Really?

The CHAIR: Is it okay for these witnesses to go over time? Is there anywhere else you need to be?

Mr DUNPHY: I do need to be across town at 11.30 a.m. to open a conference.

The CHAIR: We will go past the allotted time. If you need to leave that is fine. But rather than cut this short in five minutes we will try to move through as many questions as we can. There are other members who have more questions.

Mr DUNPHY: No, we are happy to continue.

The Hon. NATALIE WARD: My question stems from my concern that we are not actually dealing with this in a preventative way and we are dealing with after-the-fact issues. It is all very nice to have a symposium and talk about it and have a register to talk about who is already down that track but I am interested in before the fact and the resources that can be spent there. I am interested in your education and awareness campaigns. I see the campaign information you have provided, thank you. Do you provide information about different types of masks? We had some evidence earlier about the different types of masks and what works and what does not. Do you give education information about the different types of masks and their effectiveness?

Mr DUNPHY: I believe that the awareness sessions we hold talk about the controls, which include the mask and guidance material, including the new SafeWork Australia guide, which also refer to mask selection. Under the work health and safety legislation you also need to comply with the Australian standard, which provides advice on mask selection and also tests for the uses. We provide all of that information. Certainly in terms of both awareness and also in the information that we provide—

The Hon. NATALIE WARD: Where is that part of the education campaign though?

Ms McCOOL: For example, in the roadshow—which is another event in Queanbeyan at the end of the month—we have a whole session on selecting the right mask, also fit testing and for checking and having a clean-shaven policy. It goes through the whole thing. The main thing is that the selection of mask will depend on the controls in front. The mask is at the bottom of the queue, meaning we have to look at having the right controls. The less controls you have in front the higher protection you need in the mask. We are obviously going to make sure that the controls are as high as they need to be because PPE is at the bottom.

The Hon. NATALIE WARD: So dad and son installer or dad and cousin or immigrant or casual worker comes along, they are not really going to be inclined to spend more money on an expensive mask that is going to do a better job, are they?

Ms McCOOL: As I said, depending on the mask—whether it is a P1, P2, P3 or a powered, air-purifying respirator [PAPR]—it is going to depend on the work practices that they have in place. The cost of a mask right through to that PAPR, the most expensive is around $1,500—so it is not an expensive cost.

The Hon. NATALIE WARD: To a dad and son installer, a family business, a casual worker—

The Hon. WES FANG: An apprentice.

The Hon. NATALIE WARD: —or an apprentice at a residential worksite installing stuff, I would have thought that was an enormous amount of money.

Ms McCOOL: It is the employer's responsibility to provide the PPE, not the worker—

The Hon. NATALIE WARD: I accept that; I am not arguing about that. I am just saying that on the ground the reality is that there are people out there doing these jobs. I am not sure that we are really effectively reaching them before this becomes a problem—to focus on the education and to ensure that they are wearing the right masks, potentially and hopefully the best masks they possibly can—at $1,500. People who do not speak English and are doing a casual job for a couple of days on a worksite somewhere, you are potentially not going to be reaching to those people at all in this education campaign, are you?

CORRECTED

Mr DUNPHY: The campaign is designed to reach multilingual people from different communities. Certainly that has been the intention all along. That is why we use various different channels through TV advertising to do that. We certainly recognise that prevention is the most important element and that is why we have put a lot of effort into the awareness campaigns, into providing workshops and also the roadshows, to make sure that people, particularly small businesses, can come along to do those. We are always looking at ways to provide incentives as well as to assist small businesses to comply with their obligations.

The Hon. NATALIE WARD: What are the incentives for a small business to go and buy a $1,500 mask?

Mr DUNPHY: To comply with the legislation and be aware that there are consequences if you expose your workers to serious risk.

The Hon. NATALIE WARD: So we apply a prosecutorial approach rather than an incentivisation approach, is that correct? Is that a fair assessment?

Mr DUNPHY: We do both. There are deterrents and then there is trying to change behaviours through the information we provide and through the awareness campaigns.

Mr DAVID SHOEBRIDGE: You have been back to a number of workplaces. When you went back to the workplaces a second time, did you find continued exposure to dust in any of those workplaces and issue a prohibition notice or other notice?

Mr DUNPHY: I might ask Ms McCool.

Ms McCOOL: Not at this point. However, if a prohibition is in place and it is seen again, it automatically goes essentially up to a $100,000 prosecution. A prohibition can never be lifted; it can be complied with, meaning you are doing other safe practices. If it is seen again, then essentially we move up the compliance.

The Hon. TREVOR KHAN: How many prosecutions have there been?

Ms McCOOL: There are a number under consideration.

The Hon. TREVOR KHAN: Do I take the answer at this stage to be that there are none?

Ms McCOOL: There is one enforceable undertaking.

The Hon. TREVOR KHAN: My question was clear. How many prosecutions have there been? The answer is none, is it?

The CHAIR: No, an enforceable undertaking is the answer.

Ms McCOOL: Yes, an enforceable undertaking is in place for one and the other one is preparing the evidence which includes interviewing the workers, looking at the workplace, compiling the evidence so that we can list the matters.

The Hon. TREVOR KHAN: Andrew spoke earlier about hard hitting.

Mr DAVID SHOEBRIDGE: Hard-hitting ad.

The Hon. TREVOR KHAN: It does strike me that there is disconnect here. I do struggle with the fact that there have been all these inspections of sites and you have got one enforceable undertaking and one consideration of a prosecution. Tell me how that is hard hitting?

Mr DUNPHY: There are a number of considerations. Investigations are going on which may result in prosecution and that is from the information that we have gathered in terms of recent issues. I think the other point to make is that there are over 30 cases where we actually have stopped the business from operating and that is very hard hitting. You cannot have a more hard hitting impact than stopping a business from operating.

The Hon. TREVOR KHAN: I agree with that.

Mr DUNPHY: We have taken significant action where it has been warranted.

The Hon. NATALIE WARD: What is the budget for the awareness and education campaign?

Ms McCOOL: Phase one was $40,000. Phase two was $200,000 and that now has all the assets which are now on the website which you would have seen, the video safety alert. Those ads can be rerun. So that has been, I guess, the development costs and also meeting the Government's advertising requirements.

The Hon. NATALIE WARD: Is it finished now?

CORRECTED

Ms McCOOL: The last phase just finished at the end of July. That was with the last round of that funding.

The Hon. NATALIE WARD: What are the plans for ongoing education and awareness campaigns?

Ms McCOOL: The strategy goes for five years. In terms of that campaign that has just finished, it will be reviewed and each element of the campaign is being reviewed today, which is a new taskforce report.

The Hon. NATALIE WARD: Are there any plans for further steps in the awareness education campaign?

Ms McCOOL: At this point the current campaign is under review as to what is next.

Mr DUNPHY: We do have a rolling campaign but it does require us to review what happens in each of them. We will look at them and then we will decide then what will be the next phase of the campaign.

The Hon. NATALIE WARD: I would have thought it is as simple as this: you get on a bike, you wear a bike helmet; you get in a car to drive it, you wear a seatbelt; and you undertake this work, you wear the best possible face mask that can be provided. Is it that simple? I am not trying to be an advertising guru but I am just simply saying should the focus and energy be put into this?

Mr DUNPHY: The problem with that approach though is that personal protective or respiratory equipment is the last option. In terms of the hierarchy of controls the legislation requires you first to look at isolating the hazard, putting in engineering controls so it is having the integrated water-fed systems or the integrated extraction systems.

Mr DAVID SHOEBRIDGE: That is not where you start?

Mr DUNPHY: That is where you start.

The CHAIR: Yes, you do not start at isolate, you start at substitution then isolation.

The Hon. WES FANG: Elimination and substitution.

Mr DUNPHY: That is right, yes, there is elimination and substitution.

Mr DAVID SHOEBRIDGE: Which you stepped right over as if it did not exist.

The CHAIR: We are getting caught up now.

Mr DUNPHY: No, you are right. I mean it does start at elimination and substitution.

Mr DAVID SHOEBRIDGE: So why are you not doing that?

The Hon. ROD ROBERTS: I think these figures are correct, and correct me if I am wrong, but you said 249 premises that deal uniquely with manufactured stone were visited, 600 prohibition notices issued as a result of that—

Mr DUNPHY: Six hundred notices, they include improvement and prohibition notices.

The Hon. ROD ROBERTS: Six hundred notices issued. I am assuming there is a schedule for repeat visits to these premises that have been detected as not complying.

Mr DUNPHY: Yes.

The Hon. ROD ROBERTS: As a result of the repeat visits, how many further breaches have there been? How many other notices have been issued?

Mr DUNPHY: I might refer to Ms McCool who might be able to assist.

Ms McCOOL: In terms of the notices that have been followed up they have all been complied with. So there has not been any one that we have followed up on where measures have not been put in place at this point.

The Hon. ROD ROBERTS: You must be a pretty good enforcement agency then. You are telling the Committee that every place you visited where you have found an issue, a notice has been issued and each of them has complied? There has not been a repeat of any offending. Is that what you say?

Ms McCOOL: In terms of the notices, some relate to silica and some do not. It could have been that they had an electrical issue or an issue with a forklift—

The Hon. ROD ROBERTS: But everybody has fixed everything? They are 100 per cent perfect?

CORRECTED

Ms McCOOL: So 123 notices were issued for health monitoring. Those people have gone and had their health monitoring undertaken. There have been 39 prohibitions on, as I said, the dry cutting. They have been followed up and there is no evidence of them continuing with dry cutting. But also when we are looking at dry cutting we are not just trying to look at it in the Act, we will look if there is any dust forming, piling up in anywhere. We will look if there is a broom there. We will look if all of a sudden a grinder is back there that does not have a water-fed or dust capture. It is essentially following up. Where we have gone back to look at those premises they have complied.

The CHAIR: Can I ask you to take on notice and give the Committee a full breakdown of all of your statistics? You have told us how many inspections but will you go into every subset of these numbers that we are talking about, including follow-ups, notices, stop-work permits—

Mr DAVID SHOEBRIDGE: In relation to silicosis?

The CHAIR: Yes, anything in relation to silicosis—not in relation to forklifts and other things—all the way through to prosecutions and enforceable undertakings, et cetera. Will you take that on notice and provide a full snapshot as it will help tell the story and answer some of our questions.

The Hon. ANTHONY D'ADAM: I want to add to that in terms of the data request, will you provide statistics on how many of those 246 workplaces had a HSR?

Mr DUNPHY: Yes, sure. I do not know whether we collected that data but we can certainly check to see if we have got that.

The Hon. ANTHONY D'ADAM: You do an inspection and you do not ask whether there is a HSR in place?

Ms McCOOL: We do.

Mr DUNPHY: I just need to confirm that. I would imagine that there would be some information on that but I do not know how easily we can extract that from the inspector's check list but we can certainly have a look.

The Hon. WES FANG: In the same document referenced by the Hon. Trevor Khan and the Chair.

The Hon. TREVOR KHAN: I did not reference a document.

The Hon. WES FANG: It was indicated that dry cutting was prohibited. It also indicated that silica dust is the next asbestos. The first part of the hierarchy is elimination. Has any consideration or work been done into banning manufactured stone?

Mr DUNPHY: In terms of prohibiting—

The Hon. WES FANG: I am talking about banning manufactured stone.

Mr DUNPHY: Yes. One of the issues, I guess, that we have with the issue of manufactured stone is to ban that by itself, it is not the only material that people are working with that has a silica content. We know that there are high levels of silica particularly in Sydney sandstone as well. There is a whole range of products.

The CHAIR: Not as high as that.

Mr DUNPHY: Not as high, potentially, but still in the high range. We also know that not all manufactured stone has the same concentration or content. There are issues around that. Before we go to looking at a ban, the first thing is to look at the appropriate level of controls that are in place and whether the controls are effective. As Ms McCool has mentioned, we have gone in and looked at those controls and have been able to determine that those controls, when they are operating appropriately, do work effectively. That is the approach we take in terms of risk management for any hazardous material. Banning would be the extreme and the final decision if none of those other controls were in place and were working effectively.

The Hon. WES FANG: So no consideration has been given to banning this substance at this time?

Mr DUNPHY: Not at this stage, no, because we are confident that if the controls are put in place they will actually control that hazard.

Mr DAVID SHOEBRIDGE: You are confident that this will protect workers' safety, is that right?

Mr DUNPHY: That is right, yes.

Mr DAVID SHOEBRIDGE: Do you say you are confident that the current standard of 0.1 milligrams per cubic metre, as an average exposure over an eight-hour workday, protects workers?

CORRECTED

Mr DUNPHY: What we have recommended is that the exposure standard go to 0.05.

Mr DAVID SHOEBRIDGE: Are you satisfied that an exposure standard of 0.05 milligrams per cubic metre, averaged over an eight-hour work day, will protect the health of workers and prevent them from getting them silicosis from manufactured stone dust? Are you confident of that Mr Dunphy?

Mr DUNPHY: No, the way the legislation works is that people need to ensure the work, health and safety of workers as far as reasonably practicable. The actual exposure standard is just a trigger point where we can actually take compliance action.

Mr DAVID SHOEBRIDGE: The reason I ask you about this is Dr Chris Colquhoun, the Chief Medical Officer of the largest dust disease compensation scheme in the country, gave us this evidence:

> If I can put forth an opinion I think any time you are cutting manufactured stone you have to make the assumption that if you breathe the stuff in you are going to die.

You are proposing an exposure standard of 0.05 milligrams per cubic metre on average over an eight-hour day that could involve you getting dense exposure at one moment and nothing for the rest of the day. That seems directly contrary to Dr Colquhoun's medical opinion.

Mr DUNPHY: I think the Chief Medical Officer has put out a qualifying statement, and that is on the icare website, following that statement. I am not sure of the context in which he said that, but certainly our approach—

Mr DAVID SHOEBRIDGE: He said it sitting there. He said it in the context of sitting there.

Mr DUNPHY: I know, but I think since then he has made a qualifying statement and that is now on the icare website.

The CHAIR: What about the evidence that we have had though that there is not the testing equipment available to be able to measure at that level? Do you contest that? That is something that has been acknowledged, has it not?

Mr DUNPHY: That is right, and we agree that the lower you go the more uncertainty, and the whole purpose of having an exposure standard is so that we can take action regardless of having to prove whether there is a risk or not.

The CHAIR: But how do you take action if you cannot measure it?

Mr DUNPHY: If you get to a lower level, 0.05, where confidently you can—

The CHAIR: We had evidence to say that there is not the equipment available to measure at that level. Do you contest that evidence?

Mr DAVID SHOEBRIDGE: Or it is hideously expensive.

The CHAIR: Yes, it is prohibitive.

Ms McCOOL: Not at 0.05. I think what is being confused here is if you look at, say, the lower level that has been recommended, which is where there is further research, the standard is for an eight-hour time-weighted average. If you are working a 12-hour shift or any longer than that, you more or less need to nearly halve that. So if it was 0.02, if you were working more than eight hours it would have to be 0.01. So that is giving an idea that that is where you are testing at, and that is a difficult level to measure at.

The CHAIR: How many workplaces do you examine—you will not answer this—that work for just eight hours? It is likely in the construction industry for people to be working more than an eight-hour shift, therefore we are going to those lower levels, are we not? Is the equipment available to be able to adequately monitor that at those lower levels to back up a potential prosecution?

Mr DUNPHY: At 0.05 we are confident that the measurement techniques will provide that.

The CHAIR: Okay. Beyond that?

Mr DUNPHY: Beyond that, part of the recommendation of SafeWork Australia is to do further research to make sure we are satisfied that we have got in place a proper measurement methodology that will be able to provide—

The CHAIR: But they are going down this path. This will be signed off sooner rather than later, will it not?

Mr DUNPHY: No, they are recommending the reduction from 0.1 to 0.05 in terms of reduction.

CORRECTED

The CHAIR: That is right, but that is over an eight-hour exposure.

Mr DUNPHY: That is right, yes.

The CHAIR: But that is not going to work in the majority of construction sites, is it, or some other businesses, if we are going beyond that?

Mr DUNPHY: We believe it is the lower levels, which is at 0.02, which we believe at the moment the methodologies are not able to provide accurate sampling. But at 0.05 the methodologies do hold.

The Hon. TREVOR KHAN: What follow-up do you have on workers—and by follow-up I mean what investigation do you undertake—where workers have been diagnosed and have perhaps gone off work because of silicosis exposure in the manufactured stone area?

Mr DUNPHY: We work with icare and they do provide us with information, so we can follow up and make sure that any information that relates to that worker and to their workplace we can follow up.

The Hon. TREVOR KHAN: Mr Dunphy, I assumed that you had a source of information. What I ask you is, and you may need to take this on notice, of those people, say, in the last two years that you have been notified have got a silicosis exposure and gone off work, how many of them have been interviewed, point one? Point two: What follow-up have you taken with the employers as a result of those examinations? Point three: How many prosecutions have flowed from the disclosures made by the workers of exposure to dust as a result of those?

Ms McCOOL: As I said, we have the information from icare, which we served a notice to receive. Those matters are the ones that I said, and I think you referred to one being followed up. The ones that have been followed up with the view as to whether further action will be taken—meaning they are under full investigation—are those matters that we have received the information from icare. We interview the worker, we interview the workplace, we also have a look at the workplace, we have a look at how many employers they work for—it is a full investigation of those matters, and they are the ones that I was saying are under full investigation.

The Hon. TREVOR KHAN: I think the notice was 40 that we were told of. So it is not one.

Ms McCOOL: Out of those 40, 21 relate to manufactured stone; the other ones do not relate to manufactured stone, but we still follow up on them.

The Hon. TREVOR KHAN: I would like to know what you have done in those 21 cases.

The Hon. GREG DONNELLY: Can I take you to the running sheet for the symposium that you conducted for your silica symposium on 7 May 2019, which is obviously relatively recent? I put this to you to, dare I say support strongly the proposition that I was alluding to earlier that we have got a silicosis issue broadly speaking and we know that is manifesting from a range of areas and agitating global concern and we are giving some particular attention to the issue of manufactured or engineered stone.

In the 9.30 a.m. session, which was titled "Silicosis: the dangers of working with silica dust", you, Mr Gavrielatos and Dr Anthony Johnson presented, you might recall. The sub-heading is "Silica is a very common mineral found in natural and manufactured stone as well as building products such as concrete, tiles and bricks." Then it states, "When disturbed by cutting, sanding, blasting or grinding, silica dust is released, which can get into workers' lungs and lead to lung disease, silicosis." That was the session that you took with Mr Johnson. Mr Gavrielatos, how much attention in that session did you spend on specifically looking at the issues around manufactured stone?

Mr GAVRIELATOS: I essentially facilitated that session and the other speaker went into the health specifics of silica. It was trying to describe essentially what the concerns were about breathing crystalline silica dust.

The Hon. GREG DONNELLY: From wherever it comes from?

Mr GAVRIELATOS: From wherever it comes from, yes.

The Hon. GREG DONNELLY: Because if you go further on in the agenda for the day, particularly in the second half of the day, you have got various panel sessions, you will recall—in fact, they start after lunch. There were a number of speakers there who have got some significant expertise from various backgrounds. I note though that if you look at the speakers, they are covering the issue of exposure to silica dust from a range of domains. It was a silica day, so to speak, was it not? It was not specifically—

Mr GAVRIELATOS: It was about all the industries where silica may be present.

The Hon. GREG DONNELLY: With respect to specifically the work that you do as an organisation, specifically on the issue of the manufactured or engineered stone, over the last, let us take a period, two years,

CORRECTED

how many specific symposia or conferences or workshops have you conducted specifically on the issue of manufactured or engineered stone?

Mr GAVRIELATOS: All of our seminars, whether they are symposia or other types of groups coming together, would cover everything, but there was always a specific—

The Hon. GREG DONNELLY: That is not my question.

Mr GAVRIELATOS: There was always a specific reference to manufactured stone.

The Hon. GREG DONNELLY: That is not my question. My question was: Over the last 24 months—take a two-year period from today going back two years—how many specific symposia, one-day conferences, workshops, has SafeWork NSW conducted with respect to manufactured or engineered stone?

Mr GAVRIELATOS: I will just ask Ms McCool to answer that.

Ms McCOOL: At that actual symposium, if you look at 2.40 p.m., it broke into three separate workshops. There was one specifically on manufactured stone. In February, which was prior to the symposium, there were three specific manufactured stone forums in Sydney, Wollongong and Newcastle.

The Hon. GREG DONNELLY: Who attended those?

Ms McCOOL: Whether it was a worker, whether it was an employer, whether it was anyone within the industry who was invited to those—and they were full house. They went through—much like we were talking about—the engineering controls, all the way through the processes, what mask to wear. They are continuing in the current roadshow again with a specific case study in each of those forums on manufactured stone.

The Hon. GREG DONNELLY: Going back, there have been a total of four over the 24-month period—this one here and the three you mentioned in February?

Ms McCOOL: Six roadshows plus 40 other industry-specific ones. That could be a mix of things. We can break down that 40, if you would like. It could be attending a master builders' event night, going to sites. There have been ones where we have gone to a site and educated the workers within a stone factory and it has been a specific session for them. There is a mix within that 40.

Mr DAVID SHOEBRIDGE: In those workshops on manufactured stone, did you identify the doctors' concerns that the dust from manufactured stone is of such a nature that it is causing accelerated silicosis, which can have an onset—potentially lethal—of three to five years?

Mr DUNPHY: That information is in our general guidance, so we talk about the fact that you can either have accelerated or—

Mr DAVID SHOEBRIDGE: Did you link that specifically to manufactured stone and identify the medical evidence that raises the concern that the dust from manufactured stone is most likely the cause of this accelerated silicosis?

Ms McCOOL: Can I mention that the three to five years is where a worker or a workplace has not been following the controls. There is research from an international journal that has concluded—it has looked at a systematic review across silicosis in all the industries and the findings were that the clinical characteristics of silicosis were comparable to those reported for the disease occurring in traditional workplace settings. That was applied against manufactured stone.

Mr DAVID SHOEBRIDGE: Do I take that as a no? You did not identify a specific or an elevated risk from manufactured stone? If the answer is no you can just say that, Ms McCool.

Ms McCOOL: To phrase it in the manner that best represents it, workers working with protection or workers working without protection in any of the industries—essentially if you are not protected in that three to five years, the same outcome, as per that research. Whether it is a traditional setting—a traditional tunnelling or a traditional stonemasonry—versus manufactured stone, essentially that is what we are finding. We are finding that the controls were not adequate in a number of manufactured stone businesses.

Mr DAVID SHOEBRIDGE: Mr Dunphy, you suggested that Dr Colquhoun had qualified his statement to this Committee. Is that your position?

Mr DUNPHY: I said he has put a statement out in response to the statement he made to the Committee.

Mr DAVID SHOEBRIDGE: You were suggesting that he qualified it or he had walked back from it a little. Was that what I was meant to take from your evidence?

Mr DUNPHY: That is my understanding—that he has put some context around it, yes.

CORRECTED

Mr DAVID SHOEBRIDGE: Why don't I read it to you and you can tell me whether he has walked back from it at all? He expanded on his comment and said:

> As with any industrial process the Hierarchy of Controls must be followed when there is any potential exposure to a hazardous substance. This includes elimination, substitution, isolation, engineering controls, administrative controls and finally personal protective equipment. Cutting and grinding manufactured stone is known to generate significant concentrations of respirable crystalline silica over a relatively short period, which, if inhaled can lead to adverse, irreversible and untreatable health consequences. Hence irrespective of whether monitoring is available, utmost caution needs to be undertaken to ensure a worker is safe and all steps are taken to prevent exposure to this hazardous substance. Keeping workers safe from harm is not negotiable.

That is not qualifying. That is not walking back. That is affirming his concerns, and top of his responses is elimination.

Mr DUNPHY: What he is referring to is the hierarchy of controls. We certainly agree with that and that is what is in the legislation.

Mr DAVID SHOEBRIDGE: I do not get from you that SafeWork NSW adopts Dr Colquhoun's position that keeping workers safe from harm is not negotiable. It sounds to me like you are quite satisfied with the ongoing cutting of this product, the ongoing wet cutting of this product, the ongoing importing and use of this product, knowing full well that workers will inevitably be exposed to dust. It does not sound to me that you adopt Dr Colquhoun's position that keeping workers safe from harm is not negotiable. It seems very negotiable to you.

Mr DUNPHY: I totally reject that assertion. We spend our whole working days ensuring that workers are protected. I think what we have said is that if they follow the hierarchy of controls and the appropriate controls are in place they will be protected.

The Hon. ANTHONY D'ADAM: In the report there is a quote that says, "It is not about if people will get ill, it is when because everyone is now working with these engineered stones. For MDF you need a sign. With stone you do not have to." I note in the industry responses in the report there is an agreement from one of the industry players, CDK Stone, to include warnings in the wrappings. I wonder whether it is beyond the power of SafeWork NSW to mandate that?

Mr DUNPHY: Certainly in terms of the regulation there are requirements for risk communication in terms of what you provide around information. I might get Ms McCool to refer to the risk controls and the labelling or the information requirements that are required.

The Hon. ANTHONY D'ADAM: It seems like a very practical way to communicate your message directly to the people who are going to be in the firing line.

Ms McCOOL: There is a national guide and on page 25 it has examples of the dust hazard signs, "Danger: silica dust hazard", "Use tools with continuous water feed", "Silica dust: wet sweeping only". So it is in the national guidance material.

Mr DAVID SHOEBRIDGE: "Inhalation will kill you"?

The Hon. ANTHONY D'ADAM: Why is it that this is a voluntary arrangement with CDK Stone? Why is it not mandated across the industry already?

Mr DUNPHY: In terms of what is provided with the product when it is supplied?

The Hon. ANTHONY D'ADAM: When it is wrapped. If it is wrapped up when it goes to the fabrication site, onsite, to protect it, it seems a very practical and simple way to include the information in the wrapping so that the workers who are going to be grinding or cutting it onsite unwrap it and have the information readily available to them.

Ms McCOOL: It is a schedule 14 chemical. It requires information to be provided with the supply and it is.

The CHAIR: Is that upon request?

Ms McCOOL: I would have to seek advice on that.

The Hon. TREVOR KHAN: I will tell you that when the benchtops turned up at my place there were not warnings on them.

The CHAIR: That may mean that the safety data sheet is sitting on a hard drive on a computer and unless the person who is purchasing requests it that supplier may be meeting their legislative requirements. Is that right?

CORRECTED

Ms McCOOL: It is a duty on the employer or the person in possession to follow the instructions, including training their workers on what they are working with. There is a duty of control.

The CHAIR: There is. It means that the apprentice who picks up the benchtop has to have been informed and trained and ask for the guy, who has six other people queueing out the door, to print off the safety information that comes with that manufactured stone. Because it is the apprentice's obligation to ask for it, isn't it? Rather than what we are saying here—that it be mandatory to be labelled on the product and wrapped or attached to it when it is supplied. Is that the right scenario? It would require that apprentice to ask for it, wouldn't it, under the current situation?

Ms McCOOL: The apprentice should have been trained before that—

The CHAIR: I have acknowledged that.

Ms McCOOL: —and when we do our site inspections we look for that: how are people trained, how are they supervised, what information was provided and what information was not. Then we would issue a notice.

The CHAIR: Let me be clear. You have said that because it is a schedule 14 that the supplier must provide the safety information, is that right?

Ms McCOOL: It is a schedule 14 chemical, yes.

The CHAIR: But the supplier only has to have the information available upon request, is that right?

Mr DAVID SHOEBRIDGE: Well, they could email it with the invoice.

Mr DUNPHY: There is an obligation on the employer to ensure that they provide that information.

The CHAIR: I understand the employer side. I understand that everyone needs to be trained and they need to be seeking that information and supplying that information to their workers. I understand that. I remind you I have a masters in OHS, so I am no fool when it comes to this. But it is also not mandatory, other than having the information available there. That piece of stone could go out the door that afternoon and if the person did not ask for the information it does not have to be with that product, does it? It has to be asked or requested for, is that right?

Mr DUNPHY: I believe that is the case, yes.

The CHAIR: Is there any value in changing the system to make sure that this stuff has mandatory labels and that there is just not a guidance around the signage for this raw product but it is stepped up a level and it becomes an offence not to warn other people on the work site that they are working with this manufactured stone? We have had other evidence about what happens with people who are discarding and demolishing this sort of stuff. There should be some sort of labelling system for them as well. Is there merit in that? Has that been looked at?

Mr DUNPHY: It is certainly something that we could look at. The issue with labelling is there is always the risk that you will not see it.

Mr DAVID SHOEBRIDGE: There is no rush!

The CHAIR: You will not see it if you do not ask for it.

Mr DAVID SHOEBRIDGE: If it is not there it is hard to see.

The CHAIR: If it is not there you will not see it.

Mr DUNPHY: But if you are talking about labelling on the wrapping, there is always the potential that the wrapping will have been removed.

The CHAIR: To transport it to site it has to be wrapped.

Mr DUNPHY: Yes.

The CHAIR: They are also taking this into people's homes. I could have nothing to do with the industry and invite a renovator into my home, with my children running around. Not only are they doing the wrong thing but my whole family might have to wear it as well.

Mr DAVID SHOEBRIDGE: To replace the sink in your kitchen you need to resize the stone top. It gets dry cut, dust goes everywhere, kids run through the kitchen—

The Hon. TREVOR KHAN: They do not do it that way. They do not recut in that sense.

The CHAIR: No, it would just be a trim or a grind.

CORRECTED

Mr DAVID SHOEBRIDGE: Yes, grinding it to resize it.

Mr DUNPHY: The point you make is valid. Certainly it is something we would be happy to look at.

Mr DAVID SHOEBRIDGE: I went to the SafeWork Facebook website to see your online presence because you spoke about it at length in your response. I was distressed at elements of it but what distressed me most was in response to a posting about silicosis. A worker posted, "I have worked on constructions sites since I was 17. I am now 39. I have something like a smoker's cough"—he wrote "caught" but I think he meant to say "cough"—"sometimes blow a blood clot or cough up a clot but don't want to know." The response from SafeWork was, "Hi X, Sorry to hear you're experiencing these symptoms. We recommend seeing your GP for a check-up if you have health concerns."

There was no reference to icare, free screenings, a link to any information, no follow-up, just, "We recommend seeing your GP for a check-up". The guy contacted you to tell you he is coughing up blood after working 22 years in the construction industry. We have had so much evidence about what icare can do and about its screenings. How could you not tell this man that? How could you not give him proper guidance?

Mr DUNPHY: I am happy to take that on notice and we will follow up on it. I was not aware of that particular post.

Mr DAVID SHOEBRIDGE: There are not a lot of comments on your Facebook page. It did not take long to get there.

The CHAIR: That is fair. Mr Dunphy has not seen it. He is happy to take it on notice.

Mr DUNPHY: You are right. We should be providing that link to icare. We can follow up to make sure that happens.

The CHAIR: I apologise for going over time. This topic has not only picked up the eyes and ears of Committee members but it also is more broadly happening elsewhere. Part of this Committee's job is to make sure that we do not sit here and look back in 20 years' time and say that we should have asked more questions or been more satisfied at the time. I appreciate the vigorous questioning that you have been willing to address. You have taken some questions on notice. The secretariat will liaise with you to get those answers back within 21 days. There may also be some follow-up questions that we submit on notice as well.

Mr DUNPHY: We always appreciate your insight. Certainly with any consultation we always go back and look to see what else we can do. It has been very valuable.

(**The witnesses withdrew.**)

CORRECTED

RICHARD BROOME, Director, Environmental Health, NSW Health, affirmed and examined

JEREMY McANULTY, Executive Director, Health Protection NSW, NSW Health, affirmed and examined

The CHAIR: Do you want to make an opening statement?

Dr McANULTY: Yes, I would like to explain what we do in Health Protection NSW. We are primarily tasked with preventing communicable and environmental health diseases in the community. We are community facing. We help deliver immunisation across the State to children and adults. We investigate and control communicable disease outbreaks. We monitor communicable diseases through surveillance systems. We regulate and monitor drinking water quality across the State. We assist in Aboriginal health issues particularly around housing. In environmental health we assist through the Public Health Act and work with councils in regulating pools, skin penetration and Legionnaires disease risks. While we are not a regulator in occupational settings, we do work across agencies—the Environment Protection Authority, SafeWork, Sydney Water and others—in terms of sharing knowledge and approaches to conditions.

The CHAIR: The Committee is interested from a health point of view where the issue of silica dust is crossing the line from directly in the workplace setting and getting more into the public health sphere. What view, insight or work are you doing? We have heard examples of work happening in a domestic household and in public places where stone masonry is being carried out and also the discarding of some of this material in landfill sites or recycling areas. Will you provide an insight as to your relationship, exposure or input in this space, particularly around silicosis within the broader community?

Dr McANULTY: We have not done specific work around silicosis in the broader community. We recognise that it is primarily an occupational disease from exposure in occupational settings and we work with SafeWork in supporting its work. The Environment Protection Authority are the regulators of waste and so on in relation to that.

Dr BROOME: In particular in terms of how people are exposed in non-occupational settings, it is usually through an occupational process that leads to that. We generally try to work with the regulator to make sure that those kinds of issues are managed.

The CHAIR: Are you comfortable with the awareness or do you have any insight into the broader awareness of the exposure of silica from a range of different areas outside of the workplace.

Dr McANULTY: I suppose the main issue about where the risk is for developing disease and the evidence we have is that in Australia it is entirely related to occupational settings. While people can be exposed to silica through incidental environmental exposures—because silica is in the earth's crust at low levels, of course—they are not meaningful in terms of their risk of developing silicosis.

The CHAIR: Mr Roberts?

The Hon. ROD ROBERTS: I do not have anything, Chair.

The Hon. ANTHONY D'ADAM: I suppose we really just need some practical advice around the mechanism for creating a dust diseases register either at a national level or at a State level. We have had some evidence to say that a national register would ultimately just be composed of information assembled from the various State jurisdictions. Perhaps if you could give us some information about what would be required in terms of either legislative or regulatory measures to establish a dust diseases register for New South Wales in the first instance.

Dr McANULTY: There are registers for a range of different conditions and I think the important thing is to understand exactly what the objective of a register is—is it to identify workers at risk and therefore put them on a register and therefore make sure they are screened, or is it something else? My understanding is that that is being worked through at a national level and there is a recently formed task force that is tasked with looking at these sorts of issues, which will provide direction. Registers have pluses and minuses. From other disease registers, we know—they are expensive to maintain, they need to be well maintained to be accurate—but it comes down to that purpose: what is the main purpose and therefore what is the best method then to apply to meet that objective? I think it is something that a range of experts need to consider carefully and I am glad to see that the task force nationally is looking at that.

The Hon. ANTHONY D'ADAM: Certainly, my understanding of the purposes, one would be to enable data sharing with the regulator so that if a case emerges that they could then go out and see if other workers are potentially at risk. I think the other element of the register, as I understand it, is to ensure that all workers who may be exposed to a dust disease like silicosis are able to be informed of their potential benefits under the dust

diseases scheme—I think those kind of dual purposes. There is some evidence to suggest that it could be done through a regulatory measure or a change to the Public Health Act. Is that the case in New South Wales?

Dr McANULTY: Diseases are notifiable in New South Wales, and that was set up many years ago primarily for the control of infectious diseases. Infectious diseases typically have a laboratory test, and so when we get laboratory reports we know that is a pretty effective way of getting onto a notification system, disease reports. For diseases that do not have a lab test, and there are not that many in the infectious diseases field, where there is a reliance on doctor notification, we know that from experience that is very poorly complied with—doctors are very busy, they do not always have in their mind, "I have made this diagnosis, I must report it to the health department."

So the experience, despite even where we put lots of effort into raising awareness among doctors, is that they are still very poor at complying with mandatory notification because they are busy doing clinical work and it is not on their minds. Relying on notification from doctors for silicosis, where there is no lab test, we believe is very likely to have a very low compliance rate and therefore be misleading—if the purpose of a register is to identify what the burden of disease is, misleading in how it would capture what level of disease there is in the community.

The Hon. ANTHONY D'ADAM: Where does the notification obligation lie? Does it lie with the general practitioner or the specialist or, in the case of dust diseases, radiographers or radiologists doing the assessments? Could they be required to notify? What is the mechanism?

Dr McANULTY: Currently, the methods of notification, the responsibility under the Public Health Act lies, for infectious diseases—most laboratories notify them, some are hospital notifiable and a smaller number are notifiable by a medical practitioner.

The Hon. ANTHONY D'ADAM: The diagnostic side, they have a notification requirement, is that the case?

Dr McANULTY: Yes. The bulk of our notifications from laboratories, as I mentioned earlier, because they bill patients and send reports to doctors, they have a system set up that can be automated to allow notification of the condition to the Public Health Unit.

Mr DAVID SHOEBRIDGE: That is for infectious diseases?

Dr McANULTY: For infectious diseases, that is right. So it works very effectively and we hear about cases rapidly.

Dr BROOME: And one of the reasons it works effectively is because in a laboratory you do a test and it says this person has the particular disease. So it is obvious, it is clear.

The Hon. ANTHONY D'ADAM: Are there any conditions that are notifiable that are not infectious diseases currently?

Dr McANULTY: There is lead poisoning, which is a laboratory test as well. I think that is it. Under the schedules which relate to public health diseases there are a whole lot of conditions under the Public Health Act—even birth is, in a sense, a notifiable condition—but the ones I am talking about are the ones that have public health implications. I am pretty sure it is just lead, but I could be wrong.

Dr BROOME: Cancer, I believe, is notifiable as well, predominantly by laboratories as well, but we are getting a little bit outside our area. Birth is a notifiable condition, I understand. So there are things that are there that are slightly unusual, but the primary purpose, I guess, from the public health point of view—

The Hon. TREVOR KHAN: Birth is not unusual.

Dr BROOME: Sorry, outside the infectious diseases sphere. How they got there, I guess, is historic. But primarily the main purpose of notification is to allow public health action in response to an infectious disease.

The Hon. GREG DONNELLY: Doctors, thank you very much for coming along today. It has been put to us by witnesses on another occasion that with respect to the issue of the health challenges we all face as a society, as a community, with respect to manufactured or engineered stone, there have been parallels drawn to the asbestos scandal that we had, which we are all very familiar with, and the utter misery and suffering that that created and affected so many people, and it made the parallels very strongly analogous. Would you care to comment on that statement?

Being public health doctors I am sure you will be very precise in answering a question like that. I have got a couple of questions and if you want to take them on notice I am happy for you to do that because I am not looking to sort of bowl up a twister and catch you out, but it is a very bold statement that we have got this sleeping

giant that is awakening. The tipping point of that is specifically with respect to those unfortunate individuals exposed to manufactured or engineered stone, but, more broadly, silicosis is an issue that we are facing. That is my first question.

Dr McANULTY: I might start and then I will throw to Dr Broome for more information. Asbestosis and silicosis are both tragic diseases and both are related to occupational exposures. I guess the difference with silicosis is that, as we talked about earlier, the risk is occupational and when you are exposed to levels of silica dust that creates that risk. When you are outside an industry and the home and there is no dust being generated I think that is a key difference with asbestosis where asbestos later on can become friable and people might be exposed during a home renovation and so on.

Dr BROOME: I think from the point of view of managing an issue, it is really important that we use the science and evidence that supports the particular chemical of concern to manage that issue. Whilst that analogy has been drawn, I think there are certainly differences in what we know about the effects of asbestos versus the effects of silicosis and from the point of view of managing silicosis we need to focus on the science of what silicosis does and what we know about silicosis and how it can be managed and all those sorts of things. So that analogy—I know it is out there—but I do not necessarily think it helps us in terms of the appropriate management options.

The Hon. GREG DONNELLY: It is very helpful to have that reflection because we are trying to give some real precision to looking at this issue and we would consider you experts to be able to give us that advice. If we look at the issue of silicosis, we have had evidence from the New South Wales regulatory authority, which provides us with information, giving attention to the disease silicosis—broadly speaking, the effects of exposure to the silicosis disease. What we have been looking at in particular with much of the evidence in this inquiry is that top end of exposure, with respect to workers in particular or people immediately around the workplace where this is being done—if it is outside, a manufacturing site, a standalone site—the exposure effects of high concentrations of this.

With respect to manufactured stone or engineered stone, you may be aware that it has a percentage level of around 90 to 93 per cent silicosis if you take a sample of the dust. So it is focusing on that which is making people quite concerned about it. You can go down from that to other products and you can go right down to say that if you accidentally dropped a tile and it cracked, there would be some silica dust that you would breathe in from that cracked tile. There is quite a large spectrum. My question is, from a public health point of view—and I understand that this is not an infectious disease but to bring your public-health learnings—how can one, while trying to deal with a broad issue, give particular attention to an element of it for which, dare I say, the evidence is stronger that there are serious consequences that we can see now and that we need to act quickly, as opposed to moving along, dealing with the broader issue and through doing that that is going to address the specific issue?

Dr McANULTY: Again, I will start. I suppose in all these settings it is a risk-based approach that we need to take. We need to understand what the risks are and then communicate that risk and put in the control measures that are proportionate to that risk. In the example of cracking a tile, the evidence would suggest that the amount of silica you might be exposed to through the air and breathe into your lungs is short term and probably quite low levels and therefore of negligible health consequence. At the other end of the spectrum there is the example that this Committee is looking at, which is quite different and so it does seem appropriate that the focus is on how to minimise the exposure to people in those industries.

The Hon. NATALIE WARD: I want to clarify and pick up on the point about asbestos and silicosis and clarify the potential for after-effects—dust in the hair, going home and potential exposure for other people. We are aware with asbestosis, for example, of wives being exposed when washing husbands' overalls. Can you comment on that and whether there is a similar risk or not and, if so, what should be done?

Dr McANULTY: I am not aware of the data on that.

Dr BROOME: I think the risk would be probably somewhat different because of the nature of the effects of asbestos versus the effects of silica. This fact that there is very clear evidence about the way asbestos causes cancer—silica is also a cause of cancer but it seems to be a slightly more peripheral cause, if that makes sense. I think it goes back to the fact that, irrespective of that, people should be taking precautions at workplaces to ensure that they are not taking dust home. It does not matter whether—it could be silica, it could be anything on their clothes. Lead dust is another issue. It does not matter what it is, there should be those processes in place to make sure that members of the family and members of the public are not exposed.

The Hon. NATALIE WARD: Is it the case, broadly, that there is not the same sort of risk as asbestos, after the fact?

CORRECTED

Dr McANULTY: To identify that risk requires large studies and with asbestos that has been done in places such as Wittenoom and so on, looking at secondary cases among family members. I am just not across the literature enough and data for silicosis.

The Hon. NATALIE WARD: That is fine, if that is the case. I am just trying to get a handle on what we are aware of and what we are not.

Dr BROOME: It is important to know that we are all exposed to silica all of the time. It is a crustal element—a very common crustal element.

The Hon. NATALIE WARD: It is a bit like the scare around radiation when there is radiation in a banana, as I understand it. There is radiation everywhere. I am just trying to get a handle on what the reality is.

Dr BROOME: We know the relationship to some extent, particularly at high doses, between exposure and risk, which is what drives things like the exposure standards in workplaces. We also know that we really do not see silicosis outside of occupational settings.

The Hon. NATALIE WARD: Because it is the continued exposure?

Dr BROOME: Yes, so generally that would mean that it is a high level of exposure that would cause the problems.

The Hon. TREVOR KHAN: Can I just go to the question of separating out the maintenance of a register from notification and I will predicate this on two preliminary observations. Last week we concluded a fairly contentious bill, which you might be aware of—got a bit of publicity. In the context of that, the question of data collection came up. Some of the evidence we received before the social issues committee on the question of data was, I can remember one witness making the observation, "Data is good". That was the observation that was made, notwithstanding those who were in support of the legislation and did not want data collected, that witness from Family Planning NSW said that data was good. I think some of what you have already said would be consistent with that—that data is good. Would you agree with that?

Dr McANULTY: Sure, absolutely.

The Hon. TREVOR KHAN: Let me go back in time: A weird fact is that this is the anniversary of Rock Hudson's death in 1985, who died of AIDS. Prior to 1985—because I am old enough to remember—I can remember the articles that were starting to appear in the very early eighties about a frequency of a relatively rare cancer, Kaposi sarcoma. It was starting to appear in the gay community, particularly in San Francisco from the very early eighties. My recollection is that one of the problems was that there was no data. There were a range of theories being bandied about as to why this was occurring, but no hard evidence—yet alone evidence in the form of the identification of the virus. There was not a demographic identified, there was not a frequency of occurrence occurring and the like. That to me is an example of a lack of data leading to a huge misdirection of effort, including medical effort, going on. Dr McAnulty, I suspect you might be old enough to remember some of that—although you would have been very young at the time.

Dr McANULTY: Yes and that was the emergence of HIV—initially AIDS, which was then identified as HIV. There were some fantastic epidemiologic studies that were done around that time with the reports initially coming in of clusters of Kaposi sarcoma and of increased use of various medicines to treat PCP—a form of pneumonia. The methodology of surveillance that was developed from that is the very same methodology we use to develop surveillance systems for our infectious diseases in New South Wales—we have a close relationship with the US. Again, the key to HIV identification—prior to HIV being discovered as a virus—AIDS was a syndrome that depended on doctors recognising and notifying, which, again, was not a great way of identifying what the burden of disease was until we actually identified a lab test that could identify HIV.

I suppose there are some parallels in that in terms of how effective surveillance systems do require a useful diagnostic system. The diagnosis for silicosis—bringing it back to this topic—is very difficult if you are a GP. Specialists—respiratory physicians—are well equipped to make a diagnosis for silicosis, particularly if they have the evidence or knowledge that the person has been exposed to silica dust and they can do the appropriate testing, but by and large your GP will probably struggle to make a diagnosis of silicosis without expert advice.

The Hon. TREVOR KHAN: Indeed, if a GP were clued up, if they were coming to a conclusion that it may be silicosis, it would almost inevitably lead to a referral to the specialist. A GP nowadays who did not refer off to a specialist would be nuts, would they not, when they have a complex lung condition that seems to be identified?

Dr McANULTY: Yes, we would expect that such patients would be referred to respiratory physicians.

CORRECTED

The Hon. TREVOR KHAN: If the reasonable expectation is that when confronted with a complex lung condition someone is going to be punted off to a respiratory physician and the respiratory physician is capable of making the diagnosis then an obligation placed on respiratory physicians to notify at least the Department of Health would result in the development of good data.

Dr McANULTY: The experience we have had to date, we are always open to new experience—

The Hon. TREVOR KHAN: Aren't we all.

Dr McANULTY: —is specialists are not great at notifying. We have had experience with various infectious diseases where we seek to get additional information about patients from specialists but it is very hard to get that information back.

Mr DAVID SHOEBRIDGE: Their own college is saying they want to register.

The Hon. TREVOR KHAN: I am separating out register from notification. They are two different things.

Mr DAVID SHOEBRIDGE: From memory they supported notification as well.

The Hon. TREVOR KHAN: They may have.

Mr DAVID SHOEBRIDGE: Their own college is supporting it.

Dr McANULTY: It is still under consideration so we are not saying it should not be notifiable at all. The thing we are saying is let us look at the objective. If it is about measuring the burden of disease there are probably different ways of doing that that are better and provide more accurate data. The downside of notification that is poorly notified is that it can be misleading and underestimate the burden of disease.

The CHAIR: What is the better alternative?

Dr McANULTY: There is hospitalisation data. We have inpatient data collection that we can look at how many patients are hospitalised. There is death data. There is also data that is coming from the screening processes talked about earlier today. This needs further investigation. There may be triangulation of a range of datasets to get a clearer picture of what the burden of disease might be.

Mr DAVID SHOEBRIDGE: We have been told repeatedly that the screening is only getting to a subset of workers exposed. We have been told repeatedly that workers have been identified with silicosis but they are not suffering an impairment so they will not get to hospitals and there will not be hospital data. Each of those options you put forward seems woefully inadequate in terms of getting adequate data. Are they seriously the alternatives you are looking at?

Dr McANULTY: I mentioned triangulation of data. Looking at the range of different sources of data that are available to put together a picture. We do that often with other conditions such as influenza where we are looking at a large proportion of the population who get influenza, but only a tiny proportion ever get tested for influenza or end up in hospital. What we do is triangulate a bunch of data looking at laboratory testing, community surveillance, from deaths to hospitalisation, to build up a picture of what is going on. Again, depending what the purpose put forward for surveillance is: If it is to look at the burden of disease for silicosis, that is one objective, then it may be better to put together a range of data that is available.

Mr DAVID SHOEBRIDGE: Including notification?

Dr McANULTY: Potentially.

The CHAIR: Can I flip that. Let us assume you are already doing the triangulation of the other data, would requiring specialists to notify have an adverse impact on the data set?

Dr McANULTY: It may be useful and again it is something we are considering and need further consideration of. We are not ruling it out at all.

The CHAIR: What I am saying is when we have icare here, and other evidence—we have had the bus, for example—we think people are being missed. That is only applicable to a certain amount of people who were employed as well. We know that there are people that are probably heading off down through another path and are falling through some of the gaps. I would need to be convinced that us making a recommendation that specialists should notify would not have an adverse impact on the data. I think there could be a range of benefits. There could be no benefits. I would be happy with both of those outcomes. At the moment it seems like what we do have is missing people.

CORRECTED

You can take it on notice if you like but could you answer whether you genuinely believe that if we recommended that specialists notify—Mr Shoebridge is right, their own college has said it should be notifiable—whether that would create an adverse impact on the data set and may lead to an adverse outcome rather than neutral or beneficial?

Dr McANULTY: For any source of data as long as you explain the limitations and caveats for the compilation of the data that avoids adverse effects.

Mr DAVID SHOEBRIDGE: Dr McAnulty, there are a series of other benefits from: First of all, notification; and secondly, having the notification finding itself on a State register. Do you agree?

Dr McANULTY: It would contribute.

Mr DAVID SHOEBRIDGE: What is your understanding of the prevalence of silicosis in New South Wales now?

Dr McANULTY: We do not have good information on that.

Dr BROOME: No.

Mr DAVID SHOEBRIDGE: What are you doing to get better information on it?

Dr BROOME: More broadly, I suppose people suffer from a range of conditions and we in the health system use a range of data sources to look at those conditions. We, for example, have looked at our data to see what patterns there are in silicosis. One of the things about surveillance, often you do not get complete notification but it indicates trends. You can identify if things are going up. The data we have probably helps to do that already.

Mr DAVID SHOEBRIDGE: Can you give us on notice what the data is?

Dr BROOME: We have actually got some numbers that we could talk through.

Dr McANULTY: These are reports of silicosis admissions and first time admissions for patients to New South Wales hospitals. It depends on being coded correctly. In 2017, all ages, there were 18 reported admitted to hospital. Similar data ranging back to 2005, 48, and ups and downs. A general long-term decline. I mentioned 18 in 2018, in 2017 there were 29. There is a table we can provide.

Mr DAVID SHOEBRIDGE: In 2018?

Dr McANULTY: In 2018 there were 18.

Mr DAVID SHOEBRIDGE: In 2017 there were 29?

Dr McANULTY: That is right.

Mr DAVID SHOEBRIDGE: Are you aware of the Queensland audit they did in February of manufactured stone that found in the manufactured stone industry in Queensland there were 98 cases of silicosis, 15 of which were terminal? Are you aware of that?

Dr BROOME: We have heard that, yes. We have had that report.

Mr DAVID SHOEBRIDGE: Have you considered doing a similar audit yourself?

Dr McANULTY: This is where we work with Safe Work and icare, where the screening processes are able to identify people with early onset disease and that would need to be taken into consideration of how that data is collected.

Mr DAVID SHOEBRIDGE: One of the recommendations of the Committee from earlier this year was a case finding study which would identify something like what we saw in Queensland, get that sort of data. Is that on track, is that happening?

Dr McANULTY: Again, that is where working with Safe Work, who are the regulators, and their system organisations—we are happy to work with them.

The CHAIR: Have you been asked to participate in such a case study?

Dr McANULTY: We would have to check on that.

Mr DAVID SHOEBRIDGE: Given what Queensland found, if you have your public health hat on, that is a significant outbreak of a disease in just one industry. If we had similar data in New South Wales in the manufactured stone industry, 98 workers with silicosis, 15 terminal, that would set warning bells off, would it not?

CORRECTED

Dr McANULTY: Yes.

The Hon. TREVOR KHAN: There would be nothing inherent in Queensland; it is hotter but that is not going to have an impact on the disease.

Dr BROOME: I guess one of the things that you have heard in the inquiry is that the screening in New South Wales has highlighted and picked up more cases in recent times. This is obviously a systemic problem. It requires a systematic solution.

The Hon. TREVOR KHAN: Part of systematic solutions is to have data.

Dr BROOME: There is a legal framework that exists in New South Wales that requires employers to screen their staff, which means it is going to go on into the future. It is a system set up to go on into the future. There is this question about case finding. The question is exactly what we would do in addition to the screening that we have to work through.

Mr DAVID SHOEBRIDGE: Asking Queensland what they did would be a good start. Have you done that?

The CHAIR: They did not have the screening. One of the differences is that we have had a different level of screening to what they had to this point, is that your understanding?

Dr BROOME: Again, that is our understanding.

Mr DAVID SHOEBRIDGE: They now have universal free screening. We do not have anything like that in New South Wales. Have you thought about universal free screening?

Dr McANULTY: Again, that is a matter for SafeWork and we will support SafeWork.

Mr DAVID SHOEBRIDGE: But a lot of these workers do not come into icare, do not come into SafeWork.

The Hon. TREVOR KHAN: Well, they do.

Mr DAVID SHOEBRIDGE: Is there a public health response? If those channels are not being ubiquitous, is there a role for Health to step in and say, "You know what, we will look across the board".

Dr BROOME: This is an issue of exposure to silica and the most important thing is the primary prevention aspect of it, which we know how to do. Then there is the secondary prevention, which is what we are talking about now, which is the case findings or appropriate screening. Obviously, in terms of providing care to those people we have a health system that is set up to do that. If you are sick, you go to your GP and you get appropriate care. But, what is really important is that appropriate action is being taken to manage exposure in people's workplaces.

Mr DAVID SHOEBRIDGE: One of the key things that has been advanced in Victoria, in terms of their State register, is not just a list of people who have been exposed, but also crucially the data, the spirometry tests, the X-rays or CT scans that have been done previously so when a fresh scan is done you can compare the two, which as I understand it, can be a very powerful diagnostic tool, to see if there has been a change. That is surely one of the benefits if we have a State register, if it includes the scans and the data it would be of significant assistance in diagnosis because you could compare one to the other. That would surely be a medical benefit, would it not?

Dr McANULTY: Again, that is something that we believe lies in Safe Work's bailiwick as an occupational regulator.

Mr DAVID SHOEBRIDGE: I am asking you from a medical perspective. If you have got scans from three years ago and scans from today, surely having the two sets of scans, or the two spirometry tests and seeing if there had been a change would be a powerful tool in diagnosis, would it not?

Dr McANULTY: Of course, in any medical diagnosis knowing how things have changed over time is very useful.

Mr DAVID SHOEBRIDGE: Why do we not get on and establish it?

Dr McANULTY: The national task force is looking at the best options, as I understand it, for registers.

Mr DAVID SHOEBRIDGE: Do you want to take that on notice, in terms of the benefits of establishing that at a State level rapidly, so that you have that diagnostic tool to benefit?

CORRECTED

The Hon. TREVOR KHAN: But a specialist is looking at this. If he has a patient—or even a GP—who comes back, say with a lung condition, they are going to try to look at the previous records, are they not? That is part of good clinical practice. It is not something that you have to legislate for, it is part of clinical practice.

Mr DAVID SHOEBRIDGE: How do you find them?

The CHAIR: Your records stay with you now, do they not, under the national—

Dr McANULTY: My Health Record and the–

The CHAIR: Will those scans stay in that now? I am not aware of the system. I am genuinely asking, if I had a scan now and another one in two year's time, two different doctors, or even if I move interstate, will both scans be available to both doctors?

Dr McANULTY: My understanding is that the system is still being built. I am no expert in that system, but the idea is to be able to have your medical record available, if you do not opt out, for doctors for that purpose.

The CHAIR: Doctors, is there anything else you would like to add?

Dr McANULTY: No. I was just going to say thank you for allowing us to appear.

The CHAIR: Can you make sure that we get a copy of that data set that you have there.

Dr McANULTY: Yes.

The CHAIR: You have taken some questions on notice. The secretariat will liaise with you for a response within 21 days.

The Hon. ANTHONY D'ADAM: On notice could you have a look at 5.2.2 in the final report of the task force, which I understand you were on, Dr McAnulty? Could you provide a bit more elaboration of the benefits of option one versus option two?

Dr McANULTY: Yes, on notice.

(The witnesses withdrew.)

The Committee adjourned at 11:14.