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 Tuesday 11 February 2020

The Committee met at 9:30 a.m.

PRESENT

The Hon. Wes Fang (Chair)

The Hon. Catherine Cusack
The Hon. Anthony D'Adam
The Hon. Greg Donelly (Deputy Chair)
The Hon. Sam Farraway
The Hon. Trevor Khan
The Hon. Daniel Mookhey
The Hon. Rod Roberts
Mr David Shoebridge

CORRECTED

The CHAIR: I welcome everyone to the fifth hearing of the 2019 review of the Dust Diseases scheme. This review is focusing on the response to silicosis in 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 that respect to other Aboriginals present. Today we will hear from icare and SafeWork NSW, who have both appeared at previous hearings. We will also be hearing from Safe Work Australia.

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. So 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 only answer if they have more time or certain documents to hand. In these circumstances, witnesses are advised that they may take the question on notice and provide the answers within seven days. Witnesses are advised that any messages to be delivered to Committee members need to be done so through Committee staff. To aid the audibility of this hearing, may I remind both Committee members and witnesses to speak into the microphones. The room is fitted with induction loops, compatible with hearing aid systems that have telecoil 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.

CORRECTED

DR NICK ALLSOP, Group Executive, Care and Community, icare, on former oath

JOHN NAGLE, Chief Executive Officer and Managing Director, icare, on former oath

DR CHRIS COLQUHOUN, Chief Medical Officer, icare, on former oath

The CHAIR: We welcome our first witnesses. Would any of the witnesses like to start by make an opening statement?

Mr NAGLE: Thank you. Dr Allsop has a short statement to make to the Committee.

Dr ALLSOP: Thank you very much for inviting us back to discuss the New South Wales Dust Diseases care scheme today. icare is acutely aware that silicosis is a serious health issue and that further action needs to be taken to prevent hazardous exposure and actively look for cases of silicosis within New South Wales, particularly in the manufactured stone industry. To that end icare did a number of radio pieces that were aired yesterday and today around raising awareness of the employers' obligation to have their workforce screened and we will continue to promote such activity. We are also working very closely with SafeWork NSW and other relevant authorities on a number of initiatives with a focus on silicosis.

This includes, but is not limited to, providing free or subsidised health screening services to assist employers with their obligations to screen and care for their workforce; partnering with SafeWork NSW to improve silica dust detection in the workplace, and this is world leading research that is being conducted there; developing an artificial intelligence algorithm to detect disease markers on X-ray screens to assist in the diagnosis of silicosis; sponsoring research through the Dust Diseases Board into prevention and treatment of silicosis or silica-related diseases; finding other ways to support people diagnosed with silicosis regardless of the level of impairment as there are some barriers there to providing the right level of support and improving the data collection around this disease so that we are better enabled to do research and find cases et cetera in the future. Thank you again for the opportunity to appear before you today and we look forward to assisting you with any questions you may have.

The CHAIR: Thank you. We will open up to questions now.

The Hon. DANIEL MOOKHEY: Can we start by just getting the latest figures for the number of people who have been screened and identified as having silicosis for the last financial year so far?

Dr ALLSOP: For the financial year so far, the figures to the end of January in terms of screening numbers, we have conducted 2,400 screens for silicosis.

The Hon. DANIEL MOOKHEY: Is that just in the last financial year?

Dr ALLSOP: Yes. In the period from 1 July 2019 to the end of January 2020.

The Hon. DANIEL MOOKHEY: Yes.

Dr ALLSOP: From there we have detected 70 cases of silicosis, or silica-related disease.

The Hon. DANIEL MOOKHEY: That is 70.

Dr ALLSOP: Yes, 70.

The Hon. DANIEL MOOKHEY: So 70 in the financial year so far compared to 40 in 2018-19, eight in 2017-18, six in 2016-17. I calculate that—in the course of three years—is a rise of above 688 per cent within the last three years. Should we not be panicking about this?

Dr ALLSOP: There are a number of changes that have happened over this period. I will go through a couple of points to provide more context around those figures. Firstly, there is a much greater awareness of the risks of working with silica-containing products and a far greater focus on educating people and having them seek screening well before they present with any sort of symptoms. So in the past, prior to this increased awareness and focus, people would have presented for screening generally when they started to experience symptoms of the disease. There may have been exceptions to that but in general that would have been the case.

We are now picking up people who have no symptoms of the disease but have early markers of the disease. So early signs of scarring or nodules on the lungs. But they are not presenting with any degree of impairment or any symptoms and it is really pleasing that the awareness and the education campaigns are working and people are being reached and they are coming forward for screening and getting the information they need to make the right choices about their health. So yes, it is a large increase and impart it will be reflective of changes in industry practice and things like that, but it is also predominantly this education and awareness.

CORRECTED

The Hon. DANIEL MOOKHEY: Of course we are all glad that people are being detected.

Mr DAVID SHOEBRIDGE: I think Mr Nagle was going to add something.

The Hon. DANIEL MOOKHEY: Sorry, before we do. I am glad that it is being detected. But it is a preventable disease and a 700 per cent increase is cause for worry. Can you confirm that the 70 number, is that the highest icare has ever recorded for a financial year so far?

Dr ALLSOP: Yes, I believe it is. I do not have the figures—

The Hon. DANIEL MOOKHEY: But in no other year on record have we had that number presenting ever?

Dr ALLSOP: I could not confirm that but I can go back through our records. They are not digitised when we go back—

The Hon. TREVOR KHAN: Can we just find out what the level of screening has been in those years? Because it seems to me you are comparing—and I am not arguing about the severity of the problem but it seems to me that you need to know how many screenings were done in each of those years before one throws up—

The Hon. DANIEL MOOKHEY: But the point is though that 70 people have come forward and it has never been that many in any year, in the last 10 years at least.

Dr ALLSOP: Certainly not in the last 10 years but the screening numbers have increased dramatically so—

Mr DAVID SHOEBRIDGE: But historically the numbers have been more like eight and nine. That has been the kind of standard number we have been getting. And now we are at 70 at the end of January in the financial year. Yes, I am certain some of it is because of increased screening but we all acknowledge there is a very serious problem here.

The Hon. TREVOR KHAN: I am not arguing at cross purposes with you but I think—

The CHAIR: Can we just allow the witnesses to answer? I believe Mr Nagle was attempting to provide some advice.

Mr NAGLE: It is a point that has been made. The ratio is similar to the prior years. On notice we are happy to provide the detail but the number of screenings we have been doing have increased dramatically over the last three years. More specifically, it is targeted at the manufactured stone industry.

Mr DAVID SHOEBRIDGE: But previously we were getting, say, three percent of screenings showing silicosis but you were screening 60 and 70-year-olds. Now you are screening people in their 20s and 30s and you are still getting three percent also of silicosis. That is the real problem is it not?

Dr ALLSOP: So the good side of it—if there is one—is that we are picking up people who would not have been detected in the past until they actually presented with symptoms. So in terms of the number of people presenting who actually have symptoms or a high degree of impairment, that has not materially increased in recent periods. Very few people are still presenting with 100 per cent impairment, or above 1 per cent, essentially. We have seen a large influx of the number of people presenting with no symptoms and very low levels of impairment.

The Hon. DANIEL MOOKHEY: Could we tease out how this demographic cohort looks—the 70—are they all from the manufactured stone industry?

Dr ALLSOP: The majority of them are—circa 70 per cent of them are.

The Hon. DANIEL MOOKHEY: Some 70 per cent of them are. I can only presume, given that the manufactured stone industry has only existed for roughly 20 to 30 years, that that is abnormal by historic standards—that you would have so many drawn from one industry.

Mr DAVID SHOEBRIDGE: Twenty years.

Dr ALLSOP: It is hard to tell because the industry is relatively new so we do not have a history going back. Also, with the increased awareness, we have a very different pattern of detection compared to what they had in the past.

The Hon. DANIEL MOOKHEY: But do you accept that the cause for alarm is the manufactured stone industry, not the tunnelling industry or quarries, which are presumably consistent with historic patterns?

Dr ALLSOP: Higher doses of silica that you can breathe in is certainly more dangerous and needs better preventative measures, absolutely.

CORRECTED

The Hon. DANIEL MOOKHEY: What is the median age of people?

Dr ALLSOP: The median age is around 50 to 60—in that band.

Mr DAVID SHOEBRIDGE: What is the age of the youngest worker identified?

Dr ALLSOP: The youngest we have is in their late 20s.

The Hon. TREVOR KHAN: Could we just clarify whether these numbers relate to the manufactured stone industry or the total cohort of 70?

Dr ALLSOP: It is the total cohort of 70.

The Hon. TREVOR KHAN: Have you analysed the manufactured stone cohort as opposed to the total number?

Dr ALLSOP: We can do that analysis but I do not have in front of me today.

Mr DAVID SHOEBRIDGE: You can get us that on notice.

Dr ALLSOP: Okay, yes.

The Hon. DANIEL MOOKHEY: Is the 28-year-old from the manufactured stone industry?

Dr ALLSOP: I could not tell you that offhand.

Mr DAVID SHOEBRIDGE: I think we said 28 but you said in their late 20s.

Dr ALLSOP: Yes, in their late 20s.

The Hon. DANIEL MOOKHEY: Do you have a measure of the average impairment level?

Dr ALLSOP: We do. The majority of people coming forward from the past year and a half—95 of the total 110 people who have presented with silicosis—are in that 0 per cent to 1 per cent range.

The Hon. DANIEL MOOKHEY: What is the most severe?

Dr ALLSOP: The most severe is 100 per cent impairment.

The Hon. DANIEL MOOKHEY: Do we have people with 100 per cent impairment?

Dr ALLSOP: We do, we have had five in the past year and a half.

Mr DAVID SHOEBRIDGE: Just to be clear, does 100 per cent impairment mean that they are at very serious risk of death as a result of the—

Dr ALLSOP: It is a very serious health risk, yes.

Mr DAVID SHOEBRIDGE: Has anybody died?

Dr ALLSOP: I do not believe that we have had a fatality from this group just yet.

The Hon. TREVOR KHAN: It is not a very serious health risk, it is a very serious health condition, isn't it?

Dr ALLSOP: Yes.

Mr DAVID SHOEBRIDGE: Yes, 100 per cent impairment.

The Hon. DANIEL MOOKHEY: That effectively means that their lungs are not working.

The Hon. TREVOR KHAN: Mr Nagel, do you have something to add?

Mr NAGLE: We have some information on the split from silica dust from 1 July 2018 to 31 December 2019.

The Hon. DANIEL MOOKHEY: Do you mind taking us through that, Mr Nagle?

Mr NAGLE: Yes. We have 46 workers who were exposed to manufactured stone products; 27 workers were exposed to manufactured stone and natural stone products; and six workers were exposed via employment in the construction industry. So 45 per cent were manufactured stone products, 26 per cent were a mix of manufactured stone and natural stone products and 6 per cent were—

Mr DAVID SHOEBRIDGE: Sorry, is that per cent or numbers? I thought you said numbers first of all.

CORRECTED

Mr NAGLE: Yes, 27 workers is equal to 26 per cent—for the manufactured stone and natural products—and 46 workers is 45 per cent who were exposed via the manufactured stone products.

Mr DAVID SHOEBRIDGE: And six were construction.

Mr NAGLE: That is right.

Mr DAVID SHOEBRIDGE: That means 18 per cent are unspecified?

Mr NAGLE: At the moment, yes.

The Hon. DANIEL MOOKHEY: This is awfully alarming, isn't it? Have you ever had this problem present itself in respect to any other dust disease in such a short period of time?

Mr NAGLE: Historically the numbers are—most of the dust diseases program has been towards asbestosis. As we have previously testified, the silicosis condition coming from the manufactured stone industry is new to everybody—so, yes. We are watching, which is why we have had the program of increased screening.

The Hon. DANIEL MOOKHEY: What is the financial liability? What are you projecting?

Dr ALLSOP: We are holding circa $100 million against future incidents of not only silica-rated disease but also non-asbestos-related diseases.

Mr DAVID SHOEBRIDGE: That is not being paid for by the companies that manufacture it, is it? It is being paid for by a levy across all employers, good and bad?

Dr ALLSOP: The scheme operates on a pay-as-you-go basis. So yes, levies are collected from any active employer deemed to be working in an industry that has dust-related exposures.

The Hon. TREVOR KHAN: Can you identify what is identified as an industry with an exposure to dust? How broad is that category?

Dr ALLSOP: They are broad categories. We are not going down into the fine detail of what each individual employer is doing—it is categories such as construction and that sort of level.

The Hon. TREVOR KHAN: What else apart from construction?

Dr ALLSOP: I would have to go back and check to see.

The Hon. TREVOR KHAN: For instance, does it cover the agricultural sector?

Dr ALLSOP: It would, because there have been instances of farmer's lung and things like that from the agriculture sector.

The Hon. TREVOR KHAN: I know there have been instances, but the rise that we are identifying now is contrary to historical trends, one would think. I am trying to work out the spread of industries that are carrying the burden of this exposure by a particular industry.

Mr NAGLE: On notice we are happy to provide the details of which industry codes are amalgamated into the levy.

Mr DAVID SHOEBRIDGE: What is the scope for targeting the manufactured stone industry with a special levy? Can you do that under the existing arrangements?

Dr ALLSOP: No, we cannot. Our role is to determine the pay-as-you-go levy to be collected in each individual year. We pass that information to the State Insurance Regulatory Authority [SIRA] and it determines which employer groups to collect that levy from. Our legislation is quite prescriptive in terms of collecting the amount we need to expend on paying claims and expenses.

Mr DAVID SHOEBRIDGE: But if SIRA chose it could put a specific levy on that industry or industry segment?

Dr ALLSOP: It could tailor our request for a total levy across the industry groups.

The Hon. DANIEL MOOKHEY: Dr Allsop, you said that $100 million is being held for dust diseases—did you say this disease, or all the dust diseases?

Dr ALLSOP: All non-asbestos-related dust diseases, which is predominantly silica-related diseases.

The Hon. DANIEL MOOKHEY: How much in general is being held in the dust diseases scheme?

Dr ALLSOP: The total liability is about $1.7 billion.

CORRECTED

The Hon. DANIEL MOOKHEY: Roughly 8 per cent, or close to 8 per cent, of the total liabilities being held?

Dr ALLSOP: Closer to 5 per cent.

The Hon. DANIEL MOOKHEY: You are probably right as you are the actuary so your maths is better! When was the last time you revised the $100 million figure?

Dr ALLSOP: We had that reassessed at 31 December as part of our regular six-monthly cadence of doing valuations.

The Hon. DANIEL MOOKHEY: What was it prior?

Dr ALLSOP: I would have to take that on notice but it has increased to December on the back of the increased numbers of silica-related diseases being identified.

The Hon. DANIEL MOOKHEY: So it is $100 million and that has gone up?

Dr ALLSOP: Yes.

The Hon. DANIEL MOOKHEY: And you will be revised again in six months?

Dr ALLSOP: Yes, at 30 June.

Mr DAVID SHOEBRIDGE: To get some kind of perspective, what is the reserve being held for asbestos-related diseases?

Dr ALLSOP: It is essentially the rest of that $1.7 billion—so $1.6 billion.

The Hon. DANIEL MOOKHEY: Do you maintain—I understand that every six months independent actuaries come in and validate.

Dr ALLSOP: Correct.

The Hon. DANIEL MOOKHEY: But icare's own actuaries—is the risk on that $100 million liability on the downside or the upside? Is it likely to be revised up or down in the next six months?

Dr ALLSOP: It is really difficult to tell. Because it is such a new pattern of experience it could be that we are passing the peak right now and will see it taper off, or it could be that there is a little bit more growth to go as we continue the screening initiative. What we are reasonably confident on is that we have reached a large proportion of the manufactured stone industry—certainly the fabricators. There is further work to be done around reaching out to the installers but we have screened a large number of people in the industry and so we are confident that we are picking up a large number of the people who may be presenting with the disease.

The Hon. DANIEL MOOKHEY: Do you have a list of installers?

Dr ALLSOP: No, we do not have a list of installers.

The Hon. DANIEL MOOKHEY: How are you finding them to screen them?

Dr ALLSOP: This is where the collaboration with SafeWork NSW comes in. It has identified the fabricators in New South Wales and a lot of the installers are tied to the fabricators, so we are using those channels and that relationship with SafeWork NSW to try to reach out further.

Mr DAVID SHOEBRIDGE: So you are going through those tier 1 organisations? Is that how you would describe them?

Dr ALLSOP: It depends how you define "tier 1", but yes, the fabricators who are the first point of call in terms of working with the stone to reach out to the installers.

Mr DAVID SHOEBRIDGE: The December report from the national task force critiqued that and they referenced an industry submission that said "Regulatory bodies target tier 1 organisations as they have the ability to drive change through subcontractors that they engage. This model is flawed in that a high level of risk exists in the smaller operations", not just tier 1 and tier 2 organisations. They are being critical of focusing on the big players, even though that is the easiest way to get to a larger number, because the biggest risk operates at smaller ones. Have you reviewed your strategy or does your strategy deal with that problem?

Dr ALLSOP: It is certainly a concern. We have very limited ability to reach out into the network of potential employers or people working with the product. Our role is to provide the screening and the support and compensation should people unfortunately contract the disease. So it is difficult for us, and not ourselves, to reach out into that network.

CORRECTED

Mr DAVID SHOEBRIDGE: That is more a SafeWork thing you would suggest. Is that right?

Dr ALLSOP: I would suggest they have more scope to do that, yes.

Mr DAVID SHOEBRIDGE: The same report says a lack of—

The Hon. TREVOR KHAN: Sorry. Mr Nagle—I notice the body language—shifts forward in his chair occasionally. He might have something to add.

Mr NAGLE: Simply just to emphasise that point, which is we have done a lot to enhance the awareness of screening. Dr Allsop mentioned the radio program that he appeared on recently, and we need more. It is things like this Committee's awareness. That radio soundbite basically came off the back of this Committee. So it is raising the awareness across the community. Certainly the utilisation of the Lung Bus in our screening site down in Pitt Street—we are at almost capacity at the moment. There are strains across the system in terms of the number of specialists who are available, but we will continue to reach out. But we do need the cooperation of industry bodies in this.

Mr DAVID SHOEBRIDGE: I do not know about the balance of the Committee but clearly you are doing something right if you are finding this level of disease. The question is though what is the kind of policy response to this level of disease? Because the level of the disease is deeply troubling. One of the other references in that December point is this: "A lack of explicit regulation has contributed to the lack of understanding amongst employers particularly those within small and medium enterprises, which would not be likely to access WHS and OHS expertise." It is deeply critical of the lack of explicit regulation, and in that regard why do we not have an explicit black-and-white ban on dry cutting? Do you think that would useful?

The Hon. TREVOR KHAN: I just wonder if these are the right people to be asking that question.

Mr DAVID SHOEBRIDGE: They can answer that for themselves, but in their experience?

The CHAIR: The witnesses will be allowed to answer, but if they, obviously, are unable to they can refer the question to another authority.

Mr NAGLE: We are not a policy-making operation and we are not a regulatory operation. We are here to operate the schemes and support injured persons in New South Wales. We are happy to be involved in any discussion and any suggestions, but unfortunately it is not our area.

Mr DAVID SHOEBRIDGE: But you are picking up a large level of disease now, which, at least in part, would be explained because of a lot of dry cutting that has been happening in the industry. Would you agree with that?

Mr NAGLE: Correct.

Mr DAVID SHOEBRIDGE: I see Dr Colquhoun nodding. Did you want to add anything to that?

Dr COLQUHOUN: At this stage, no.

The Hon. TREVOR KHAN: Apart from a nod of agreement.

Mr DAVID SHOEBRIDGE: Nods turn up very badly in *Hansard*. If we know that historically dry cutting has been clearly a significant part of the problem, in terms of your response surely you would welcome an explicit black-and-white ban on dry cutting, which would make it easier to educate employers and to encourage employees to come forward in an explicit ban.

Mr NAGLE: Again, unfortunately it is not in our remit.

The Hon. DANIEL MOOKHEY: Can I just then perhaps turn to what is in your remit, which is to get some updated figures on your mobile lung screening service? In your September update which you provided to the Committee you said that you had visited 62 worksites across New South Wales. Do we have updated figures on that?

Dr ALLSOP: From the Lung Bus specifically?

The Hon. DANIEL MOOKHEY: We will take the Lung Bus and then we will take in general.

Dr ALLSOP: Sorry, I am not finding it immediately.

Mr DAVID SHOEBRIDGE: Dr Allsop, if you have a bunch of numbers there would there be any problem with just tendering the numbers, the data that you have?

Dr ALLSOP: I think there is no problem us providing the Committee the numbers after the meeting.

CORRECTED

Mr DAVID SHOEBRIDGE: A comprehensive set of numbers?

Dr ALLSOP: Yes.

The Hon. DANIEL MOOKHEY: We would like that figure now though.

Mr NAGLE: Sure. Generically, since 1 July 2017 to 31 December 2019, we have screened 7,692 workers for both silica and asbestos exposure. In the financial year 2019 to December 2019 we had screened 2,047 people.

The Hon. DANIEL MOOKHEY: But how many sites?

Mr NAGLE: In terms of sites I do not have that information.

The Hon. DANIEL MOOKHEY: You accept that you told us there were 62 as of September, presumably, in your figures.

Mr NAGLE: Yes.

The Hon. DANIEL MOOKHEY: How many do you do a month?

Dr ALLSOP: That is variable, depending on driving time and things like that.

Mr NAGLE: We will have to take that on notice and come back to you.

The Hon. DANIEL MOOKHEY: Since we have had the last opportunity to talk about this with you, SafeWork has come back and said that they know of 246 separate worksites in which fabrication takes place. Have you visited all of them?

Dr ALLSOP: We have been engaged with SafeWork NSW around getting screening for all of those workers at those sites. Whether or not we individually visited them with the Lung Bus I would not expect so, but we certainly have been engaged in terms of providing the screening services.

The Hon. ANTHONY D'ADAM: What about direct communication? Have you written to them or reached out to them?

Dr ALLSOP: Yes. The engagement with SafeWork NSW has meant that we have—

The Hon. ANTHONY D'ADAM: Through SafeWork or through icare?

Dr ALLSOP: Probably a combination. I could not tell you the exact split and how all that contact has worked. I can tell you that we have been screening employees from all of those worksites.

The Hon. DANIEL MOOKHEY: If you can come back to us with those figures? Presumably, if the 62 on the mobile bus service—and we are taking your evidence that you think it is the best program to proactively screen—it would seem that effectively you have done one in four. That is not a criticism but is it the policy intention to get to all of them for screening or not? Because this goes to that earlier question we were asking about whether or not the risk is going to go up or down. Presumably we will be going out to these sites again and we can expect it to be going up if you are doing additional screening at these sites.

Mr NAGLE: We will have to, as we say, come back with the actual number of site visits. The various factories and manufacturers are clustered generically, so where we go to one site we would generally see multiple employees. But there is an estimate that there is somewhere between 2,500 and 3,000 employees in the manufactured stone industry. We believe we have screened a great bulk of those.

The Hon. DANIEL MOOKHEY: That brings me to the next question. Presumably you have screened them all once, but is there a program or policy in place to repeat the screenings every few years?

Dr ALLSOP: Absolutely. Every year at a minimum if you are working in manufactured stone.

The Hon. DANIEL MOOKHEY: For each worker?

Dr ALLSOP: Yes.

The Hon. DANIEL MOOKHEY: How do you track the workers other times?

The Hon. TREVOR KHAN: Dr Colquhoun seems to be wanting to jump in with something as well.

Dr COLQUHOUN: I was going to add to Dr Allsop's point. Safe Work Australia guidelines do recommend yearly or annual screening or re-screening of anybody who is undertaking health surveillance in this regard.

The Hon. DANIEL MOOKHEY: But how will you keep track of the workers at other times?

CORRECTED

Dr ALLSOP: We are somewhat reliant on the employer to fulfil their obligation and putting their workforce forward for screening. If they have been screened once by us then they are on our books and we can proactively reach out and make contact, but if they are new entries into the workforce then it becomes more difficult for us unless the employers are meeting their obligation of putting their workforce forward.

Mr DAVID SHOEBRIDGE: Surely this is why we should already have in place a State register. Surely that would assist your job, would it not, if there was a State register where whenever someone comes into contact with their GP or a health professional or any kind of government agency and the issue of silicosis arises they are identified and then you can use that register to follow people up? Surely that would assist, would it not?

Mr NAGLE: I think in our previous testimony we have agreed with that stance, yes.

The Hon. DANIEL MOOKHEY: But presumably now a case is also being made for ongoing registration of the workers regardless of whether or not they have shown signs of silicosis, because, as you rightly say, that presents over time, risk changes over time, risk changes to exposure levels. Dr Colquhoun, certainly there is merit in actually having any worker who is engaged in the cutting of manufactured stone registered so they can be tracked over time.

Dr COLQUHOUN: A top-down approach to understanding the potential scope of anybody exposed to this sort of hazard on record would make a lot of sense.

Mr DAVID SHOEBRIDGE: Can I just ask a couple of questions about what this means for, say, a worker in their thirties who has been involved in manufactured stone for maybe five or 10 years. That is their work—how they earn their keep. They come to a screening, they get screened and there are the initial signs of silicosis on their lungs. What do you tell them?

Dr ALLSOP: They are appropriately warned that they are at risk of ongoing progression of the disease and that they need to take appropriate preventative measures to ensure that their exposure to silica particles in the future is below what is considered by the regulator a safe standard.

Mr DAVID SHOEBRIDGE: But there may not be air monitoring in their workplace. They may be anxious about their economic future. If they have already got signs of silicosis, it could well be that their workplace has created that. Do you recommend that they get out of the industry and get another job? Surely any further exposure would be problematic. Dr Colquhoun, what is the medical position?

Dr COLQUHOUN: The national guidelines do recommend removal from any ongoing exposure to any hazardous substance. Obviously, prior to that prevention is the major driver, particularly around the hierarchy of controls. But really, if a worker is diagnosed with silicosis or silica-related diseases, removal from ongoing exposure is generally recommended. That sort of decision cannot always be taken lightly. As you mentioned, Mr Shoebridge, a worker's financial future, their health and a number of factors would need to go into that. Generally speaking, a multidisciplinary approach needs to be taken with all relevant stakeholders brought into the room to discuss that particular worker and their options ongoing.

Mr DAVID SHOEBRIDGE: Are you finding workers saying, "Well, look, it's just too risky. I can't stay in this. It might kill me", or are they going back to work because of the economic pressures?

Dr ALLSOP: I think there is a combination there but what we are doing is providing vocational support for workers who wish to transition out of that industry and into other roles. We are also providing counselling and other support mechanisms to make sure that they are as well-equipped as they can to handle the diagnosis and their life choices going forward.

Mr DAVID SHOEBRIDGE: I understand the really hard economic decisions that this places on a worker who may be earning very good money in this. But surely the advice that you are giving should be guided fundamentally by the medical advice and surely the advice should be, "Stop working in the industry. It might kill you. Stop working in the industry." Your advice should be fairly unambiguous.

Mr NAGLE: I think our advice is in line with the standards, absolutely.

Mr DAVID SHOEBRIDGE: Is it what I just said—"Stop work in the industry. It could kill you"? Is that what you tell them?

Mr NAGLE: All we can do is refer them to the standard and the impact of the standard. It is an individual decision.

The CHAIR: The Deputy Chair has a question.

The Hon. GREG DONNELLY: I want to take you to the answer given in response to questions taken on notice and provided previously. The actual document I am looking at is not dated but it has a series of answers

CORRECTED

to questions that total 12 questions. I am sorry I cannot give you a specific reference but obviously it was relating to questions on notice last year. I specifically want to ask you about your response to question No. 6, "Diagnosis and treatment costs". I would like you to see if you could turn that up. I am reading from your answers to questions on notice from last year. I do not know whether you have in front of you.

Dr ALLSOP: No, I have not, as yet.

The Hon. GREG DONNELLY: It is quite a detailed answer. It provides the cost breakdown. It is the answer to question No. 6. Have you got that in front of you?

Dr ALLSOP: Yes.

The Hon. GREG DONNELLY: Thank you. With respect to the answer, specifically I wish to go to the second sentence: "The cost of screening a worker in the Lung Bus is approximately $225 and the cost of screening a worker in the Pitt Street clinic is $700 per worker. This cost includes…". Is that relating to the $700, the next sentence? "This cost includes X-ray", et cetera. Does that relate to the Pitt Street clinic or the bus?

Mr NAGLE: It is to both. The costs in Pitt Street are higher because they are fixed premises and the numbers that we can push through Pitt Street versus the Lung Bus going to the actual sites.

The Hon. GREG DONNELLY: Right. With respect to the high-resolution computed tomography [HRCT], is that dealt with on the Lung Bus as well?

Dr ALLSOP: No. The HRCT costs are the additional costs of screening services where we refer someone on for CAT scanning.

The Hon. GREG DONNELLY: Let me be devil's advocate. Given we have an emerging and serious issue here—I think we can probably agree on that—there are some really long-term implications for many workers in this particular industry. Whilst the Lung Bus is obviously valuable by being able to travel around, is mobile and is able to provide some insights through the testing conducted in the Lung Bus, is the superior model of testing something more sophisticated than the Lung Bus which involves the HRCT and therefore is there an argument that workers who are in the first instance tested on the Lung Bus ought follow through and the able to access more sophisticated testing to provide the highest level of information about their condition? In other words, it is not acceptable to just have the indicative information from the Lung Bus, as useful as that is in providing some indicia about the possibility of this person having a condition, but there should be almost an automaticity that if you pass through the Lung Bus you then must be streamed onto the more sophisticated testing so that we can collect the most accurate and detailed data about their condition.

Dr ALLSOP: We currently follow the guidance recommended by the various bodies that are tasked with determining what the most appropriate screening standards are. At the moment that still says that X-ray is the first port of call. We absolutely refer people on for CT scanning if there is any trace of an anomaly in those X-rays or their lung function testing suggests there is something that should be investigated further. All are diagnoses of silicosis or silica-related disease have gone through that CT scanning process as part of that. If we do not detect anything through the X-rays, the lung the function testing and if the work history is not showing up any risk factors that we believe warrant further screening, it is not an automatic referral for CT, based on the guidance that we are working from. That being said—

The Hon. GREG DONNELLY: Just pause there. On notice, can you provide to the Committee what is the category or the list of information that is the basis upon which a decision is made to refer them on to more sophisticated testing?

The Hon. TREVOR KHAN: Would you like to invite Dr Colquhoun to make a contribution on this as well?

The Hon. GREG DONNELLY: Sure.

The Hon. TREVOR KHAN: He looks interested in the question.

Mr DAVID SHOEBRIDGE: And if we are doing that, could you address this: There was a meeting of the national task force at the end of last year, I think. I know that one of the issues on that agenda was the recommendation from the Royal College of Radiologists that everybody get a CT scan. I am fairly certain that recommendation from radiologists, which has not been adopted by icare is my understanding, was up for discussion at that national task force. I do not know what the decision was.

Dr COLQUHOUN: Sure. I suppose a very direct answer to this is we are pre-empting proactively some changes to SafeWork Australia guidelines—they are currently in draft—that states that any worker in the

CORRECTED

manufactured stone industry who has been working in that occupation for three or more years should immediately go to a high-resolution CT scan as a screening method. We have implemented that as of this year.

The Hon. GREG DONNELLY: I am sorry—implemented when? As at 1 January?

Dr COLQUHOUN: I would have to get the exact date.

The Hon. GREG DONNELLY: Okay, but you are saying—

Mr DAVID SHOEBRIDGE: That is the current policy.

Dr COLQUHOUN: Correct, yes. It has been implemented.

The Hon. DANIEL MOOKHEY: You said that you have pre-empted SafeWork's guidelines. Does that mean that you have implemented ahead of time or that you have resolved a set of guidelines which will be at some point inconsistent, presumably, with the highest safety standard?

Dr COLQUHOUN: I will try to break that down. The easiest way to answer is that we assume this is in the pipeline.

The Hon. DANIEL MOOKHEY: Why do you assume that?

Dr COLQUHOUN: Because we have seen the draft guidelines.

The Hon. TREVOR KHAN: I am not quite sure whether Dr Colquhoun had finished his contribution before you took him on further. The Hon. Greg Donnelly had asked quite an expensive question and it struck me that Dr Colquhoun might have had a number of things to say. I am not trying to cut off the Hon. Daniel Mookhey, but it seems to me Dr Colquhoun might have a lot to contribute, if he has the chance.

Mr DAVID SHOEBRIDGE: No pressure now, Dr Colquhoun.

The Hon. GREG DONNELLY: The floor is yours.

Dr COLQUHOUN: Thank you, Mr Donnelly. As Mr Donnelly was pointing to, the real question is: As technology, particularly healthcare technology, improves, screening versus diagnostic tests will change. They will become more affordable, more accessible and lower risk. I think the point Mr Donnelly was making is that from a mobile point of view, x-rays are still done. They still meet the current guidelines that have been endorsed for decades both nationally and internationally. We know there is emerging evidence, as Mr Shoebridge has mentioned, that high-resolution CTs, particularly low-dose, could be used as a first port of call for screening for manufactured stone workers exposed to silica.

We have pre-empted that decision to try to put an index of exposure risk around what sort of potential silica load would indicate going to CT. Various people have put comments around that; some people would say three years would be an appropriate time of exposure to go straight to CT. That was the direct answer to that particular point. Longer term, one of the real questions from the lung bus point of view is how can that sort of technology be accessed by the regional and remote areas in New South Wales that we visit. This new process had been implemented by icare, so the next stage will obviously be offering those workers CT scans in their regions.

The Hon. GREG DONNELLY: Without complicating this even further, this discussion, this consideration has direct implications with respect to the cost or the subsidisation of the screening and what that amount of money might be.

Dr ALLSOP: Yes. So the approach we have adopted is to absorb the cost of CT screening for any worker that goes down that path.

Mr DAVID SHOEBRIDGE: The radiologists have said that there are portable high-resolution low-dose CT scans. I think I asked on the last occasion if you had investigated getting a portable low-dose high-resolution CT scan on the lung bus. Have you investigated that further? Is that a goal that you have? What is the story there?

Dr ALLSOP: We have investigated that further on the advice that we have from senior people in the college of radiologists is that it is not possible to keep such a device calibrated on a mobile platform. Yes, if you are taking it somewhere and you have the time to set up and calibrate and then do the screening thereafter and then move it again. If it is going to stay in one place for a long period of time and then be moved—sure. But if you are putting on a bus and driving it around, the calibration is just not possible at this stage. What we are doing though is investigating the network of CT scanners across New South Wales to make sure that, should it be the case that we have a regional or remote area that does not have CT scanning facilities within a reasonable proximity, how do we invest in making sure that that equipment is made available in a fixed location within reasonable travel

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distance for those individuals? And especially focusing on areas where there is a higher prevalence of manufactured stonework being conducted.

The Hon. DANIEL MOOKHEY: Dr Colquhoun, I just want to return to that line of questioning about the choice of icare to pre-empt the SafeWork guidelines. Did you make that choice because you expected SafeWork Australia would be taking the time?

Dr COLQUHOUN: I probably cannot answer the specific question but we do believe evidence is emerging that high-resolution low-dose CT scans should be considered as first-line screening and we want to get on the front foot to make sure injured workers are screened appropriately.

The Hon. DANIEL MOOKHEY: Have you heard from SafeWork Australia is when they expect to be proclaiming those guidelines?

Dr COLQUHOUN: We have not.

The Hon. DANIEL MOOKHEY: In the process of your interactions with SafeWork Australia, have they reach the same conclusion that you have about screening technology and the change to the guidelines?

Dr COLQUHOUN: Most of the communication with SafeWork Australia is via SIRA so we have not engaged directly with SafeWork Australia on this particular issue.

The Hon. DANIEL MOOKHEY: Okay, but it is the case that effectively you have decided to adopt a tougher standard and a safer approach than currently prevails under the existing guidelines. That is fair?

Mr NAGLE: I think it is fair to say that we are reacting to what is in front of us. There has been quite a bit of debate and we think that the draft proposals make sense.

The Hon. DANIEL MOOKHEY: How long have these draft proposals been drafted for to the best of your knowledge?

Dr COLQUHOUN: I would need to check on that and provide that on notice.

The Hon. DANIEL MOOKHEY: This is work that the Commonwealth has been undertaking through the national task force? We are into year number four or five, is that right?

The Hon. DANIEL MOOKHEY: The task force was kicked off in 2017, was it not?

Dr COLQUHOUN: It was 1 July, 2018.

The Hon. DANIEL MOOKHEY: Right. So nearly two years and yet we still do not have anything even as basic as guidelines as to how we should be screening from it, including at the Commonwealth level?

Mr NAGLE: Yes, July 2019 is when they completed their final report. It has been under consideration by various governments since then.

The Hon. DANIEL MOOKHEY: So is it—

Mr NAGLE: Sorry, I have to correct that. That is the New South Wales Manufactured Stone Industry Taskforce which fed into the Federal—

Mr DAVID SHOEBRIDGE: I think the Federal one provided an interim report in December.

Mr NAGLE: That is right.

The Hon. DANIEL MOOKHEY: Basically, the Commonwealth is going slow. Is an unfair characterisation given that you as probably the leading buyer of these screening services have had to go on your own decision?

The Hon. TREVOR KHAN: One day you are likely to be in Government, Daniel.

The Hon. DANIEL MOOKHEY: Sure.

Mr NAGLE: I do not think we can answer that question because we cannot measure against any other process.

Mr DAVID SHOEBRIDGE: We can ask this: Have they changed any regulation? I think the answer to that is no, correct?

Mr NAGLE: That we are aware of.

Mr DAVID SHOEBRIDGE: Yes. They have not changed any regulation. Have they issued any new clear guideline? I think the answer to that is no, is that right?

CORRECTED

Mr NAGLE: That we are aware of.

Mr DAVID SHOEBRIDGE: Have they changed any legislative arrangement? I think the answer to that would be no.

Mr NAGLE: I am not sure that is their role. It is an advisory—

Mr DAVID SHOEBRIDGE: On all of those objective outcomes, they have not achieved any of those objective outcomes that you would hope. I think we can agree on that.

Dr ALLSOP: They are working towards a number of improvements in this environment.

The Hon. TREVOR KHAN: You are not going to pin them down.

Mr DAVID SHOEBRIDGE: Whilst they are working towards a number of improvements in the environment, on the ground you are dealing with, just in the first half of this financial year, 70 new workers coming in with a potentially life-threatening disease. For me, working towards goals and changing the environment so slowly is not responding to the fact that slow regulation is killing people.

Mr NAGLE: Our responsibility is to citizens in New South Wales, which is why we have made our decisions for our scheme.

Mr DAVID SHOEBRIDGE: I am not criticising your actions. I am asking you to reflect upon the Federal actions and whether or not they are helping you.

The CHAIR: Mr Shoebridge, I believe that the witnesses have answered multiple versions of your question.

The Hon. DANIEL MOOKHEY: Well I might ask a couple more questions. The Commonwealth interim task force said as their fourth recommendation: Developing national guidance on screening workers working with engineered stone. Presumably that is what you are talking about?

Dr ALLSOP: Correct.

The Hon. DANIEL MOOKHEY: And they have advised that their final report will be delivered to the COAG Health Council by the end of 2020, which means that at the end of the year we might get a view from them as to what the guidelines should be and then we might be waiting for an interminable time whether or not governments agree to implement it. Would it assist you in your responsibilities if New South Wales was to adopt a slightly more unilateral approach as Queensland has and as Victoria has in respect to some other aspects of the silicosis issue, or is it the case that we should be waiting for the Commonwealth to complete this work?

Mr NAGLE: As we mentioned, we believe our responsibilities are to the citizens of New South Wales and we are happy to be guided by that.

Dr ALLSOP: We will enact whichever guidelines or regulations come out. But it is our role to do that, not to set it.

The Hon. DANIEL MOOKHEY: Are you in dialogue with NSW Health about the proposition of a New South Wales notifiable dust diseases register?

Dr COLQUHOUN: Yes, we had discussions in late January around that specific point.

The Hon. DANIEL MOOKHEY: Directly with the Department of Health?

Dr COLQUHOUN: With the Department of Health and SafeWork NSW.

The Hon. DANIEL MOOKHEY: Not mediated by SIRA? Directly icare to NSW Health? Or is it icare through SIRA to NSW Health?

Dr COLQUHOUN: That particular meeting was arranged by icare with SafeWork NSW and NSW Health.

The Hon. DANIEL MOOKHEY: So you sponsored the meeting?

Dr COLQUHOUN: We arranged it.

The Hon. DANIEL MOOKHEY: Are you at all engaged—

The Hon. TREVOR KHAN: Can we just be clear whether Dr Colquhoun was at the meeting and whether he was the one who arranged it? Just so we are clear on it. We use terms like "we" and I am wondering who is the actor.

CORRECTED

Dr COLQUHOUN: I was at the meeting. I did not arrange it.

The Hon. DANIEL MOOKHEY: That was icare that sponsored the meeting or was it sponsored by NSW Health and you were invited?

Dr COLQUHOUN: The meeting was at icare's premises.

The Hon. DANIEL MOOKHEY: Hitherto, we have always understood that—I do not know what they are called anymore, the Better Regulation department. I think they are now in Customer Service. I cannot keep up. It was in dialogue with the Department of Health around a proposal to establish a New South Wales notifiable dust diseases register. Are you in any formal mechanism around that project? Is there a consultative committee? Is there a task force? Is there a—

The Hon. TREVOR KHAN: A working group?

The Hon. DANIEL MOOKHEY: A working group.

The Hon. TREVOR KHAN: We do not like those.

Mr NAGLE: We have been asked for our view and we have presented our view that we support the creation of the register.

The Hon. DANIEL MOOKHEY: How were you asked for your view, and how did you provide that view?

Mr NAGLE: I would have to take that on notice and come back to you.

The Hon. DANIEL MOOKHEY: But you are not on any formal group?

Mr NAGLE: No.

The Hon. DANIEL MOOKHEY: Right. Do you know if SIRA is?

Mr DAVID SHOEBRIDGE: Do you know if that group exists? I think that is the question.

The Hon. DANIEL MOOKHEY: That is probably a better question. Does the group exist?

Mr NAGLE: We know they are part of the working group in Safe Work Australia, but we do not follow exactly which groups are on and everything.

The Hon. DANIEL MOOKHEY: I cannot criticise you for that, but do you have any indication from NSW Health as to when it expects to have a proposition finalised?

Mr NAGLE: Not at the moment.

The Hon. DANIEL MOOKHEY: In our last review we made a recommendation that, should we not have a national scheme operating by the end of last year, New South Wales should embark upon a unilateral approach, which, at the time—to be fair—was effectively endorsed by the New South Wales Government's proposition. We are now three months beyond that period. Do you have any idea as to whether or not that is something the Government is pursuing?

Mr NAGLE: Again, we are not a policy or regulatory body. We are waiting to hear like everyone else.

The Hon. DANIEL MOOKHEY: Sure. I was not necessarily asking you about what advice you would provide. I am asking if you know whether or not such a timetable has been adopted or whether or not it is supposed to be delivered. Are you planning operationally for the existence of one?

The CHAIR: Mr Mookhey, I believe that question was asked.

The Hon. TREVOR KHAN: Will you also direct that question to Dr Colquhoun? He looks interested.

The Hon. DANIEL MOOKHEY: Dr Colquhoun?

Dr COLQUHOUN: This is my resting pose.

The Hon. GREG DONNELLY: It is a good one as far as we are concerned.

Dr COLQUHOUN: Through that meeting we do know that consideration for making silicosis a mandatory notification was discussed. I am not aware of any specifics around time frames.

The Hon. DANIEL MOOKHEY: The Government has announced that it is intending to provide some form of rebate to fabricators for the installation of additional safety-related equipment. Have you been consulted on that proposition?

CORRECTED

Dr ALLSOP: No, I do not believe that we have.

The Hon. DANIEL MOOKHEY: Were you asked to provide any advice for such a policy proposition?

Dr ALLSOP: No, our role is not to provide advice on policy in general.

The Hon. DANIEL MOOKHEY: Given that your bus has visited, amongst others, and you are the ones who have the best data as to who is developing this disease, have you been asked to provide even basic advice as to where that money would be best spent?

Dr ALLSOP: Because we are involved at the screening and compensation stage of the process, it is not always within our remit to provide that sort of input, and we do not always have the information to do so. I think everyone is aware that the manufactured stone industry has products that contain that high level of silica and anybody involved in using those products needs to take greater precaution.

The Hon. DANIEL MOOKHEY: To the best of your knowledge, is that scheme live?

Dr ALLSOP: Which scheme?

The Hon. DANIEL MOOKHEY: The rebate scheme for fabricators to be able to install additional safety-related equipment—I think to the value of $1,000.

Dr ALLSOP: I am not sure if that has started yet.

Mr DAVID SHOEBRIDGE: Dr Colquhoun, in terms of the medical position on how to respond to the risk, personal protective equipment would be the last step you take, would it not?

Dr ALLSOP: On the hierarchy of controls it is the final step. There are five or six before that.

Mr DAVID SHOEBRIDGE: So, from a medical point of view, you would hope that any policy response does not rely upon personal protective equipment but on the four or five steps that precede it?

Dr ALLSOP: Internationally, I think that has been the approach that all safety regulators would take.

The Hon. DANIEL MOOKHEY: You mentioned previously that you provide workers who have been identified as having silicosis with vocational assistance should they wish and to transition out of the industry. How many workers have requested that assistance and to how many have you provided it?

Dr ALLSOP: To date, the numbers have been relatively low. I think I do have them here. Five workers have been referred for vocational rehabilitation services, with a further three being referred to providers in the area.

The Hon. DANIEL MOOKHEY: You said that you have 70 for the last financial year. How many in total are on the books for silicosis?

Dr ALLSOP: I do not know that I have that number off the top of my head. The chronic silicosis is less life span-impacting then the more aggressive, acute and accelerated silicosis that has emerged more recently. We have a number of people who have silicosis who have been with us and who have been receiving our support for a fair number of years.

The Hon. DANIEL MOOKHEY: Assuming no-one has died, on the basis of the figures that you previously provided to the Committee, we are looking at 70 this year, 40 the year before and roughly nine each previous year? So we are looking at close to 130, 140, of which only five have sought to leave the industry. Is that a fair representation?

Dr ALLSOP: Five have sought vocational rehabilitation services from us. We cannot comment on how many may have sought to leave the industry via different means.

The Hon. DANIEL MOOKHEY: But is that your best proxy for understanding who is trying to leave? Is there any better figure?

Dr ALLSOP: There is no better figure that we have but it is not necessarily a good indicator of the numbers leading.

The Hon. TREVOR KHAN: People could just leave the industry.

Dr ALLSOP: Exactly, yes, and we would not know.

Mr DAVID SHOEBRIDGE: But if somebody has been exposed to silicosis in the industry and they have the early signs, but it is asymptomatic, and on medical advice they choose to leave the industry and have a period of unemployment or underemployment that follows, are they eligible for make-up pay provided by the scheme?

CORRECTED

Dr ALLSOP: Where we have deemed them to have at least 1 per cent impairment then, yes, they would be eligible for compensation under the scheme.

Mr DAVID SHOEBRIDGE: Has anyone received that?

Dr ALLSOP: I would have to double-check that and get back to you on notice.

Mr DAVID SHOEBRIDGE: What is the quantum of compensation and how long does it run for?

Dr ALLSOP: It is a lifetime entitlement under the dust diseases scheme—until retirement age, obviously, for income replacement.

Mr DAVID SHOEBRIDGE: And what is the cap? If they were earning 70 grand a year as a fabricator or installer—

The Hon. TREVOR KHAN: That is highly unlikely.

Mr DAVID SHOEBRIDGE: They might be working seven days a week. What would they be likely to be—

Dr ALLSOP: I would have to come back to you on notice with the exact capped amount.

The Hon. DANIEL MOOKHEY: On the vocational support—

The CHAIR: The Deputy Chair has a question.

The Hon. GREG DONNELLY: If I have understood the evidence given earlier by Dr Colquhoun, there appears to have been some anticipatory work done by icare with regard to the HRCT screen, and I presume that is being worked on inside icare. That is what I understand from your answer. Stepping back, icare, with its very focused role, is looking at this matter as it is unfolding and developing its thinking about how to deal with this. In New South Wales, we have the work that SafeWork NSW does and NSW Health. You may wish to take this question on notice—there is no ambush in this. This Committee will make recommendations about trying to provide some assistance in tackling this serious matter.

Do you believe it would be helpful to produce a recommendation that those three entities be working more closely in a structured way to tackle the issue before us? In other words, we have this enlivening that there is a serious problem in this area. You are doing your work, SafeWork NSW is doing its work, and NSW Health is as well, although it is slightly a step removed at this point—it is looking in but perhaps it has not fully structured its thinking. Do you believe there is a case to be made that these three bodies should be working cooperatively together, regularly meeting to consult and discuss how to tackle the issue before us? That is not to suggest that meetings are not taking place or that people are not getting invitations. I gather that perhaps there is some informality about this. In terms of regularising it and giving some structure and form to tackling the issue, is there not a serious argument that those three major bodies should pull together to tackle it?

Mr NAGLE: The New South Wales task force has been working with various representatives across government. I think we would be supportive of any recommendation that allowed us to give our information, advice and support in coming up with potential improvements—I will not say solutions—to this scenario. So, absolutely, we would be happy to support that.

The Hon. DANIEL MOOKHEY: I have a final question on vocational support. In order for a worker to access vocational support, must they have a level of impairment?

Dr ALLSOP: Yes, they must have non-zero impairment to access vocational support funded through the Dust Diseases Care scheme.

Mr NAGLE: Which is what Dr Allsop mentioned in his opening statement. We have actually amended how we assess people and we have tried to allow for that minimum percentage to ensure that we are giving people support at this time. In response to your earlier query regarding the number of cases, since 1 January 2000 we have had 261 cases of silicosis and 192 of these are still open.

Mr DAVID SHOEBRIDGE: Since when was that?

Mr NAGLE: Since 1 January 2000.

The Hon. DANIEL MOOKHEY: So 110 of the 261 cases have appeared in the past two years?

Mr NAGLE: Yes, that would align with the numbers.

Mr DAVID SHOEBRIDGE: So more than a quarter in the past eight months out of a 20-year period?

Mr NAGLE: Which reflects the focus on the industry.

CORRECTED

The Hon. DANIEL MOOKHEY: And also the fact that the industry did not really exist in 2000.

The Hon. TREVOR KHAN: It reflects the testing regime you have put in place.

Mr NAGLE: That is right.

Dr ALLSOP: Correct.

The Hon. TREVOR KHAN: The scanning machine.

The Hon. DANIEL MOOKHEY: It did not exist in 2000.

Mr DAVID SHOEBRIDGE: Well, that is part of it, and the level of disease. Surely it reflects the level of disease in the community, does it not?

The CHAIR: Order! We have reached time. Thank you for attending the hearing today.

Mr DAVID SHOEBRIDGE: Before we go, I indicate at least on my behalf that this has been hard work from icare. It is a very difficult area. I know that you are beaten up in parliamentary inquiries, but I think the move towards CT scanning for manufactured stoneworkers is essential and important. I commend you for it. The additional screening is clearly important and commendable. I thank you for that as well. I think there is a lot more to be done but I think we should acknowledge the work.

The Hon. DANIEL MOOKHEY: We should also acknowledge that you seem to be the most active of these agencies that we are seeing as well.

The Hon. TREVOR KHAN: Can I also say that I predicted before that the Hon. Daniel Mookhey might end up in government. I also thought Hillary Clinton would win at the last election. I could be wrong.

The CHAIR: On that note, thank you.

(The witnesses withdrew.)

(Short adjournment)

CORRECTED

JACKII SHEPHERD, Director, Occupational Hygiene Policy, Safe Work Australia, affirmed and examined

MICHELLE BAXTER, Chief Executive Officer, Safe Work Australia**,** affirmed and examined

AMANDA JOHNSTON, General Counsel and Branch Manager, Legal Policy Branch, Safe Work Australia, affirmed and examined

The CHAIR: I welcome our next witnesses from Safe Work Australia. Would anybody like to make a short opening statement?

Ms BAXTER: No, thank you.

The Hon. DANIEL MOOKHEY: Thank you for your appearance today. I do not know whether or not you were here for the previous session or for parts of the previous session. Did you hear some of the evidence? Is that correct?

Ms BAXTER: Yes, just towards the tail end.

The Hon. DANIEL MOOKHEY: So you heard that the latest update that icare gave was that, to the best of its knowledge, there were 70 new cases of silicosis detected in New South Wales in the period from July last year to date. Did you hear that?

Ms BAXTER: Yes.

The Hon. DANIEL MOOKHEY: Do you track numbers nationally?

Ms BAXTER: We do track numbers nationally, but our numbers are tracked according to accepted workers compensation claims and, therefore, as you would appreciate, there is somewhat a lag in terms of the data coming forward to us from the jurisdictions and then our capacity to publish that data.

The Hon. DANIEL MOOKHEY: What is the trend showing you?

Ms BAXTER: The data that I have here is across the period from 2010-11 to 2017-18. Are you asking in terms of silicosis cases across Australia?

The Hon. DANIEL MOOKHEY: Yes.

Ms BAXTER: Across Australia for that period of time we have a figure of 60 silicosis cases.

The Hon. DANIEL MOOKHEY: From 2011?

Ms BAXTER: From the 2010-11 to 2017-18 financial years.

The Hon. DANIEL MOOKHEY: Can you give me that figure again?

Ms BAXTER: Across Australia for that period there were 60 cases of silicosis.

The Hon. DANIEL MOOKHEY: Effectively you have recorded 60 cases over a decade?

Ms BAXTER: Correct. That is based on data that has been provided to us by each of the Australian jurisdictions.

The Hon. DANIEL MOOKHEY: So icare has on its books 262 from 2000 onwards, of which at least 110 come from the past two years and that is within one State. I think Queensland has gone public with a figure that is circa 140-150. Without wanting to go further down that rabbit hole, it seems the way in which you record data is not consistent with the way States do it.

Ms BAXTER: No, it is not. The data that Safe Work Australia collates is based on data provided by the jurisdictions. That data is provided based on an agreement by the jurisdictions as to what data they will provide. The cases that I have indicated to you are based on accepted workers compensation claims, which is quite a different set from any jurisdiction that may, for instance, have been health screening and has picked up cases of silicosis in the past couple of years. These are not dependent upon an accepted claim for workers compensation.

The Hon. DANIEL MOOKHEY: Do you agree that the rise in the number of silicosis cases in New South Wales and nationwide is a crisis?

Ms BAXTER: I am aware that there has been an increased identification of cases of advanced silicosis in the last couple of years.

CORRECTED

The Hon. DANIEL MOOKHEY: Given that this is a preventable disease do you think that the public should be alarmed that we are hearing such constant evidence that the silicosis cases are exploding and regulators are going really slow?

Ms BAXTER: With respect, I am here representing Safe Work Australia. You may or may not be aware Safe Work Australia is a body that is constituted under Federal legislation. It is the statutory body. And in fact Safe Work Australia is not me, the CEO, or my staff here today at the table; it is actually the Member's body, which is comprised of a representative from each jurisdiction around Australia, including the Commonwealth, two representatives nominated by the Australian Council of Trade Unions [ACTU] and two representatives nominated by employer groups, one from the Australian Industry [AI] Group and one from the Australian Chamber. So it is they who make the decisions and have the views in relation to issues that may be emerging, for instance.

The Hon. DANIEL MOOKHEY: Sitting here, is it your evidence that the Commonwealth has no agency that is responsible for coordinating a national response to silicosis? Is that the inference we should take from the answer you just gave?

Ms BAXTER: No.

The Hon. DANIEL MOOKHEY: What is the Commonwealth agency if it is not you? Are you responsible for developing the Commonwealth strategy or not?

Ms BAXTER: You may be aware that the Department of Health under Professor Brendan Murphy convened a dust disease task force last year—

The Hon. DANIEL MOOKHEY: We will get to that.

Ms BAXTER: —made up of a number of experts and representatives across Australia. It is that body which has been tasked with pulling together a national response.

The Hon. DANIEL MOOKHEY: So what does Safe Work Australia do in this respect? What are you guys doing about the silicosis crisis?

Ms BAXTER: In relation to the issue of silica and in relation to the issue of cases of diagnosed silicosis there are a number of actions that Safe Work Australia is taking based on decisions of the Member body asking for work to be taken. I might hand to my colleague Ms Shepherd—

The Hon. GREG DONNELLY: Sorry, I do not understand what you just said about "the Member body asking for work to be taken". What do you mean by that?

Ms BAXTER: As I explained, Safe Work Australia is not me sitting here as the CEO; it is not my staff sitting either side of me. Safe Work Australia, under our legislation, under the legislative remit that we work under, is the Member's body—that is Safe Work Australia. That is the thing that is Safe Work Australia.

The Hon. GREG DONNELLY: Yes. We have done our homework in regard to Safe Work Australia. I think you can take it as read that we have done our homework about how it is structured and how it operates. But I did not understand a part of your answer about the Member body, what specifically—

Ms BAXTER: Just to be clear, the Member body is not an advisory body. It is a decision-making body. So it is quite different to, for instance, in a corporate setting where you might have a board that is advisory to the operations of the business. Safe Work Australia is a decision-making body so it is they who decide, based on voting arrangements that are set out in our legislation, what work Safe Work Australia will undertake.

The Hon. DANIEL MOOKHEY: Do you want to take us through what exactly the decision-making body has voted for you to do?

The Hon. GREG DONNELLY: In regard to the silicosis issue, with respect to manufactured stone specifically.

Ms BAXTER: Yes. Certainly. Ms Shepherd?

Ms SHEPHERD: Absolutely. Occupational lung diseases including silicosis are a priority condition under the Australian Work Health and Safety Strategy. The strategy is running from 2012 to 2022. In 2017 we did a mid-term review of that strategy and confirmed that occupational lung diseases including silicosis are a priority condition. Part of what we did as an agency, we were asked to look at a workplan to address occupational lung diseases including silicosis that could help address some of the gaps that were being seen. So in December 2018 Safe Work Australia Members agreed to an occupational lung diseases workplan. That workplan has three key initiatives: education and awareness; research; and data investigation, collection and analysis. That workplan

CORRECTED

is complementing other work that we are conducting including reviewing the workplace exposure standard, developing a national guide for silica and silica-containing products. We more recently were tasked by Members to develop a model National code of practice for working with engineered stone and we are working on that as well.

The Hon. DANIEL MOOKHEY: When you say you have been tasked with developing a workplace exposure standard, when were you tasked?

Ms SHEPHERD: The review of the workplace exposure standard started back in 2017.

The Hon. DANIEL MOOKHEY: And when are you meant to conclude?

Ms SHEPHERD: We will be concluding this year. We were asked by multiple governments including the Commonwealth to prioritise the review for respirable crystalline silica [RCS] and that has been completed.

The Hon. DANIEL MOOKHEY: When do you anticipate the decision-making body will make a decision as to what should be the workplace exposure standard?

Ms SHEPHERD: Work Health and Safety Ministers agreed that the workplace exposure standard for respirable crystalline silica will be reduced to 0.05 milligrams per cubic metres.

Mr DAVID SHOEBRIDGE: Is that going to keep workers safe? Is that your advice—that it is going to keep workers safe if they are exposed to that level of silica?

Ms SHEPHERD: I cannot comment upon that. That was the Work Health and Safety Ministers' decision for that reduction and that is to be implemented—

Mr DAVID SHOEBRIDGE: I am not asking about their decision. I am asking about your expertise. How many people are employed in your organisation?

Ms BAXTER: Approximately 100.

Mr DAVID SHOEBRIDGE: Whether or not there is any expertise within the 100 people employed in your organisation that has a view or provided you with advice that exposure to that level of silica is safe.

Ms BAXTER: We might, if it would assist, just talk you through the process by which the workplace exposure standard—

Mr DAVID SHOEBRIDGE: No. What would really assist would be answering my question.

The Hon. CATHERINE CUSACK: Point of order—

The CHAIR: Mr Shoebridge, please allow the witness to provide an explanation before you jump in on her.

Mr DAVID SHOEBRIDGE: Provided it answers my question, they can do it however they like.

The Hon. TREVOR KHAN: No.

The Hon. CATHERINE CUSACK: No.

Mr DAVID SHOEBRIDGE: They have to answer the question.

The CHAIR: Sometimes they need to provide a little bit of background in order to answer the question.

Mr DAVID SHOEBRIDGE: Of course, provided it answers my question.

The CHAIR: Please allow the witness to answer.

The Hon. TREVOR KHAN: Can I just say these witnesses are here voluntarily. I think they are entitled to be treated with courtesy. I do not want to stop in any way, I do not want to take any of your time up, but I think they are here to give us some assistance. I think you have to show them some grace, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: I say again I do not mind how they go about it, provided they answer the question.

The CHAIR: Please continue your answer.

Ms BAXTER: Okay. Just coming back to your question about whether, of the approximately 100 staff in the agency, there is anyone who has the expertise to offer an opinion in relation to whether 0.05 is potentially injurious to workers, what I was about to explain is the process we undertook in relation to arriving at a proposed or draft level standard or level for RCS was that we actually tendered for that work to external experts outside of Safe Work Australia. We do not have sufficient expertise in-house to be able to express those opinions. So we

CORRECTED

had an organisation that we engaged to undertake the review and then that work was peer reviewed by an independent expert.

Mr DAVID SHOEBRIDGE: And what was their advice? Is it their advice that that is safe?

Ms SHEPHERD: The health based recommendation in the draft evaluation report indicated a reduction to 0.02 milligrams per cubic metre.

The Hon. DANIEL MOOKHEY: That is a segue to what I was going to ask. This was my line of questioning.

Mr DAVID SHOEBRIDGE: No, sorry—did any of them provide advice, this external consultant—my question is simple: Did they say exposure to the level that you are recommending is safe? Is that the advice you got from your external consultant?

Ms SHEPHERD: That is not what they were asked to provide advice upon.

The Hon. DANIEL MOOKHEY: Ms Shepherd, you just said 0.02 was what came back from the peer review process as to what the health provider advice was.

Ms SHEPHERD: Correct. Yes.

The Hon. DANIEL MOOKHEY: Before I ask my next question I might just ask you to answer a question which I do not think you had the chance to answer, which is: When is the new workplace exposure standard meant to apply from?

Ms SHEPHERD: It was agreed last year by Safe Work Australia Members that 0.05 milligrams per cubic metre would be applied as soon as practicable and no later than 1 July 2020.

The Hon. CATHERINE CUSACK: What is the current standard?

The Hon. DANIEL MOOKHEY: It is 0.1.

Ms SHEPHERD: No, it has been changed. It is now 0.05, because it was agreed to be changed.

The Hon. DANIEL MOOKHEY: But prior to that change it was 0.1.

Ms SHEPHERD: Correct.

Mr DAVID SHOEBRIDGE: When did that change take effect.

Ms SHEPHERD: I believe it was published 16 December 2019.

The Hon. DANIEL MOOKHEY: The proposition that came back from the peer reviewed evidence, which is the health recommendation was 0.02, that was the position adopted by the Victorian Government—is that correct?

Ms SHEPHERD: Yes, the Victorian Government did lobby for 0.02 to be adopted.

The Hon. DANIEL MOOKHEY: Were they joined by any other State?

Ms SHEPHERD: No, not formally.

The Hon. DANIEL MOOKHEY: The New South Wales Government, though, took a position of 0.05—is that correct?

Ms BAXTER: You would need to ask the New South Wales Government that.

The Hon. DANIEL MOOKHEY: They are on the public record saying that was the position that they were supporting, so—

Ms BAXTER: If that is the public position, then yes.

The Hon. CATHERINE CUSACK: This is a gentle point of order.

The Hon. DANIEL MOOKHEY: Sure.

The Hon. CATHERINE CUSACK: These are policy matters that the Minister deals with at that council level. There is a limit to how many—

Mr DAVID SHOEBRIDGE: Their board deals with it.

The Hon. ROD ROBERTS: I think the CEO was at the meeting where this was discussed.

CORRECTED

The Hon. DANIEL MOOKHEY: I take your point.

The Hon. CATHERINE CUSACK: Yes.

Mr DAVID SHOEBRIDGE: The evidence is that it is an autonomous board.

The Hon. CATHERINE CUSACK: I just want to point out some of those policy issues on that at the moment, particularly in relation to inter-governmental agreements.

The Hon. DANIEL MOOKHEY: Sure. But it is the case that the proposition that was advanced for 0.02 was endorsed by Victoria but New South Wales' preferred stand on it was 0.05.

Ms SHEPHERD: The agreement was accompanied by further research to be undertaken. At 0.02, there are limitations around measurements.

The Hon. DANIEL MOOKHEY: But 0.02 is the position that currently prevails in the United States. It is the position that currently prevails in Mexico. It is the position which, to be fair, the manufactured stone at least in the US market has been advancing in safety guidelines as their preferred exposure standard levels and have been doing so for effectively for 15 years. We have learned that here. Why is it the case, therefore, that there is conjecture at a national level about this? Why are we not immediately going to the safest standard?

Ms BAXTER: That was a majority decision of the members of Safe Work Australia to recommend to Work Health and Safety Ministers a standard or a level of 0.05.

The Hon. DANIEL MOOKHEY: When you say there was a majority decision, was there a vote?

Ms BAXTER: Yes. I believe there was a vote on that occasion.

The Hon. DANIEL MOOKHEY: What was the vote?

Ms BAXTER: I do not have those details to hand.

Mr DAVID SHOEBRIDGE: Could you provide them on notice?

Ms BAXTER: I will take a question on notice.

Mr DAVID SHOEBRIDGE: Are the minutes of the meeting is publicly available?

Ms BAXTER: No, they are not.

The Hon. DANIEL MOOKHEY: But it is the case that, even after we make this change, a stonemason in Mexico or the United States will have more protection than will a stonemason in New South Wales and Victoria or Queensland. That is fair?

Ms BAXTER: There were significant concerns raised, both through our public consultation period in relation to the draft standard and then through our Members at our discussions, about the capacity or the ability of anyone to measure to a level of 0.02.

The Hon. DANIEL MOOKHEY: That is over an eight-hour period, though, is it not?

Ms BAXTER: Yes.

The Hon. DANIEL MOOKHEY: When you say there were significant objections—

The Hon. TREVOR KHAN: That is not what she said.

The Hon. DANIEL MOOKHEY: What did you say—"feedback"?

Ms BAXTER: "Concerns". So SafeWork Australia, the Members body, has asked the agency to undertake some further research and work to determine whether in fact that capacity or that technology exists.

The Hon. DANIEL MOOKHEY: Were those concerns raised by the engineered stone importers?

Ms SHEPHERD: I do not remember. I can take that on notice and let you know.

The Hon. DANIEL MOOKHEY: Were they advanced by Fabricate?

Ms SHEPHERD: Again, I do not have the feedback that we collected from that in front of me.

The Hon. DANIEL MOOKHEY: Okay. To the best of your knowledge, was it advanced by any Government as being a consideration?

Ms SHEPHERD: As in whether or not it could be measured?

CORRECTED

The Hon. DANIEL MOOKHEY: Yes.

Ms SHEPHERD: It was provided by various Members, yes, and through the Safe Works of the various States and Territories.

The Hon. DANIEL MOOKHEY: When you say that you went out to public consultation, did you rely on the Member bodies to do that, or did you do it yourself?

Ms SHEPHERD: No. We did it ourselves. We have an engage platform from which we are releasing all of the draft evaluation standards and draft evaluation reports onto our engage profile for public feedback. We are encouraging that throughout the entire process.

The CHAIR: I seek a little bit of clarification. For my own mind, can I clarify this: The Member body requested that Safe Work Australia develop some guidelines around the amount of exposure for silica. You have said that there was not enough experience in your organisation to do that so you then tendered it out and it was then peer reviewed. That information came back to you at 0.02, yet the Member body has overruled the information that was tendered and peer reviewed and has gone with an exposure standard of 0.05.

Ms BAXTER: That is correct, based on a number of considerations that the Member body took into account, including as I previously stated, uncertainty around whether or not a level of 0.02 could actually be accurately measured and on the Safe Work Australia agency doing further work to explore that issue. There was also consideration that if that were the case, then Members would reconsider the level.

The Hon. TREVOR KHAN: Can I ask question in due course that flows from this?

The CHAIR: You probably want to ask the same question.

The Hon. TREVOR KHAN: No. What is the further work that needs to be undertaken?

Ms SHEPHERD: The further work that we are doing is that we are investigating the currently available collection equipment and analysis techniques within Australia to be able to measure at and below 0.02.

The Hon. TREVOR KHAN: Is that work being undertaken by Safe Work Australia itself or is it retaining other experts in the field?

Ms SHEPHERD: Again, we have an expert on contract to do that work.

The Hon. TREVOR KHAN: When are you anticipating a report from that expert or experts?

Ms SHEPHERD: June of this year.

The Hon. TREVOR KHAN: What will happen to the report?

Ms SHEPHERD: The report will be provided to Safe Work Australia Members for consideration.

Mr DAVID SHOEBRIDGE: Has the existing report been published anywhere—the one that you relied upon for the initial decision?

Ms SHEPHERD: The draft evaluation report?

Mr DAVID SHOEBRIDGE: Yes.

Ms SHEPHERD: Yes. It is available on our website.

The Hon. DANIEL MOOKHEY: Does that include the health advice about 0.02?

Ms SHEPHERD: It includes the health-based recommendations of 0.02.

The Hon. CATHERINE CUSACK: Can I ask a couple of questions?

The Hon. DANIEL MOOKHEY: I have only one very short one just to follow up, just to complete the line.

The CHAIR: Then follow your line of questioning and then we will go to the Hon. Catherine Cusack.

The Hon. DANIEL MOOKHEY: You said that that was a decision taken on 16 December 2019. Was that the only decision taken by that body in respect to what the—

Ms SHEPHERD: The updated exposure standard was published on 16 December. That came after the Members meeting in November.

The Hon. DANIEL MOOKHEY: Was any other decision taken in the November meeting that is relevant?

CORRECTED

Ms SHEPHERD: For this?

The Hon. DANIEL MOOKHEY: Yes.

Ms SHEPHERD: It was an agreement to reduce to 0.05 and an agreement to do the further work.

The Hon. DANIEL MOOKHEY: That is it?

Ms BAXTER: There were also issues in relation to work in relation to silica generally.

The Hon. DANIEL MOOKHEY: We are going to get into that. I just wanted to ask: At the last available ministerial council—

The Hon. TREVOR KHAN: Well, no. You asked it.

The Hon. DANIEL MOOKHEY: I did. It was answered.

The CHAIR: You asked and—

The Hon. DANIEL MOOKHEY: I did, and it was answered, to be fair, in context.

The CHAIR: No, no. Please allow—

The Hon. TREVOR KHAN: You asked, "What else?" She started to answer and you cut her off. Let's find out what else.

The Hon. DANIEL MOOKHEY: No. I am asking directly was any other decision made at ministerial level at that meeting?

Ms BAXTER: Just to be clear, the meeting that we are talking about in November was a meeting of Safe Work Australia Members. Ministers agreed via correspondence to the level that was recommended by the members at their November meeting. There has not been a meeting of Ministers in relation to this issue thus far.

The Hon. DANIEL MOOKHEY: Right. That is useful.

The Hon. CATHERINE CUSACK: I just want to ask about the peer review. That did not pick up the measurement issue?

Ms SHEPHERD: Yes, it did. The other thing on the draft evaluation report is a line about whether or not it was considered that it could be measurable and at that stage I believe it was unclear whether or not it could be measured at 0.02. Part of the public feedback that we are collecting with these draft evaluation reports is about that measurement. We are getting feedback from occupational hygienists and other experts about whether those values can be accurately measured.

The Hon. GREG DONNELLY: I circle back to the questioning at the commencement about the numbers of persons that have been identified, if I can use that generic word, with a condition. I understand from the answer, Ms Baxter, that from the period 2010-11 through to 2017-18 your records show, based on data provided to you meeting particular criteria that I will come to in a moment, that there are 60 people diagnosed with the condition.

The Hon. TREVOR KHAN: No, no.

Mr DAVID SHOEBRIDGE: Sixty people have received workers compensation.

The Hon. GREG DONNELLY: Quiet please. Could you just answer the 60 people?

Ms BAXTER: Yes—60 people who have been diagnosed and have had workers compensation claims accepted.

The Hon. GREG DONNELLY: Diagnosed, and it is not and/or. It is diagnosed and with respect to their workers compensation claim that they have made with respect to this condition, and that workers compensation claim has been accepted by the relevant authority in the State or Territory. Is that right?

Ms BAXTER: Correct, yes.

The Hon. GREG DONNELLY: With that formula that is used as the way in which the data is collected from the States and Territories—in other words, those conditions are met; the person has been diagnosed and the workers compensation claim has been accepted by the authority in the State or Territory—where does that definition come from?

Ms BAXTER: Which definition?

CORRECTED

The Hon. GREG DONNELLY: The definition was used by Safe Work Australia for the collection of this information. It is a definitional matter that is used and followed to produce that figure of 60. Where does that definition come from? Where does it sit?

Ms BAXTER: Definition of what, sorry?

The Hon. GREG DONNELLY: To have that counted as one of the 60 for that period a person needs to have been diagnosed—

Ms BAXTER: Correct.

The Hon. GREG DONNELLY: And has made a workers compensation claim in the State or Territory and that that workers compensation claim has been accepted. That gets them over the line.

Ms BAXTER: Correct.

The Hon. GREG DONNELLY: Each State and Territory has submitted information according to that criteria?

Ms BAXTER: That is right.

The Hon. GREG DONNELLY: And that gets you to the 60.

Ms BAXTER: Yes, in relation to workers compensation data.

The Hon. GREG DONNELLY: No.

Ms BAXTER: This is a dataset that is a collection of workers compensation data. It is not pretending to be anything else. It is not pretending to pick up every case of silicosis that has been diagnosed in Australia in the past two years. In fact, it is probably not even capable of doing that because of the time lag that you get between diagnosis, putting in a claim and a claim being accepted and then being reported upon.

The Hon. GREG DONNELLY: That is a debatable point. Please go back to the question I asked. Have I misunderstood you that the actual 60 only relates to individuals who have made a workers compensation claim and that the claim has been accepted by the respective State or Territory authority?

Ms BAXTER: Yes.

The Hon. GREG DONNELLY: With respect to that definition—I will use the definition which is the criteria for the registration of information by Safe Work Australia with respect to this condition—where did that definition come from? Has the Member component parts of Safe Work Australia said, "Listen, this is the way we want to collect the information. Just aggregate the live claims in each State and Territory." Is that where that comes from? I am trying to get to the bottom of who made the decision that that is the appropriate or the legitimate basis of collecting information to understand the incidence of this condition?

Ms BAXTER: These decisions in relation to the datasets that Safe Work Australia hold go back a number of years. I cannot recollect, but it is certainly made at jurisdiction level, whether it was made at ministerial level or at officials level but it was some years ago that these are datasets that they would like Safe Work Australia to collate and this is the data that we, the jurisdictions, will provide you. Let me be clear here Safe Work Australia has no power to compel jurisdictions to provide this information. We are dependent upon, as it were, the goodwill of the jurisdictions to provide us the information that has been agreed to be provided.

The Hon. GREG DONNELLY: I understand all of that but I go back to the evidence given by the Hon. Daniel Mookhey—

The Hon. TREVOR KHAN: I hope he did not give evidence. He might have asked a question.

The Hon. GREG DONNELLY: The reference made by the Hon. Daniel Mookhey to the previous witness from icare. I think you heard at least part of the testimony. We have the situation in this State whereby there are numbers of cases, in the several dozens, being identified through the screening that is being undertaken by the State body that is overseeing the screening. And there is real dissonance in the numbers because obviously the screening is producing a number which is in front of those claims that are claims that are made and accepted by the workers compensation authority.

Mr DAVID SHOEBRIDGE: Question?

The Hon. GREG DONNELLY: My question is, in terms of changing the way in which this information is collected by Safe Work Australia what is the mechanism for the component bodies to open up that procedure to change the definition for the purposes of calculating?

CORRECTED

Ms BAXTER: Sure, that would need to be a majority decision of the Member body that each jurisdiction was going to provide that data to Safe Work Australia to be collated.

The Hon. GREG DONNELLY: That would need to be a majority decision of the body?

Ms BAXTER: Yes.

The Hon. TREVOR KHAN: And it would require consistency, if it were to be by way of diagnosis, of screening processes across all the States. Would it not?

Ms BAXTER: Yes, that is right.

The Hon. TREVOR KHAN: That is why you have got the figure that you have got using the workers compensation claims because it seems to be the only perhaps consistent figure that could be relied upon from the different States.

Ms BAXTER: Yes, that is right.

Ms SHEPHERD: May I talk a little bit about the data investigation that we are undertaking at Safe Work Australia to try to identify some other silicosis cases because we do acknowledge that the national dataset for workers compensation based statistics is for a very set purpose and it collects very specific information? As an agency we highlighted to Members that this was a big gap in the dataset and there are other ways that could be investigated. One of the projects that Members agreed for the agency to undertake is data investigation and collation.

So we are investigating the measures to improve that data and we are working with the Australian Institute of Health and Welfare, the Australian Bureau of Statistics and the Commonwealth Department of Health to determine whether a combination of datasets can more accurately identify silicosis cases. Because of where each of them lie and the purpose of each dataset, we are trying to find out if we can do a data linkage project for that to try to better identify where this disease is coming through. Being able to link into the Australia Bureau of Statistics actually allows us to look at things like the census data so it is also very important in a work, health safety sphere to see what industries and what workforces are being affected by this disease. We are trying to look at it at a very comprehensive level.

The CHAIR: With the project around the datasets, is any work occurring to standardise the way that data and measurement is taken between the States? As the Hon. Trevor Khan rightly pointed out, each State is analysing the data differently. For example, New South Wales has seen a marked increase in the past 12 months.

The Hon. TREVOR KHAN: It is not just a question of analysis, it is actually what we are doing.

The CHAIR: Do the testing, yes.

The Hon. TREVOR KHAN: And what Queensland has done and some other States have done.

The CHAIR: It is the number of tests that have occurred.

Ms SHEPHERD: Part of that data linkage is investigating what lines up with what. Yes, that will be looked at as part of that.

Mr DAVID SHOEBRIDGE: I will deal with the interim advice that has been provided by the taskforce. Are you aware of that interim advice?

Ms BAXTER: Do you mean the Dust Disease Taskforce?

Mr DAVID SHOEBRIDGE: Correct.

The Hon. DANIEL MOOKHEY: Are you on the task force?

Ms BAXTER: I am a member of the taskforce so I am aware of it. If I may though, I am unable to speak on behalf of the task force. I am but one member. It is a Commonwealth taskforce. My understanding is I am not able to express opinions or views in relation to Commonwealth matters appearing before a State inquiry.

Mr DAVID SHOEBRIDGE: I will let you answer the questions as you feel able to answer them. But you are aware of the interim advice?

Ms BAXTER: Yes.

Mr DAVID SHOEBRIDGE: Are you aware that the first finding that government interventions undertaken in response to the rising cases of accelerated silicosis appear to have been inconsistently implemented and monitored, creating an unequal and fragmented level of health protection. Are you aware of that finding?

CORRECTED

Ms BAXTER: I am aware of the contents of the interim advice, yes.

Mr DAVID SHOEBRIDGE: Do you agree with that finding?

Ms BAXTER: As I have explained, I am here representing Safe Work Australia, the Members body. The Members body has not expressed an opinion in relation to its position on the interim advice.

Mr DAVID SHOEBRIDGE: Has Safe Work Australia undertaken any work to ensure that government interventions are consistently implemented across the States and Territories? Do you think that is the job of State government?

Ms BAXTER: If we are talking at a broader level, of course, Safe Work Australia developed the model Work Health Safety law as well as a National compliance and enforcement policy. So at the broader level, yes, that was an attempt, and I think a quite successful one, to try to have every jurisdiction in Australia take forward its enforcement and compliance activities in a similar manner.

Mr DAVID SHOEBRIDGE: But these findings are about behaviour and government responses, State and Federal, under the reformed national workplace regulation. This about the current system failing. Do you accept that?

Ms BAXTER: No, I do not accept that. I need to make the point that Safe Work Australia is not a regulator. We have no enforcement or compliance role in relation to the model Work Health and Safety laws. I think it would be unfair of me to try and answer on behalf of all of the jurisdictions around Australia whether or not their enforcement and compliance activity was appropriate in relation to the issue of silicosis.

Mr DAVID SHOEBRIDGE: One of the other findings of the task force that you are on is this:

> Acknowledging that, the highest level of protection required under the WHS laws is to eliminate all risks, including by eliminating hazards, there is growing support for the consideration of the prohibition of the importation of some of the engineered stone products that have very high levels of silica (and then substituting with products with lower concentrations of silica or alternative products).

What is your organisation doing to address that finding?

Ms BAXTER: That is an interim advice to the Commonwealth. It is not a settled position. My understanding is the final report will go to the Federal Health Minister at the end of 2020. Just in relation to Safe Work Australia, it has no capacity to ban the import or otherwise of a material. That would be a matter for the Commonwealth.

Mr DAVID SHOEBRIDGE: My question was not what you are not doing or what you are not able to do, my question was what you are doing in response to that finding? If the answer is that you are not doing anything in response to the finding, I do not mind, but would you answer the question?

The Hon. TREVOR KHAN: The witnesses are trying to be helpful.

Ms SHEPHERD: Safe Work Australia Members, as I mentioned earlier, have agreed to a model code of practice to be developed for working with engineered stone. That model code of practice will align with the model Work Health and Safety laws and, therefore, will address elimination and substitution.

The Hon. DANIEL MOOKHEY: What is the timetable for that work to complete?

Mr DAVID SHOEBRIDGE: Sorry, no. Is the model code going to include a prohibition, as proposed?

Ms BAXTER: Sorry, if I may, sir, I think you are reading from initial findings rather than early recommendations from the interim report.

Mr DAVID SHOEBRIDGE: That is what I said, yes. Finding number 5.

Ms BAXTER: Yes, they are findings, but the recommendations do not go to those matters.

Mr DAVID SHOEBRIDGE: But I am asking what you are doing in relation to the findings. The findings are important, are they not?

Ms SHEPHERD: As Ms Baxter has also said, Safe Work Australia Members have not yet formally considered this report. It was only released in December and Members have not yet had the time to consider that as a membership group.

The Hon. DANIEL MOOKHEY: I think it was released in January, but your point is still valid. The code of practice that Safe Work Australia has been tasked with developing, what is the deadline for that work to complete?

CORRECTED

Ms SHEPHERD: We do not have a deadline for that as yet. We will be taking a draft code of practice to Members for consideration this year. Because it will be a new model code of practice and it may come with some regulatory amendments—we do not know yet; we still need to scope that out—we do need to undertake a regulatory impact analysis with the Office of Best Practice Regulation. That is a little bit time consuming and generally that takes about 12-18 months.

The Hon. DANIEL MOOKHEY: So it is not unreasonable for us to conclude that, to the extent to which there is going to be a National code of practice, it is a date that we cannot depend on at this point in time?

Ms SHEPHERD: Correct, but there is also a National guide for working with silica and silica-containing products that aligns with the Work Health and Safety laws.

The Hon. DANIEL MOOKHEY: You are in the process of updating that, I understand.

Ms SHEPHERD: Updating it. I am sorry?

The Hon. DANIEL MOOKHEY: Is that the guideline on screening workers?

Ms SHEPHERD: No, that is the health monitoring guidance. That is updated and that is due to be published this Friday.

The Hon. DANIEL MOOKHEY: What responsibility does Safe Work Australia have in respect of the findings and recommendations of the interim Dust Disease Taskforce at a Commonwealth level? What authority, advice or responsibility? Are you engaged in that process? Do you have any responsibilities under that process or not?

Ms BAXTER: As I indicated, I am a member of the Dust Disease Taskforce representing Safe Work Australia.

The Hon. DANIEL MOOKHEY: Is your agency in a position to provide the Commonwealth Health Minister with advice, independent of your Members' bodies, or in conjunction with your Members' bodies?

Ms BAXTER: No. As I have explained, Safe Work Australia is the Members body.

The Hon. DANIEL MOOKHEY: Other than membership of the task force, does Safe Work Australia have any other responsibilities for policy advice at a Commonwealth level, enforcement activities or regulatory responses?

Ms JOHNSTON: No, we are not a regulator. We have no responsibility for enforcement or compliance and we do not provide Commonwealth policy.

The Hon. DANIEL MOOKHEY: Is that the Department of Health, therefore, which is assuming that role?

Ms BAXTER: From a work health and safety perspective in the Commonwealth, that would be Comcare.

The Hon. DANIEL MOOKHEY: Comcare, okay. Is there any other Commonwealth agency that is engaged in this process?

Ms JOHNSTON: The Department of Health is engaged in the process. It provides the secretariat support for the taskforce. It also has matters of public health at the Commonwealth level. Comcare is the regulator at the Commonwealth level. The Attorney-General's Department has Commonwealth policy for work health and safety.

The Hon. DANIEL MOOKHEY: Are you aware of the timetable for the development and/or introduction of a national dust diseases registry?

Ms BAXTER: No, I think that question would be better referred to Professor Murphy.

The Hon. DANIEL MOOKHEY: Have you been asked to provide advice on the utility of such a register?

Ms BAXTER: No.

The Hon. DANIEL MOOKHEY: You have not been asked? No-one has asked you what you think?

The Hon. TREVOR KHAN: She said no.

The Hon. DANIEL MOOKHEY: I find that extraordinary, thus I am following up.

The Hon. CATHERINE CUSACK: You are not. You are just repeating the question.

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The CHAIR: I believe the question has been answered.

The Hon. CATHERINE CUSACK: I just wanted to ask some questions about the data. Forgive me my inexperience, but we heard earlier about the screening picking up cases where there are—I think it was described as precondition indicators. In other words, there were no symptoms but there were indicators of the presence of silica in the lungs. How is that classified? If someone is screened and found to have precondition indicators, are they regarded as having the disease or not having the disease?

Ms SHEPHERD: We cannot answer that question. That is a question for the workers compensation authorities or for the doctors who will be diagnosing that.

The Hon. CATHERINE CUSACK: In that case, they have not made a claim. I need to go back to them in relation to how that is being defined. Some of the figures that have been given from you have come from—

Ms JOHNSTON: If they have not made a claim they would not fall within our dataset. We would not know about it.

Mr DAVID SHOEBRIDGE: Not on the radar.

Ms JOHNSTON: They would not be on the radar.

The Hon. CATHERINE CUSACK: This is potentially explaining some of the differences between what we are learning from the screening versus how the data is being reported.

Ms JOHNSTON: Yes. With respiratory lung disease, obviously some things may be classified broadly and the actual lung disease may not be known at the time of pre-screening. It is not until later in the piece that a silicosis diagnosis may be given and then we get that data. You may have a lot more respiratory lung disease cases than you do, finally, towards the end, have silicosis diagnosis.

The Hon. CATHERINE CUSACK: There are two interpretations, but there has been a suggestion that there is an increase in the occurrence of the disease. Is it possible that it is an increase in the detection of it, or a reduction in undiagnosed cases, that we are seeing?

Ms BAXTER: I think it could be possible, but I am not an expert in relation to this.

The Hon. CATHERINE CUSACK: Because there is more screening.

The Hon. DANIEL MOOKHEY: Have you got evidence that would support that conclusion?

Ms BAXTER: No, that is why I am very tentative about saying it could be possible, but I do not have evidence one way or the other.

The Hon. DANIEL MOOKHEY: Theoretically possible.

Ms BAXTER: What I am aware of is there has been a lot more health screening taking place of the populations of stonemasons and fabricated stone benchtop workers.

Mr DAVID SHOEBRIDGE: Are you really saying that you do not have any evidence, one way or another, about a rise in the incidence of silicosis?

The Hon. TREVOR KHAN: The credibility of this witness is not an issue.

Mr DAVID SHOEBRIDGE: Is it your evidence that you do not have any evidence, one way or another, that there is a rise in the incidence of silicosis in the population?

Ms SHEPHERD: We are investigating that through a contract with Monash University, which is updating a previous Safe Work Australia report on occupational lung diseases in Australia. That will be available later in the year because incidence and prevalence is something that needs to be investigated. We have got Monash University and Professor Sim to undertake that work for us.

The Hon. CATHERINE CUSACK: I have one final question. Earlier you said that it had been made a priority condition in the organisation. I just wondered if you could expand on what that actually means. What closed on that decision to make it a priority condition?

Ms JOHNSTON: It has been made a priority condition under the Australian Work Health and Safety Strategy, which is a strategy that is agreed by all Members. It is a national strategy, it is not a Commonwealth strategy. Being a priority condition means that all stakeholders should be taking action to address that condition, and implementation in the States and Territories, that they should be taking particular actions to try and address that condition. We are not responsible for implementation, again, because we are not a regulator, but by naming it as a priority condition we are acknowledging the seriousness of that condition. We are acknowledging that it is

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a workplace condition that needs to be addressed and we are strongly encouraging all relevant stakeholders to be taking measures to address it.

The CHAIR: The time being 11.30 a.m., I will shortly call these hearings to be in abeyance. But just before that I wanted to allow Mr David Shoebridge, who has been waiting patiently—and I cannot believe I just said that—to ask you a question.

Mr DAVID SHOEBRIDGE: Ultimately it is not your job to set the policies or the responses, is it? It is ultimately up to the various States' regulators to set policy for their States and if there is a Federal response the policy is set by Comcare. Would that be a fair description about where the responsibilities lie; otherwise, tell me?

The Hon. DANIEL MOOKHEY: And enforcement being, in New South Wales, SafeWork NSW.

Mr DAVID SHOEBRIDGE: Yes.

Ms BAXTER: If we are talking in the work health and safety space—

Mr DAVID SHOEBRIDGE: Correct.

Ms BAXTER: —Safe Work Australia has responsibility for the model laws. If we are talking more broadly about policy in this space then Members could ask Safe Work Australia to deal with this as a National policy issue and Safe Work Australia would do that. Jurisdictions are equally able to determine and develop their own policy in this space and I think you have seen some of that. At the Commonwealth level it would be a Commonwealth work health and safety responsibility which is held by the Attorney-General, not from here.

Mr DAVID SHOEBRIDGE: Have members asked Safe Work Australia to take that national role or policy role when it comes to the issue of silicosis caused by manufactured stone?

Ms BAXTER: There are a number of initiatives, or programs of work I suppose you would say, that we are undertaking. As Ms Shepherd has indicated in our occupational lung disease work, at our most recent Members meeting in November as well as Members agreeing to recommend a workplace exposure standard [WES] for respirable crystalline silica [RCS] to Work Health and Safety Ministers.

Mr DAVID SHOEBRIDGE: What is a WES?

Ms BAXTER: A workplace exposure standard or limit. Members agreed to recommend that to Work Health and Safety Ministers. Members also agreed for the development of a National model code of practice in relation to silica and Members also have asked for investigation to be undertaken as to whether there needs to be a regulatory response. By that I mean whether or not there needs to be changes to legislation in this space.

The CHAIR: Thank you for attending the hearing today. The Committee has resolved that any answers to questions on notice will be returned within seven days. The secretariat will contact you in relation to the questions, if you have taken any on notice.

Ms BAXTER: Thank you.

Ms SHEPHERD: Thank you.

(The witnesses withdrew.)

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MEAGAN McCOOL, Director, Hazardous Chemical Facilities and Safety Management Audits, SafeWork NSW, on former oath

PETER DUNPHY, Executive Director, Fair Trading Specialist Services, SafeWork NSW, on former oath

ROSE WEBB, Deputy Secretary, Better Regulation Division, SafeWork NSW, affirmed and examined

The CHAIR: I now welcome our next witnesses from SafeWork NSW. I remind Mr Peter Dunphy and Ms Meagan McCool that you do not need to be sworn as you were sworn in a previous hearing for this inquiry. Would anybody like to start by making a short opening statement? Please keep it to no more than a couple of minutes.

Ms WEBB: I have a short statement to make. Thank you for the opportunity to provide the Committee with further information on the work being done by SafeWork NSW in response to silica exposure in the manufactured stone industry. We have reached the mid-point of our five-year chemicals strategy with an independent evaluation highlighting the following four project components. Component one is awareness and education. We have had 200,000 views of our silica video featuring Dr Karl Kruszelnicki; 24,000 views video safety alert; 11,500 visits to the silica page on our website; 2,600 attendees at SafeWork presentations; a 1.8 million reach in our digital advertising; two rounds of radio advertising in English and in other languages; and eight media releases with high uptake.

The campaign has performed higher than the industry average across all government and non-government advertisers and campaigns. We have 140 people were surveyed on the campaign's effectiveness with nine out of 10 responding positively, two out of five implementing actions and perception improved in two out of three people. Of the 350 attendees at our May 2019 symposium, 95 per cent rated it a valuable event. An overall rating of 4.4 out of five was received for the six Roadshow events across the State from August to October, with 604 attending. The second component of our activity is visits by SafeWork inspectors. We have made 617 manufactured stone visits at the 246 fabrication sites, so we have visited some more than once.

The Hon. DANIEL MOOKHEY: Do you have the time period for that, Ms Webb?

Ms WEBB: I think that is since the beginning of last year.

Ms McCOOL: No, April 2018.

Ms WEBB: April 2018, sorry. Seven hundred and forty-six notices have been issued, of which 695 were improvement notices and 51 were prohibition notices. Ninety-three per cent of the improvement notices have been fully complied with, with follow-up visits being completed for the remaining 52 and with the majority of those follow-ups being related to completing the health monitoring and screening of workers.

The Hon. DANIEL MOOKHEY: I am sorry, can you repeat those numbers from the start?

Mr DAVID SHOEBRIDGE: Not from the start.

The Hon. DANIEL MOOKHEY: I am sorry, the 600 that were not prohibition notices.

Ms WEBB: There were 746 in total, 695 were improvement and 51 were prohibitions. Of those 695 improvement notices, 743, which 93 per cent, have been fully complied with.

Mr DAVID SHOEBRIDGE: Of the 695, 743 have been complied with?

Ms WEBB: Yes, 643 of the improvement notices have been complied with.

Mr DAVID SHOEBRIDGE: Six hundred and forty-three.

Ms WEBB: Yes. We have 52 remaining or outstanding. The majority of the outstanding actions are: completing health monitoring or screening. At the moment the wait time with icare at their Pitt Street clinic was March 2020, so three months wait time. I am sorry: the wait time in December was March, so that is the three months, and it takes four months wait time for the April 2020 for the lung bus. What we are saying there is that outstanding actions to be taken are in progress but there are just some wait times for them to be completed.

All the prohibition notices have been followed up, with three silica prohibitions yet to be complied with. Two of these relate to the removal and replacement of equipment and the third relates to revised cleaning procedures and processes. Until this work is completed and the notices are complied with, the prohibition notices remain. Further follow-up visits are scheduled for these sites. We have conducted a survey of 111 businesses on the outcomes of the visit. Ninety per cent noticed at least one change in the approach of management. Three in four reported new safety equipment or tools were being purchased. Around three-quarters are undertaking regular

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health and air monitoring. The businesses have confirmed that they are using wet methods, ventilation controls, training workers in personal protective equipment [PPE], fit-testing respirators and providing health monitoring. Businesses in the manufactured stone industry also have access to a $1,000 rebate for the purchase of safety equipment to protect workers from silica dust and that is available until June 2020.

The third component of our activities is research. Following a tender process, the Centre for Work Health and Safety has engaged Trolex Nome Australia to develop a respirable crystalline silica sensor which can provide real-time feedback to workers at risk of exposure. The project completion date is August 2020. Newcastle University is working with SafeWork NSW on research to assess the adequacy of current Australian health monitoring testing. The University of Western Sydney has completed its research with a major manufactured stone fabricator to evaluate the efficacy and worker exposure to silica using wet and dry cutting processes. The University of Wollongong Centre for Centre for Occupational, Public and Environmental Research in Safety & Health [COPERSH] is offering two PhD scholarships on a near real-time sensing solution for respirable crystalline silica in underground crushers and innovative control solutions for respirable crystalline silica to protect workers against exposure to silica.

The final component relates to legislation and regulation. The vast majority of the New South Wales Manufactured Stone Industry Taskforce recommendations have been accepted or implemented. The review of workplace exposure standard and health monitoring guides was expedited and completed by Safe Work Australia and other regulatory options currently under consideration by the Safe Work Australia members and the New South Wales Minister. In relation to the Health findings to make silicosis a notifiable disease that is reportable to a register, SafeWork NSW is in ongoing discussions with NSW Health about how this recommendation would operate in practice and what legislative changes we would need. The Trade Education findings relating to mandating silica syllabus in all trade courses and creating a standalone course for those not seeking a formal qualification or requiring a refresher, the Brick and Block and Stonemasonry qualifications now contain silica awareness and will be finalised shortly with other qualifications being under review. We will continue to monitor and report on the implementation of all New South Wales taskforce's findings. We also welcome and support the five national taskforce recommendations that were announced in December 2019 and are happy to answer any questions of the Committee.

The CHAIR: Thank you very much, Ms Webb. With that prepared statement, would you mind passing a copy to Hansard?

The Hon. DANIEL MOOKHEY: Can we have it formally tendered as well?

The CHAIR: You want it now?

The Hon. DANIEL MOOKHEY: Yes.

Ms WEBB: Yes, it is fine.

The Hon. DANIEL MOOKHEY: I do not know whether or not you were in a position to hear the evidence from icare this morning but they have confirmed that to the best of their knowledge since July 2019, in this financial year, 70 cases of silicosis have been detected through their screening program, which is a rise from the historic average of eight or nine. It is a rise of 770 per cent, I calculated, in the course of three years. Of course, we took evidence about whether it is additional screening or additional incidences, but do you agree with us that that is a highly alarming number and a highly alarming rise?

Ms WEBB: We can agree with the numbers; icare gave that evidence. It is difficult for us to use words like "alarming" but we absolutely think it is something that should be taken seriously.

The Hon. DANIEL MOOKHEY: Is there any other workplace—

The Hon. TREVOR KHAN: Can you clarify, did you hear the evidence this morning?

Ms WEBB: No, I did not.

Ms McCOOL: I did.

Ms WEBB: Ms McCool did and has let me know about it.

Ms McCOOL: What I did hear, and I can be corrected, is the ratio of who was screened prior to that. Seven cases over the number of screened versus the number of screened now and the number of cases. I understood they said that the ratio is the same. However, in terms of—

The Hon. TREVOR KHAN: The only reason I am asking is, rather than me jumping in and being accused of running interference, if somebody has heard what the evidence is then what Mr Mookhey says I do not

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need to interfere with. That is the only reason. I do not need commentary on it. You understand where it is all going.

Ms WEBB: We understand that is the evidence that they gave.

The Hon. DANIEL MOOKHEY: Insofar as any other workplace condition for which SafeWork NSW regulates, is there any comparable workplace condition which has seen such a sharp increase in the last three years?

Mr DUNPHY: In terms of the actual—

The Hon. DANIEL MOOKHEY: Is that no, Ms Webb? You were nodding.

Ms WEBB: No, I was saying I do not believe there is another one.

The Hon. DANIEL MOOKHEY: So it is fair to say—

Mr DAVID SHOEBRIDGE: I do not think Ms Webb was nodding. She was shaking her head.

The Hon. DANIEL MOOKHEY: She was shaking her head.

The Hon. TREVOR KHAN: And Mr Dunphy was trying to answer.

Mr DUNPHY: One additional case is one case too many. That is why we have put in unprecedented resources into this area and have taken such an active approach in terms of doing both compliance and in our response in terms of prevention programs in this area. For us it goes against the general trends. The data that was provided by icare this morning was new to us. We want to explore that more to find out what it means because there are some nuances in that data and we would need to understand what actually means.

The Hon. DANIEL MOOKHEY: The Committee will be making the findings and recommendations. One of the findings we make is that this is now reaching a crisis level.

Mr DUNPHY: The other thing to point out in the data too, it is lagged data. It also does not necessarily reflect what we are seeing now in terms of the work that we have been doing to ensure that the industry is operating safely. There has been a lot of work done to ensure that there are appropriate and safe dimensions.

The Hon. DANIEL MOOKHEY: But should this Committee be concluding that this is a crisis?

Ms WEBB: It is for the Committee to put its own words to it that we absolutely think it is a serious issue. That is, as Mr Dunphy said, why we are taking so much effort and resource to deal with it.

The Hon. DANIEL MOOKHEY: Do you have your SO 52 return with you?

Ms WEBB: I do not.

Ms McCOOL: I have a summary of it.

The Hon. DANIEL MOOKHEY: We can table it. We have already tabled and tendered it. I do not know if we can provide you with a copy. Incidentally, not you have a choice, but thank you for providing that to the Legislative Council. Going through the data that was returned, the data confirms that of the 246 sites that you have inspected, 73 per cent of them received some silica related notice. That is correct?

Ms McCOOL: That is correct.

The Hon. DANIEL MOOKHEY: And it says that to the best of your knowledge there are 669 employees in the industry, or at least that for which there are live workers compensation policies for. That is correct?

Ms McCOOL: Correct.

The Hon. DANIEL MOOKHEY: It says that only nine of the 246 sites have health and safety representatives [HSR], that is correct?

Ms McCOOL: Yes. However, most businesses when you look at that table have less than five workers, so their consultation arrangement does not necessarily require or trigger a HSR.

The Hon. DANIEL MOOKHEY: Sure.

Ms McCOOL: They may have consultation arrangements, but not necessarily a HSR.

The Hon. DANIEL MOOKHEY: I accept that, but there are sites—

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The Hon. ANTHONY D'ADAM: That is reflected in the data because one of the sites, there is a notation in the return that said they had a work health and safety committee. Alternative arrangements are reflected in the data. It seems that other than those with HSRs and work health and safety committees there is no consultation structures in place.

Ms McCOOL: So 22 per cent were actually self-employed—single, no employees. When you look at that, 11 had other agreed arrangements including toolbox talks, 18 per cent had no formal arrangements, noting informal can include regular team meetings, ad hoc meetings and briefing sessions. There is a range of arrangements, but appreciating that most of these businesses are less than five workers. We do have some representation that some of them can be as large as 90 in a workplace, but we are talking small business where the HSR arrangements are not necessarily triggered but there are consultation arrangements in various ways.

The Hon. DANIEL MOOKHEY: Sure. Accepting that, and it is useful, but I am just randomly flicking through this. Sites with 24 employees—no HSR. Sites with 30 employees—no HSR. I might be wrong on this but there are sites that are upwards of 50 with no HSR. Do you think that is a concern?

Ms McCOOL: The law requires it when one worker requests to have an HSR. If no-one has requested a HSR we cannot enforce that requirement.

The Hon. DANIEL MOOKHEY: Okay, but you are not disputing that only nine of them have HSRs.

Ms McCOOL: No. However, it is not a compulsory requirement.

Mr DUNPHY: And they would have other consultative arrangements in place. They have other options in terms of either a committee, as you say, or other—

Mr DAVID SHOEBRIDGE: Health and safety representatives.

Mr DUNPHY: Yes.

The Hon. DANIEL MOOKHEY: I have one other question arising from the data itself in terms of sites which are in regional New South Wales versus sites which are not. It is evidenced in that sheet. It shows that SafeWork Australia visits Sydney-based sites an average of 2.3 times but regional sites once. Do you want to explain why?

Ms McCOOL: There is a higher population in manufactured stone in and around Bankstown, Blacktown, Prestons. It is more where the work is being undertaken. When we start going into the regions, a lot of people work with silica, it could be road workers, but there is not high population of manufactured stone factories.

The Hon. DANIEL MOOKHEY: They account for 32 per cent of sites. Some 32 per cent of sites where manufactured stones are fabricated are in regional New South Wales—

The Hon. TREVOR KHAN: Which is consistent with the population.

The Hon. DANIEL MOOKHEY: Which is consistent with the population, but that is nearly one in three.

The Hon. TREVOR KHAN: I am not doubting it. One in three of us lives outside of the city.

The Hon. DANIEL MOOKHEY: Incidentally, the employment is equally high in regional New South Wales and, incidentally, as a percentage of the local economy—local employment in New South Wales—it is proportionately higher. But sitting here right now, it would seem like there is a divergence in labour law enforcement by SafeWork NSW—or inspections by SafeWork NSW—in regional versus non-regional New South Wales. If you are a stonemason on the mid North Coast or in northern New South Wales, should you not be concerned that you are not getting the same level of inspections from SafeWork NSW as a stonemason in western Sydney?

Ms McCOOL: We have visited every site in New South Wales. In terms of follow-up it would depend on the number of notices. Some of the sites received multiple notices, 60 sites got no notices at all and 60 complied within one to two months. That might have only required one follow-up. The number of follow-ups and visits to a site is dependent on their compliance. It is not necessarily whether you are in regional or Sydney metro—the number of visits you will receive. It is based on your compliance.

The Hon. TREVOR KHAN: I think Ms Webb might have had—no?

Ms WEBB: No, I was going to say the same thing. We visited every site at least once and then, as Ms McCool said, the follow-ups would commence.

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The Hon. TREVOR KHAN: That is fine.

Mr DAVID SHOEBRIDGE: Are you on witness radar today, Mr Khan?

The Hon. TREVOR KHAN: No. There is a diversity of information. I am as at fault as everyone else. The questioner can often be directing their question at one person when somebody else has something to contribute. That is all I want to do—make sure that we get the information.

Mr DUNPHY: It is important to note, too, that across Australia there is an average of one inspector per 10,000 employees, so we do target our inspections. It is quite extraordinary that we have been to every site at least once, and more for this particular industry. We do, obviously, have to target all of our resources to make sure we are covering all risks and all workplaces.

The Hon. DANIEL MOOKHEY: One of the things which, I think, Ms Webb, you elucidated it in your statement was the improved rate of compliance with prohibition notices. Is it possible—either on notice or not—that we can get this Standing Order [SO] 52 return updated to reflect the date of compliance from the date of enforcement, given that effectively you and/or the Minister has said that since this SO 52 was provided there has been a sharp turnaround in improvement? So can we get this updated to get the latest dates of compliance?

Ms WEBB: The date of compliance? Yes, I think that should be possible.

The Hon. DANIEL MOOKHEY: Will you take that on notice?

Ms WEBB: Yes.

Ms McCOOL: Yes.

Mr DAVID SHOEBRIDGE: Thank you for your evidence today. About 750 improvement or prohibition notices have been issued: Is that right—695 plus 51?

Ms WEBB: There have been 746 in total.

Mr DAVID SHOEBRIDGE: My error. I think Ms McCool heard the evidence this morning that to the end of January of this financial year a further 70 silicosis cases have been identified by icare, and approximately 70 per cent of those are related to manufactured stone. Are you aware of that basic summary of the evidence, Ms Webb and Mr Dunphy?

Ms WEBB: I think Ms McCool was here to hear it but the way she has explained it to me, that seems to be what was said.

Mr DAVID SHOEBRIDGE: Consistent with that?

Mr DUNPHY: I think what was said was that there was screening and they have identified 70 cases where people have been exposed to silica.

Mr DAVID SHOEBRIDGE: Yes, and 70 per cent of those related to the manufactured stone industry?

Mr DUNPHY: Yes. We have not got a breakdown of the type of silicosis for those particular 70 cases.

Ms McCOOL: Percentages.

Mr DAVID SHOEBRIDGE: In the previous financial year there were 40 silicosis cases and before that we were seeing seven, eight, nine.

Mr DUNPHY: Eight.

The Hon. TREVOR KHAN: There were 40 identified.

Mr DAVID SHOEBRIDGE: That is what I am talking about.

The Hon. TREVOR KHAN: Even under the current—we do not know whether we are identifying everyone.

Mr DAVID SHOEBRIDGE: I am only talking about those identified by icare. So, that is the kind of pattern—70 identified in the first eight months of this financial year, 40 identified in the whole of the previous financial year and, historically, levels of seven, eight or nine in the years before that. Are we agreed that that is the basic pattern?

Mr DUNPHY: That is correct, and I think it relates also to the number of screenings. In 2017 there were approximately 2,000 workers screened. I think in 2018-19 there were about 3,563 workers screened. I think for the first half of this financial year there has been 2,400 screened. So it has been quite a ramping up of the screening of workers.

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Mr DAVID SHOEBRIDGE: Of the 40 in the previous financial year, did you undertake any investigation or did you ask for any information from icare that would identify with which workplaces they were associated? Did you do that?

Ms McCOOL: Yes. If I could answer that question, the current matter is that we have to serve a notice on icare to get that information. Also, icare are not the only people that can screen. In terms of that, we have investigated the 49 adverse findings. One was in cobalt, so it was not related to silica. Of those 48, 23 matters have been fully assessed by inspectors. Of the 23, three have been progressed for full investigation. When you look at seven of the 23 matters, there are multiple persons conducting a business or undertaking, or employers whom the person has worked for, which, in taking it to full investigation, makes it very difficult to attribute which employer, appreciating latency of disease. But in the three cases they are being pursued for full investigation.

In terms of the remaining 25 matters, those investigations are continuing. So what we do there, we interview the worker, we interview the employer, we look at the workplace and, generally, as you can appreciate, the workplace is generally compliant now, so we would be interviewing based on what were the previous practices and we go back in time. From that, once we have got the evidence, as I said, they are formed up to an investigation panel. So, those whole 23 matters went to a panel, with three agreed to go to full investigation.

The Hon. TREVOR KHAN: Can I ask a follow-up question to that? You say that "as we would appreciate" they are now generally compliant. I am not being rude when I ask: Why should we appreciate that?

Ms McCOOL: If I have disrespected you by using those words, I apologise.

The Hon. TREVOR KHAN: No, I do not mean it from that point of view.

Ms McCOOL: In understanding that, generally, when we walk in, there will be no dust collection, there is no dust generation, they are operating safely. So, that is where we have to go, "Hang on, we have a person here with silicosis. The workplace looks compliant." We have to then do, as I said, further investigation as to previous practices—we can serve notices on records, we can do interviews with all workers. Again, I did not mean to disrespect by using that language—

The Hon. TREVOR KHAN: I am not suggesting you were.

Ms McCOOL: Generally, we are going into clean workplaces: They are operating as intended, they have wet methods, they are wearing their right masks, they have dust collection, they have got proper clean-up. So, again, we are going back to determine the incident, how long it was for and what the previous practices looked like.

Mr DAVID SHOEBRIDGE: So three of the 49 are being actively investigated at the moment with a potential for prosecution to come out of that investigation. Is that correct?

Ms McCOOL: That is correct.

Mr DAVID SHOEBRIDGE: Are you going to undertake the same process for the 70 that we have been told that icare have identified to date?

Ms McCOOL: Yes, we serve a notice on icare for all those records—so the 70 records, we will serve a notice.

Mr DAVID SHOEBRIDGE: I have to say I find it surprising, given the very large incidence of exposure, of extraordinary non-compliance with work health and safety, identified by your own investigators, that there has not been a single prosecution. How do you explain the fact that, despite finding hundreds of workplaces with chronically unsafe conditions, you have not commenced a single prosecution? How do you square that?

Ms McCOOL: From the date of collection of evidence through to listing a matter is approximately 12 months. So, with those three matters we are in that final 12 months if they have prospects for listing for prosecution. So, it is a matter of collecting statements, having them in admissible form, going through the legal processes. For three of those matters, they are well on foot.

Mr DAVID SHOEBRIDGE: But we know that just in the last 19 months, 110 workers have been told that they have a potentially life-threatening disease, largely caused by their exposure at work. What do you say to those 110 workers about not prosecuting their employers for putting them in that situation and potentially seeing them with a life-threatening illness? What do you say to them?

Ms McCOOL: With the 20 matters that went to the panel, that did not proceed, they may have worked for eight, 10, 12 employers. So, collecting the evidence to be able to determine which one caused the exposure—one employer is blaming the other, for example. In terms of they have been pursued, they have been interviewed,

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they have been run down in terms of that, the worker is entitled to compensation in that respect but in terms of holding the employer to account, the evidence is a lot trickier with a matter where they have an extensive work history.

Mr DAVID SHOEBRIDGE: You do not have to prove that that employer caused that particular silicosis. But if somebody worked in a workplace that has been dangerous, that has a risk of giving somebody silicosis, that would be sufficient to ground a prosecution. Are you saying you are only going to prosecute if you can prove that actual disease was caused by that actual exposure at the workplace? Is that the test you are putting forward?

Ms McCOOL: No. Based on the evidence, the panel is not pursuing certain matters. However, in some, where there are multiple employers and it is conclusive, we can attribute it to multiple employers if the evidence is robust. What we are saying is that the evidence is not conclusive and the panel has not agreed to pursue those other matters.

Mr DAVID SHOEBRIDGE: I suggest this to you—and I will give you the chance to respond. If there are almost 250 manufacturers and fabricators in the industry and all have been visited by SafeWork NSW, but not one of them has been prosecuted, the word will be out that you are a toothless tiger and to not worry about SafeWork NSW, won't it? They will see the reality and will realise that they do not have to worry about being prosecuted because you do not do it.

Ms WEBB: I think I can say a few things. As you know, SafeWork NSW cannot commence a prosecution unless it has evidence that makes it reasonable for us to commence a prosecution—

The Hon. TREVOR KHAN: A reasonable prospect of success.

Ms WEBB: —and we need to make sure that we have all that evidence firmed up and that we have legal advice. As Ms McCool has been saying, sometimes the difficulty is finding something that is not anecdotal or hearsay evidence, but actual evidence that we can use. I think we have not come to the end of what we are doing about all these matters and we are taking a big priority on making sure that people do the right thing and are compliant, and that is having that effect.

The Hon. DANIEL MOOKHEY: When was the last time SafeWork NSW prosecuted anyone for silicosis-related offences?

Ms WEBB: I do not think—

The Hon. DANIEL MOOKHEY: Have you done any in the past 10 years?

Ms McCOOL: Not for silicosis.

Ms WEBB: No, not that I am aware of.

The Hon. DANIEL MOOKHEY: Just quickly, to finish that off. The statute of limitations on these claims—when is the statute of limitations up? Is it seven years?

Ms McCOOL: Two years from the date of instance. The clock ticks from the date we are notified that someone has silicosis.

The Hon. DANIEL MOOKHEY: For anyone who was detected in 2017-18, unless you commenced an investigation or a prosecution by June this year, it means that they are getting off. Is that correct?

Ms McCOOL: The date of notification. SafeWork NSW has not been notified of any of the matters by icare unless we have served a notice. When we serve a notice—

The Hon. DANIEL MOOKHEY: Presumably you served a notice in 2017 and therefore were notified.

Ms McCOOL: We've served a notice on the previous three years, so the date of notification came from when that information was received. Even though the matters might have been detected in 2017, it was the date that we were notified of the silicosis.

Mr DAVID SHOEBRIDGE: What is that date?

Ms McCOOL: The date of notices ranged over the past 12 months.

The Hon. DANIEL MOOKHEY: For the 70 who have been infected in the past six months, are you confident that you will be in a position to complete the full investigation of all 70 of those before the statute of limitations expires?

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Ms McCOOL: At this point we are on track. There are 25 that are under review and obviously from hearing the evidence that there are 70 more, we will serve a notice on those 70.

The Hon. DANIEL MOOKHEY: Were they 25 from the 2018-19 year or the 2019-20 year?

Ms McCOOL: For the previous three years. All up 49 have been reviewed.

The Hon. DANIEL MOOKHEY: So 49 of 110 that have come to light in the past two years?

The Hon. TREVOR KHAN: Daniel, weren't you going to be quick?

The Hon. DANIEL MOOKHEY: We are following-up. It is 49 out of 110 over the past two years?

Mr DAVID SHOEBRIDGE: My understanding is that it is 49 out of the corpus that was from the previous financial year and perhaps two years before that.

Ms McCOOL: That is correct. Some 23 have been completed and there are 25 that are in train, with a notice to be served for those 70.

The Hon. DANIEL MOOKHEY: Have you commenced any investigation for the 70 in the last six months or not?

Mr DAVID SHOEBRIDGE: They only just found out about it today.

The Hon. GREG DONNELLY: Amongst the three witnesses here, I think it is just Ms McCool who was here during the evidence provided earlier today from icare. Is that correct? I don't think you, Mr Dunphy—

Mr DUNPHY: No.

The Hon. GREG DONNELLY: Ms McCool, did you hear all of the icare evidence or just part thereof?

Ms McCOOL: Yes, I heard it all.

The Hon. GREG DONNELLY: Mr Dunphy and Miss Webb, you will have the benefit tomorrow—or the day after or whenever—when Hansard has produced a transcript, to read the evidence from icare, including the evidence of the 70 cases referred to and a range of other comments, including some comments about some anticipatory guideline work that icare is doing to do with the high-resolution computerised tomography [HRTC] scanning available for scanning of workers who may have the condition. Let us assume that this hearing was not taking place today and there was no Hansard available tomorrow or the next day. With respect to all of the information that was deposited this morning to us by icare, would all that be ordinarily reported to you and, if it would ordinarily be reported to you—as SafeWork NSW—how is it done and when is it done?

Ms McCOOL: In terms of icare screening, again, we serve notices to receive that information. We are obviously investigating with NSW Health—as the opening statement mentioned—about having a register where all doctors—

The Hon. GREG DONNELLY: If we just take one at a time. So the serving of notice—you would not ordinarily get that information from icare, you would have to activate a service of notice on icare to obtain that information? Is that what you are saying?

Ms McCOOL: Correct. There is a duty for the employer to report any adverse findings, which is not occurring. By having a register, which we are investigating with NSW Health, puts the responsibility on the doctor and therefore icare would be responsible for reporting.

The Hon. TREVOR KHAN: Can we just bring that back one? What triggers you issuing the notice to icare?

Ms McCOOL: Our project.

The Hon. TREVOR KHAN: It seems to me—

Ms WEBB: We do this on a regular basis.

The Hon. TREVOR KHAN: —that what is triggering the notice is evidence that is given before this inquiry.

Ms McCOOL: Not necessarily. If we have served a notice for failure to health monitor, they have to go—we set as the waiting period of about three months to be screened, but to get that information back as to the results, we have to serve a notice to get the results.

Mr DUNPHY: That is an arrangement we have set up because we know it cannot voluntarily give us the information but we have developed an arrangement with it to make sure we do get regular—

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The Hon. ANTHONY D'ADAM: It effectively tells you as the cases come in and then you serve a notice?

Ms McCOOL: Other way round—

The Hon. TREVOR KHAN: Is that a wink and a nod to a blind man sort of thing?

Ms McCOOL: No. We have visited all the sites and where health monitoring was not undertaken we served a notice. They go off to icare for the screening and to get the results of that we serve a notice to get the results back. It is our initiative going through the workplaces, if the screening is not being done, to compel the workplace to send those workers for screening. To get that information—the results—we serve a notice again on icare.

The Hon. TREVOR KHAN: Yes, but we have been given evidence here today that 70 have been identified this year. That is news to you. It is not obviously not news to icare. You now you say—and again, this is not accusing—well, it is a bit—that you will issue a notice in regards to the 70. What is the mechanism that you use?

Ms WEBB: We have a practice of doing it anyway, notwithstanding that—

The Hon. TREVOR KHAN: But when?

The Hon. ANTHONY D'ADAM: How regularly do you give notices?

Ms WEBB: Ms McCool will know the answer to that.

Ms McCOOL: Typically every six months. So those cases are coming and now we are aware of the 70, which is the last six months, we serve again. We have been serving them every six months. However, as I mentioned, if it is reportable by the doctors, we will receive that information automatically.

The Hon. TREVOR KHAN: Sure.

Ms McCOOL: What we do not have though, as Mr Dunphy mentioned, of those 70 cases, are they less than 1 per cent, which we mentioned, as to whether they are symptomatic or actually—we need all of that.

The Hon. TREVOR KHAN: This is you examining the data.

Mr DAVID SHOEBRIDGE: I think they were all identified as being at least 1 per cent—that is how the 70 came.

The Hon. TREVOR KHAN: No, I do not think so.

Ms McCOOL: No, I think 95 out of 110 were less than 1 per cent so they are not compensable yet or have any disability, and they mentioned 5 at 100 per cent.

Mr DAVID SHOEBRIDGE: We will have to agree to disagree.

The Hon. TREVOR KHAN: That's all right.

The Hon. DANIEL MOOKHEY: Just before we go too far beyond this, why six months to wait before you issue the notice to icare? Why are you not doing it every month? Presumably, if you follow the logic of that, if you wait six months, the first data you will get will be what happened in July last year, which delays every form of investigation that you can then do.

Ms McCOOL: No, from the date of notification when we receive it, that is when the clock starts ticking—

The Hon. DANIEL MOOKHEY: Sure, but I am saying that therefore, if you were asking for the information more regularly, that whole cycle would be much faster. Why are you not asking for icare to provide you this information every month, for example?

Ms McCOOL: We could get a faster but, again, we have 70 to do in that period of time. So as I said, we are serving it every six months to move through the cases so that the date of notification every six months is from that date to two years.

The Hon. DANIEL MOOKHEY: I understand that, Ms McCool, but I am asking you at a policy level, why are you not asking for it faster, to facilitate faster investigation and faster determination?

The Hon. TREVOR KHAN: Ms Webb is busting to say something.

Ms WEBB: I just want to say that I think one of the issues for us would be resources, to be really honest. The number of people that we can devote to these is quite expansive, but there is a limit. If we can finish the ones

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we have and not start the clock ticking on the new ones, we are in a more advantageous position than perhaps serving the notice and letting us—

The Hon. GREG DONNELLY: Unless there are additional resources provided, given the significance of this, to enable a facilitation for this to be dealt with in a more timely way.

Ms WEBB: Absolutely. We would want to make sure that we were in a position to start—

The Hon. DANIEL MOOKHEY: Just so I heard you properly, Ms Webb, are you saying that part of the reason why you delay asking for the information from icare is to effectively delay the clock ticking on the statute of limitations?

Ms WEBB: I did not say that.

The Hon. DANIEL MOOKHEY: That is what I am asking, to clarify.

Ms WEBB: I am just saying that one of the issues is that if we did get the material but did not have the resources to immediately investigate, we would have started the clock ticking—

Mr DAVID SHOEBRIDGE: You would be colliding with the statute of limitations?

Ms WEBB: Yes, whereas if we were in a position that we know we can, but I am not saying that is in fact what happens, I am just saying that is an issue.

Mr DAVID SHOEBRIDGE: Just to clarify that earlier point, my notes are very clear: Less than 1 per cent of the cases that have been notified to icare had zero impairment.

The Hon. TREVOR KHAN: Let them interrogate the data.

Mr DAVID SHOEBRIDGE: And 99 per cent of the cases had at least 1 per cent. Ms McCool's report is wrong.

The Hon. GREG DONNELLY: The purpose of starting off my line of questioning with this example is to be essentially illustrative of a situation here. That is that, if we take a quite different example, which is the current coronavirus issue, we know how rapidly governments can move on an issue and literally rip down walls in terms of agencies and bureaucracies and structures to deal with something significant. They literally just flatten it and get the job done. In comparing it against this matter we are discussing, and I am not comparing the two in an absolute sense, I just find it extraordinary that icare come along this morning and provide us with a whole lot of rather rich information in terms of this matter that is before us and, firstly, you do not know about that number and, secondly, there is no channel in existence which would automatically ensure that you would receive that information in a timely fashion, which is bringing me to this point.

The Hon. CATHERINE CUSACK: Through you, Mr Chair, is this a question? Because this is an opportunity for questions.

The Hon. GREG DONNELLY: Yes. We have got WorkSafe NSW, we have got icare and we have got NSW Health. We have got three key players: yourselves, icare and NSW Health. What is it going to take to rip down the bloody walls to get you all in the same room to be regularly meeting to deal with this major problem before us?

Ms WEBB: We do have regular liaison meetings with icare where they would tell us this sort of information or that there are some more cases coming through. As Ms McCool said, we are aware that more cases would be coming through because people are being sent off to screening. So it was the exact number of 70 we were not aware of until this morning but we knew there were some.

The Hon. GREG DONNELLY: How regularly are you meeting?

Ms WEBB: At my level it is a three-monthly meeting but I know Ms McCool and Mr Dunphy would meet far more regularly with icare. But the issue with serving the notice is to protect the personal privacy of the individuals.

The Hon. GREG DONNELLY: I am using that as being indicative of the problem—the serving of the notice. That is illustrative of the problem.

Ms WEBB: I understand it is to protect—

The Hon. GREG DONNELLY: I am talking about NSW Health, which has a key role and will to deal with this as we go forward. We are not hearing a whole lot from them in terms of their role in the whole scheme of things, although we have had some evidence. Yourselves, WorkSafe NSW and icare—these are the three

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players in the State of New South Wales. When are we going to get them working together hand in glove to confront and deal with this issue?

Ms WEBB: The serving of the notice is to protect the personal privacy of the affected parties. It is not a blocker or anything. It is just making sure there is a proper legal framework around us receiving this very personal medical information about the person. If we wanted to serve notices more quickly there is nothing to stop us doing that. We have regular liaison with icare and NSW Health about this and we are moving towards more and more, as Ms McCool said, with the register.

Mr DAVID SHOEBRIDGE: What I do not understand is why isn't there just a structure in place—like every six months you serve a notice?

The CHAIR: Mr Shoebridge, the questioning is with Mr Donnelly and then it is going to go to Mr Khan.

Mr DAVID SHOEBRIDGE: But I think that is what Mr Donnelly is saying. Why is it ad hoc? Why are you making it up as you go? Why isn't there a structure in place so that you do it every six months?

Ms WEBB: There is a six month—that is what I think Ms McCool's evidence was.

Ms McCOOL: We serve every six months. Equally, appreciating if icare are only one medical provider so again the work we do in NSW Health to make it notifiable would be that we would get the whole picture. Also, respectfully, up until 2015 we were all in one banner and we are no longer—the three agencies of the State Insurance Regulatory Authority [SIRA], icare and SafeWork. So the barriers to get the information a little bit more problematic. But equally the register should start to remove those boundaries.

Mr DUNPHY: The other thing is the notice gets a lot more detail. That gets all of the medical information. The actual information that icare gave you this morning, there is nothing to stop them from releasing the general figures publicly. It is just that we understand they were not in a position to be able to do that until today.

The Hon. TREVOR KHAN: Some people may go back to what has been discussed up until this point but I was interested in some of the evidence we received earlier. It goes to Ms Webb's issue of resources. We received evidence from what we could say is the importers with regards to their view that one of the ways—and I should ask, have any of you read the transcript or seen their evidence—Ms McCool?

Ms McCOOL: Yes, I have.

The Hon. TREVOR KHAN: I think I am right in saying that essentially what they were proposing was the degree of self-regulation could apply whereby supply of stone could be cut off to those fabricators who they become aware are not using what could be described as best practice. Is that a fair summary of the proposition, essentially, that they advance—or that some of them advance?

Ms McCOOL: Essentially, and I would have to confirm the numbers, there are five main suppliers, for example. What they are introducing, which is still with the Australian Competition and Consumer Commission [ACCC], which as recently as yesterday we received information that it is still being reviewed so a result is not known as to whether that scheme is viable, in the basis, essentially, if fabricators do not meet standards of that supplier they will no longer be supplied with stone. So in that essence, as I said, that is being reviewed by the ACCC to see if it is lawful.

The Hon. TREVOR KHAN: Yes. That was the evidence that they gave. What I invite you to comment on is it seems that SafeWork NSW has in a sense applied a lot of the available resources to this issue over the last couple of years. I am getting old enough to think that this will be an issue top of the mind for a period of time before the next crisis in another industry arises and then—cynically, I will say—resources will be shifted from this issue to the next. Do you see some merit in the importers proposal that they at least supplement your efforts by having that degree of capacity of quarantining miscreant fabricators from the industry, Ms Webb?

Ms WEBB: I think in general, yes, we would always be supportive of self-regulatory efforts by industry, particularly if they meet the same policy outcome.

The Hon. TREVOR KHAN: I think that is a fair—

Ms WEBB: And I think absolutely if they can make some effort to make sure that the people they are supplying are complying, that will help as well.

Ms McCOOL: Adding to that, one of the major stone suppliers—our Which Mask Will You Wear? campaign—supplies all their outbound packages, boxes, crates with the SafeWork advertising on that. There is also an enforceable undertaking that has been agreed to which will go out around March, which will be all Boral trucks that are in New South Wales. The enforceable undertaking was not related to silica but they have agreed to

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advertise silica messaging as well. The industry in the areas we have been able to compel them to also distribute, which when you look at our research the in situ messaging—so you can listen to an ad, you can see a press release and then go back to work. Seeing that advertising again in situ, the industry is taking a hold of the issue.

The Hon. TREVOR KHAN: I am not quite sure what you mean by "in situ" but I think one of the suggestions they had—

Mr DAVID SHOEBRIDGE: At the workplace.

The Hon. TREVOR KHAN: Thanks, David. One of the issues was the appropriateness of having some labelling on the uncut stone to ensure a degree of notice being brought to the individual workers that, for instance, it should be wet cut or the like. Is there some capacity now for SafeWork to require such labelling?

Ms McCOOL: There already are labelling requirements. There are also safety data sheets that have that information. They are a national set—

The Hon. TREVOR KHAN: I hear a lot about safety data sheets but with respect you all know what happens to safety data sheets. They get stuck in a folder and that is just about the end of them.

Ms McCOOL: Yes. However, to pick up on the Safe Work Australia, that national code of practice starts to get into that detail, starts to get into what tools you must use, how things must be labelled, how things must be worked with, right down to what sort of equipment, how often you need to be health monitored. So that is where we start to get traction.

The Hon. ANTHONY D'ADAM: That is almost three years away, I would expect, is it not?

Ms McCOOL: Looking at what Safe Work Australia mentioned, if it compels a regulatory change then it has got to go through a rigorous process. It would depend on the content of that code as to whether it triggers any legislative amendment.

The Hon. DANIEL MOOKHEY: Is it fair it is not imminent?

The Hon. ANTHONY D'ADAM: Yes, it is a long way off before you have a national practice.

Ms McCOOL: So there is a national guide that in its place at the moment which they mentioned.

Mr DAVID SHOEBRIDGE: But they said at least 18 months away.

The Hon. DANIEL MOOKHEY: I return to questions by the Hon. Trevor Khan about the ACCC authorisation process. Are you aware that three employers have sought authorisation for an exemption under the Trade Practices Act?

Ms McCOOL: Yes.

The Hon. DANIEL MOOKHEY: Are you aware that the ACCC is due to make its interim finding sometime this month and public submissions have closed?

Ms McCOOL: Yes, a letter was received yesterday.

The Hon. DANIEL MOOKHEY: I am looking at the organisations that provided submissions to the ACCC about this question. I see WorkSafe Victoria, your equivalent body in Western Australia and South Australia but I cannot see anything from SafeWork NSW or anything from any New South Wales government agency to the ACCC. Queensland has. Did you provide a submission to that?

Ms McCOOL: We did not provide a submission, we provided a letter of support for the industry for that initiative.

The Hon. DANIEL MOOKHEY: Will you table that letter of support because it is not public, therefore, if you did not provide it in the submission.

Mr DAVID SHOEBRIDGE: And also the letter you received yesterday from the ACCC?

The Hon. DANIEL MOOKHEY: Why did you not provide a formal submission that would allow every other respondent to the proceedings to read what you have got to say about this?

Ms McCOOL: We have referenced it in our New South Wales task force report. It was an agenda item. They essentially outlined what that proposal would be and the task force, as I said, were in support of the initiative being taken by the industry. I guess in that task force report there is our support through those means.

The Hon. DANIEL MOOKHEY: That is useful but that is not an answer to my question. Why did you not put in a submission?

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Ms WEBB: Because we did the other actions that Ms McCool said.

The CHAIR: Can I confirm that you have agreed to table the letter of support?

Ms WEBB: The letter of support and I think Mr Shoebridge wanted the letter from the ACCC but we might have to ask them first.

The Hon. DANIEL MOOKHEY: Why did you provide a letter of support but not formally file that letter in the authorisation process? I ask that because this turns on what the ACCC can consider as part of its authorisation process. Incidentally, the ACCC uses your submissions to put questions to manufacturers and other respondents, one of which is also an importer who disagrees. It is not like a choice to provide the information through one form does not have consequences. A statement from the New South Wales Government in support or opposition with a list of concerns is valuable, you would agree with that, but did not put it in? Is it just inconsiderate or it did not occur to you?

Ms McCOOL: We were contacted by the ACCC to provide that support, and we provided that support. In terms of whether or not it was published we would need to have a look at that, but we have followed the processes, submitting our information, through that consultation period.

The Hon. TREVOR KHAN: Did the ACCC contact you orally, by letter or by email?

Ms McCOOL: They contacted all stakeholders that the public consultation period was open.

The Hon. TREVOR KHAN: Sure, but I am asking in terms of SafeWork NSW, how did they communicate a request, for instance, a letter of support?

Ms McCOOL: We were invited and we responded. I would have to check whether it was a letter or email but it was sent to all stakeholders from its stakeholder list.

The Hon. TREVOR KHAN: Can we round out the provision of documentation? Will you see if you can identify the letter or email that requested a letter of support? If you can find it, can you provide the Committee with that?

Ms McCOOL: Definitely.

The Hon. DANIEL MOOKHEY: Was that letter from SafeWork NSW or was it from the Minister?

Ms WEBB: Our letter of support, you mean?

The Hon. DANIEL MOOKHEY: Yes.

Ms McCOOL: From SafeWork, from memory.

Ms WEBB: We will.

The Hon. DANIEL MOOKHEY: Okay.

Mr DAVID SHOEBRIDGE: You said in your opening statement that around three-quarters of the 246 fabrication sites you visited are undertaking regular health and air monitoring.

Ms WEBB: Yes, that is right.

Mr DAVID SHOEBRIDGE: So approximately one-quarter are not undertaking regular health and air monitoring. How can we be at all confident that that quarter are keeping their employees safe?

Ms McCOOL: That was an independent evaluation of 111 businesses and that mid report, in draft form, was presented last week. So in terms of also in our follow up visits that will be part of any follow up confirming whether that data is correct. Also 93 per cent are confirming that they are using wet methods so we will be confirming "What's happening with the other seven? Are they using dust capture?" Again it is an independent evaluation of 111 businesses that was not conducted by SafeWork. We did that to confirm the quality of our visit and what practices had been implemented as a result of our visit.

Mr DAVID SHOEBRIDGE: I assume that the survey was done independently with some sort of cogency behind who they visited. Was there some rationale about who they visited? It was designed to be representative, I assume?

Ms McCOOL: Representative, yes.

Mr DAVID SHOEBRIDGE: Representative of the 246 fabrication sites?

Ms McCOOL: Yes.

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Mr DAVID SHOEBRIDGE: If it is representative, and the advice you have got is a quarter of those employers are not undertaking regular health and air monitoring, you have got yourself a problem, have you not?

Ms WEBB: I think Ms McCool said we would verify the data and find out who those quarter were and they would be the subject of follow up visits.

Mr DAVID SHOEBRIDGE: They will be the subject of follow up visits because there is a problem that on the best evidence you have got available, which is an independent survey undertaken of a representative number of the fabrication sites, a quarter of them are not doing regular health and air monitoring. That is a problem, is it not?

Ms McCOOL: They are verbalising that but we need to validate whether or not there is health monitoring records. In terms of a worker could have been interviewed, an employer could have been interviewed, we check the quality of the visit. But in terms of our strategy it goes to 2022 and those 246 will continue to be visited over the period. We are at the mid-point of a five year program.

Mr DAVID SHOEBRIDGE: You go further, in fact. You say "the businesses confirming they are" and in that regard only 63 per cent are providing health monitoring. So 37 per cent of the businesses, on the best evidence you have got, of the 246 that you have identified and have multiple sites, despite that, over one-third of them are still not providing health monitoring. Apart from being comfortable that things are on track that makes me very uncomfortable. Do you see why that would be the case?

Ms McCOOL: But appreciating the information needs to be validated. It could have been a worker who was spoken to or a business.

Mr DAVID SHOEBRIDGE: It says here "the businesses confirming". I am reading directly from your own evidence "the businesses confirming".

Ms McCOOL: As I said, that needs to be validated information. It is independent evaluation that essentially SafeWork received last week for the mid-point review of a five year program.

Mr DUNPHY: Of course, we would not be satisfied with that response and we will follow it up.

The Hon. ROD ROBERTS: Who initiated the survey?

Mr DUNPHY: It is part of our ongoing evaluation. It was part of ensuring that we do keep a very close monitoring of—

The Hon. TREVOR KHAN: That is SafeWork initiated it?

Mr DUNPHY: Yes, that is right.

The Hon. ROD ROBERTS: And you appointed an independent body?

Ms McCOOL: Yes.

The Hon. ROD ROBERTS: Who did you tell the independent body to interview? Workers on the floor or the business managers themselves?

Ms McCOOL: They were given the 246 sites to undertake their interviews.

The Hon. ROD ROBERTS: You paid for this: we have paid for this. Did you provide instruction as to when they go out to survey these organisations, these are the organisation heads we need to speak to and these are the areas we need to survey or did you just send them out and say "Survey these people."

Ms McCOOL: No there are terms of reference which we can provide on notice.

The Hon. ROD ROBERTS: Did they interview somebody from the shop floor that you are suggesting or did they interview the business owners?

Ms McCOOL: There was a range that were interviewed. There was a cross-section that was interviewed to get a transparent view of the visit from what was conducted.

The Hon. ROD ROBERTS: So now we cannot rely on the truth or the substance of these surveys, is what you are saying and we have to now go back and validate all of this? What was the point of the survey in the first place?

Ms McCOOL: I disagree we cannot validate it.

The Hon. ROD ROBERTS: Did you not just say in your evidence previously that you have to go and validate this information?

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Ms McCOOL: We have got evaluation information. There was also a number of inspectors who were interviewed as well. Essentially we have received a report and that information needs to be validated but either way whether it was our campaigns that we evaluated, our visits that we evaluated the five-year strategy to now is at the mid-point. So it informs where we need to head. So if health monitoring is not being done, and that is validated as correct, then that will obviously prompt the areas of attention in our visit.

The Hon. DANIEL MOOKHEY: These businesses have said that they are not doing it so please tell what further validation is required? How else would you go and evaluate? Is the assumption that they provided an incorrect answer to the survey and, in doing so, confessed to not doing it? Is that seriously the problem?

Ms McCOOL: Essentially, we go through the records for those sites and check what we have on file in relation to health monitoring. If there is no evidence on file or the information is incorrect—essentially, that is what we need to do, is validate the information to confirm—

The Hon. DANIEL MOOKHEY: But that is more likely to lead to you concluding that a business that said that they have got air monitoring equipment does not, as opposed to the opposite case. Is that correct? Of the 81 per cent that said that they have got it, you are effectively verifying whether that number is accurate. You are not contesting seriously that the other—

The Hon. TREVOR KHAN: People normally do not make admissions against interests.

Mr DAVID SHOEBRIDGE: Yes. That is a fair summary.

The Hon. DANIEL MOOKHEY: Yes. It is not like you are seriously going to go out to those people who said, "We do not have it," and go, "No, you do." You cannot seriously be sitting there and suggesting that would be the position SafeWork takes. Presumably you will be auditing the 81 per cent figure for further validation. Is that correct?

Mr DAVID SHOEBRIDGE: In other words, the numbers can only get worse. That is the point, is it not? Realistically, the numbers can only get worse when you validate it.

Mr DUNPHY: I think we will go out and visit these sites. This is part of our overall evaluation to make sure that we are on track. Obviously there are things there that need to be followed up, and we will.

Ms WEBB: There may be cases where people misunderstood what we were asking or what health monitoring involves. I am not saying there are, but we are obviously just going to go and validate it.

Mr DAVID SHOEBRIDGE: Why I draw your attention to your own evidence and your own independent survey is because it directly conflicts with the statements that Ms McCool gave, and that you nodded in support of, that we should rest assured that these workplaces are safe, that they are dust free, that they are doing everything right. Because your own evidence provided by your own independent survey says exactly the opposite. I am deeply troubled by the leadership you are giving, Ms Webb, if you think everything is fine given this evidence.

Ms WEBB: I think we were being perfectly transparent about what the situation is and, as Ms McCool said, that there is work to be done in the remainder of the plan.

Mr DAVID SHOEBRIDGE: No, no. You said collectively that we can be satisfied that these workplaces are safe, that they are clean, that they are dust free. But the evidence that you have—the most recent evidence from the independent survey—says exactly the opposite. I am worried about your leadership if that is the indication you are giving, Ms Webb.

Ms WEBB: I absolutely do not recall saying those words.

The Hon. TREVOR KHAN: To be fair, it does not say exactly the opposite, but it points to some holes in the exercise.

The Hon. DANIEL MOOKHEY: Can I just follow up on that line? You are aware that you administer a manufactured silica rebate scheme, the Manufactured Stone – Silica Safety Rebate? You administer that, yes?

Ms WEBB: Yes. We mention that in our statement.

The Hon. DANIEL MOOKHEY: Okay. I am looking at the eligible items that businesses can seek a rebate for. None of the eligible items have monitoring equipment. Indeed, it says explicitly as an excluded item, "Diagnostic testing or auditing services." I presume diagnostic testing might mean health monitoring but I could be overly generous in that. We are offering rebates to businesses but we are not offering them rebates for the one thing we think they all need, which is the ability to actually monitor dust. Is that accurate?

CORRECTED

Ms McCOOL: Businesses cannot purchase air monitoring equipment. It has to be undertaken by an occupational hygienist who is accredited. Essentially, they are paying for a service. The rebate covers equipment; it does not cover services. The eligible items are wet-cutting tools, dust capture tools, H and M Class vacuums, fit testing equipment from us and clamps for holding the stone for manual handling. But, in terms of—the rebate is for equipment and tool purchase.

The Hon. DANIEL MOOKHEY: Teasing out the logic of that, you are effectively saying that a business has to hire someone to come in and monitor it for a set period of time and there is no requirement for ongoing monitoring when all work is being performed. Is that accurate?

Ms McCOOL: Air monitoring is triggered if you change a work practice. If you have air monitored and there has been no change of practice, essentially, it does not trigger another requirement. When you actually look at the whole landscape for how air monitoring is conducted—equally, when it is done, they test all tasks that are being performed. The results go to a laboratory, which can take up to a month to receive results.

The Hon. DANIEL MOOKHEY: Sure. But a business right now—the one that is literally down the street from me, if it has no legal requirement to be monitoring the air—is that accurate, unless there is a change?

Ms McCOOL: Unless there is a change or it is a routine practice. For example, tunnels will have a regular program.

The Hon. DANIEL MOOKHEY: So a business that has air monitoring—it would satisfy SafeWork NSW if effectively they only have it for one day a year. You would deem them safe on that basis. Is that accurate?

Ms McCOOL: Not necessarily, because there is other visible inspections that we will do. Regardless of air monitoring, if the next day we see that they are not using the tools that they are supposed to be using—again, there is the visible inspections and then there is the air monitoring results. Also, air monitoring can be done at times where it may not be peak periods.

The Hon. DANIEL MOOKHEY: So why wouldn't we be mandating air monitoring whenever work is being performed? Why wouldn't we make this compulsory, given how dangerous this dust is?

The Hon. TREVOR KHAN: I think you are going to find a significant resource issue arises.

The Hon. DANIEL MOOKHEY: Firstly, is that the case? Secondly, the installation of ongoing air monitoring equipment in sites like this—is it your view that that is cost-prohibitive for a business?

Ms McCOOL: Yes, it is. Regular air monitoring can take some businesses one to two weeks. In terms of the cost, it can be $10,000 to $20,000 per experience.

The Hon. DANIEL MOOKHEY: So how many people have actually used the manufacturing rebate?

Ms McCOOL: For the $500 rebate that was in existence since 2017, there has been 36, from memory. In terms of the new one that came in only a couple of weeks ago in January, there has been six processed and a seventh under review.

The Hon. DANIEL MOOKHEY: So 36 of the $500 and six of the newer $1,000. When did that $1,000 one become live?

Ms McCOOL: Mid-January.

Mr DAVID SHOEBRIDGE: Was it six?

Ms McCOOL: Six, with a seventh one under review.

The Hon. DANIEL MOOKHEY: But 36 out of what? The 246 eligible sites? Or is it how many people—it is the eligible class?

Ms McCOOL: The $500 is available to any small business that works with silica. The $1,000 is only to manufactured stone businesses to 30 June.

The Hon. DANIEL MOOKHEY: So 36 on any small business. That is incredibly low, is it not?

Ms McCOOL: We promoted the rebate. Again, it is up to a business to apply for it. It is not compulsory.

The Hon. DANIEL MOOKHEY: I accept that. I mean, you cannot literally just give money away. People need to come and ask for it. I accept that.

Mr DAVID SHOEBRIDGE: If you really turn your mind to it, you can.

CORRECTED

The Hon. DANIEL MOOKHEY: To the extent to which we have been told that there is a safety strategy in place, a large part of it turns about the availability of these new grants. Are you maintaining projections about how many businesses you are expecting to take it up?

Ms McCOOL: Our projections are that we will have 9,000 interactions over five years. We are travelling at nearly 5,000. That could be as a result of whether you got a rebate, you attended a roadshow, a symposium, or you had a visit. In terms of the numbers that we are achieving, our strategy is multi-pronged.

Mr DAVID SHOEBRIDGE: Did you have a target or an estimation for the number of rebates that would be picked up between now and when it concludes at the end of June?

The Hon. DANIEL MOOKHEY: You must because you have budgeted for it.

Ms McCOOL: Two hundred and forty-six.

Mr DAVID SHOEBRIDGE: So your target was 246 and you are currently at six.

Ms McCOOL: Correct.

Mr DAVID SHOEBRIDGE: You are not going to hit your target, are you?

Mr DUNPHY: We have only been going for a month.

The Hon. DANIEL MOOKHEY: Well, 246 over what period of time? Is it 246 in the next five years or is it 246 in the next four months?

Mr DAVID SHOEBRIDGE: Did you not say it is only available until the end of this financial year?

Ms McCOOL: Correct.

Mr DAVID SHOEBRIDGE: We are already in February and you have done six. You are not going to hit your target, are you, of 246?

Ms McCOOL: It is a little bit too early to tell.

Mr DUNPHY: One of our experiences, I think, with rebates is people often do it at the end of the process. So we do not know when people are likely to make their application.

Ms WEBB: And businesses are shut down in January.

Mr DAVID SHOEBRIDGE: Could I ask you about the findings? Have you reviewed the findings of the national dust interim advice? Are you aware of the interim advice provided by the national task force?

Ms McCOOL: Yes.

Ms WEBB: Yes.

Mr DAVID SHOEBRIDGE: And you have all read and digested it, I assume? Yes? Are you aware of the findings? The key summary about their initial findings was that government interventions undertaken in response to the rising cases of accelerated silicosis appear to have been inconsistently implemented and monitored, creating an unequal and fragmented level of health protection. Are you aware of that?

Ms WEBB: I understand that you are quoting from it, so yes.

Mr DAVID SHOEBRIDGE: I am reading verbatim from it.

Ms WEBB: Absolutely.

Mr DAVID SHOEBRIDGE: Do you accept that criticism?

Ms WEBB: I think it is fair to say that different jurisdictions are doing different things, if that is what they are saying. Yes.

Mr DAVID SHOEBRIDGE: Do you accept that that is a fair criticism of what this jurisdiction is doing? The one you are responsible for: New South Wales.

The Hon. TREVOR KHAN: But that is in a cross-jurisdictional finding.

Mr DAVID SHOEBRIDGE: That is why I am asking about New South Wales.

Ms WEBB: I think, in some ways, New South Wales has been doing a lot more than a lot of other jurisdictions. We are inconsistent to the extent that we have had this mass campaign.

CORRECTED

Mr DUNPHY: I think the timing, as well—we started our campaign in 2017, essentially, and started our road map in 2016. We have come a long way along the journey. I think every jurisdiction will have different time frames in terms of what it is doing. Each jurisdiction has different—Victoria has got different legislative frameworks. Of course there will be differences and it will be a different approach.

Mr DAVID SHOEBRIDGE: You would be aware that the interim advice is critical of the fact that work health and safety advice can be quite opaque and not very clear and that is particularly hard for smaller and mid-size businesses. Are you aware of that?

Ms WEBB: Yes.

Mr DAVID SHOEBRIDGE: And in that regard they urge clear, direct and unambiguous regulatory responses. Are you aware that? Do you agree with that? Clear, unambiguous regulatory responses are the best way of getting the message across to relatively unsophisticated players. Do we agree on that?

Ms WEBB: Yes. That sounds reasonable.

Mr DAVID SHOEBRIDGE: So why have you not supported an unambiguous, clear regulation that says dry cutting of manufactured stone is banned in New South Wales?

Ms WEBB: Because the range of regulatory responses is quite— I think that is not the only regulatory response.

The Hon. DANIEL MOOKHEY: What is wrong with it?

Ms WEBB: We have supported a lot of clear messaging. That is a policy question for the Government to determine. We cannot really talk to that.

Ms McCOOL: However can I point you to—if a prohibition is issued for dry cutting, a prohibition is never lifted so you can never go back to that practice and if you do the penalties can go upwards to $100,000. If you look at our website it says, "uncontrolled dry cutting and grinding is prohibited. We will enforce this by issuing a prohibition notice which bans you from doing this work. Instead you will need to wet cut, use dust extraction systems on portable tools or adopt other methods that eliminate or minimise the generation of dust. If you do not comply with the prohibition notice you can face penalties up to $100,000." The Minister also announced last October that that would be supported through proposals to get on the spot fines that are added to that prohibition notice. So that is where we are at.

Mr DAVID SHOEBRIDGE: When you say use dust extraction methods on portable tools, is that what you said?

Ms McCOOL: That is correct.

Mr DAVID SHOEBRIDGE: Does that mean, as I understand that direction, that it would enable dry cutting to be done on portable tools provided there was dust extraction methods.

Ms McCOOL: The dust extraction is on-tool. So it is controlled at the source. So it is essentially sucked into the tool. It cannot escape the tool. So whether you are cutting it with a wet cutting tool or one with dust extraction, it is on the tool. It is not separate to or over it. It is actually on the tool.

Mr DAVID SHOEBRIDGE: So is that you saying that, yes, dry cutting is permissible provided there is a dust extraction method on the portable tool? Is that what you are saying?

Ms McCOOL: The phrase is uncontrolled dry cutting. So if it is not controlled—

The Hon. DANIEL MOOKHEY: But that is the point is it not? It is not a requirement, as you just said, to ban dry cutting. It is to require the control of dry cutting.

Ms McCOOL: If you look at Victoria and Queensland, it is the same ruling. Essentially if it is on-tool dust extraction, it is essentially controlled cutting.

Mr DUNPHY: It is about controlling the—

The Hon. DANIEL MOOKHEY: But the point of your earlier evidence when you read the enforcement policy that SafeWork NSW has, you are inviting us to effectively conclude that you already have effectively banned it and you are enforcing it through a prohibition notice. Is that an unfair characterisation of what you have just said?

Ms McCOOL: No. But there is also an inspector practice note—

The Hon. DANIEL MOOKHEY: Great.

CORRECTED

Ms McCOOL: —which is a direction that if uncontrolled dry cutting—

The Hon. DANIEL MOOKHEY: But surely, rather than having to send inspectors out to find out that it is happening, to then issue a prohibition notice, then give an on the spot fine, why not just have a regulation that says you cannot do it? For everybody, regardless of whether or not you are subject to SafeWork NSW enforcement activities or not? What is the harm in elevating your existing policy to the level of a regulation?

Ms McCOOL: So in model laws—

The Hon. DANIEL MOOKHEY: But we have the ability to delegate from model laws.

The CHAIR: Allow the witness to please answer the question.

Mr DUNPHY: It is a policy decision. Queensland do exactly the same. In their code they say they prohibit it but they refer to the exposure standard. The exposure standard effectively prohibits the use of dry cutting because dry cutting will generate an exposure standard above what is legislated. There is that control in there that does not allow dry cutting because you would exceed the exposure standard. We have been very clear in saying that we do not accept dry cutting, that we have prohibited the uncontrolled use of dry cutting and that is about trying to ensure that we control the exposure pathways so that people are not breathing in—

The Hon. DANIEL MOOKHEY: What about dry grinding in tunnels? What is the policy on dry grinding in tunnels?

Ms McCOOL: The same. Uncontrolled dry cutting is prohibited.

The CHAIR: Part of the confusion, I think, is that we have had people testify that they believe dry cutting is permissible. Last time you testified, you indicated that dry cutting is not permissible. Now the policy document you have just read out indicates it is permissible under certain conditions but you are saying those conditions cannot be reasonably met. Do you understand the confusion that provides to the industry and provides to us? You have a policy that says, under these conditions—under controlled cutting—you can cut dry. But you are saying that no matter what happens that will exceed the dust exposure standards.

Mr DUNPHY: What I am saying is that, in terms of the controls that are in place, we are saying that uncontrolled cutting is prohibited because that will generate levels above the exposure standard and that is not permissible to be working.

Mr DAVID SHOEBRIDGE: But it is not expressly prohibited. It is by an indirect reference to exposure standards.

Mr DUNPHY: Which is exactly the same as the Queensland situation.

The CHAIR: Just because Queensland does something does not necessarily mean we should do it.

The Hon. DANIEL MOOKHEY: That is a reason not to do it actually.

Mr DUNPHY: Ms McCool, if you could just say again what we say explicitly on our website. We are very clear about it.

Ms McCOOL: Uncontrolled dry cutting and grinding is prohibited. But equally to make a change to our legislation we have to first take it to the national table. Then if it is not accepted the New South Wales Government can consider it. So there is a process in place. In terms of what Safe Work Australia spoke about today, that a range of regulatory options are being considered by the members including a national code of practice.

The CHAIR: Have we looked to take that to the national body?

Ms McCOOL: It is, as I said, in terms of recommendations and the task force for New South Wales was not explicit in terms of dry cutting. However essentially a lot of the requirements in relation to air monitoring, health monitoring and having a code of practice were recommended.

The Hon. TREVOR KHAN: Could you say that again?

Mr DAVID SHOEBRIDGE: They did not recommend dry cutting but a bunch of other stuff.

The Hon. TREVOR KHAN: Genuinely, could you say that again so I understand what your last observation was?

Ms McCOOL: So when you look at the task force recommendations, it was a look at the Work Health and Safety regulation in relation to health monitoring, air monitoring—and this is representative of the task force

CORRECTED

not SafeWork, it was other members and it was by majority agreement. In terms of explicitly asking for a provision around dry cutting, that was not a recommendation of the task force.

The Hon. DANIEL MOOKHEY: To be fair that was not a recommendation endorsed by the majority of the task force?

Ms McCOOL: It was not a recommendation of the task force.

The Hon. DANIEL MOOKHEY: But the Construction, Forestry, Maritime, Mining and Energy Union [CFMEU] has come before us and said that they recommended that dry cutting be banned and that they have advanced the proposition to the task force.

Ms McCOOL: No. The CFMEU recommended that manufactured stone be banned.

The Hon. DANIEL MOOKHEY: Yes and incidentally in addition to that dry cutting. They gave that evidence to us directly as well. So when you say that was what the task force recommended, was that a unanimous finding of the task force or was it a majority finding of the task force?

Ms McCOOL: I will have to go back but my recollection, knowing that the report is now somewhat a few months ago, was that it was around banning manufactured stone. That was the motion put to the task force.

The CHAIR: We heard earlier from Safe Work Australia that they are a members body in effect, made up of a number of memberships. Who represents New South Wales on that?

Ms WEBB: So I have been nominated to be the member because the term of Ms Donnelly, who was the member, has just ceased. But it has not been formally appointed yet so we are in an interregnum at the moment.

The Hon. TREVOR KHAN: I love that word, interregnum.

Mr DAVID SHOEBRIDGE: It is always a dangerous time.

The CHAIR: I think they said there were two per State?

Ms WEBB: No. I think there is just one.

Mr DUNPHY: There is just one.

The CHAIR: Are you aware of what New South Wales' position was on the 0.05 versus 0.02 exposure standard?

Ms WEBB: Yes. We supported the ultimate recommendation that Safe Work Australia made.

The CHAIR: The 0.05?

Ms WEBB: Yes.

The Hon. DANIEL MOOKHEY: That brings us to an issue because they were disputing whether they made that recommendation or whether they were actually channelling the views of their members. Can you clarify that for us? Was that a Safe Work Australia recommendation or did you all provide a view and then they collated it and reported back to you?

Mr DAVID SHOEBRIDGE: We are now going to have a philosophical discussion about what Safe Work is because they were saying that their council came up with the recommendation, not the CEO and their staff.

The Hon. TREVOR KHAN: I do not think it takes us terribly far.

The CHAIR: To be fair, Ms Webb is not a member at the moment.

Ms WEBB: I could take it on notice from someone who was at the meeting and try to find out, if you like.

The CHAIR: Thank you.

The Hon. ANTHONY D'ADAM: When does the reduction in the workplace exposure standard come into effect?

Ms McCOOL: The decision was for a period up to three years was the maximum. The Minister is currently considering the start date for New South Wales. No other jurisdiction has commenced other than Victoria.

Mr DAVID SHOEBRIDGE: The Committee was told by SafeWork that it came into effect under some instrument that it published on 16 December.

CORRECTED

Ms McCOOL: That is not correct.

The Hon. TREVOR KHAN: Mr David Shoebridge would understand that notwithstanding what it said it is a matter for the States.

Mr DAVID SHOEBRIDGE: That is what I am trying to find out. They said an instrument had been published on 16 December which led me to believe that it was, in effect, in New South Wales. Can you tell me what is replacing it?

Mr DUNPHY: There is a model legislation. They will update the model legislation but each jurisdiction then has to update its own legislation. For example, Victoria has never adopted any of the legislation but each jurisdiction has to make its own decision about when it will adopt it.

Mr DAVID SHOEBRIDGE: When will adopt that much safer air quality—but not safe—monitoring?

Ms WEBB: Ms McCool said the Minister is currently considering it.

The Hon. TREVOR KHAN: Watch this space.

The Hon. ANTHONY D'ADAM: Following on that, all the air monitoring assessments that have been made in terms of 142 or 146 sites are above a higher standard, is it not?

Ms McCOOL: Point one.

The Hon. ANTHONY D'ADAM: Are we able to assess whether they are compliant at the lower standard or will that require a further exercise in going out and assessing whether they are complying?

Ms McCOOL: Definitely. However, our evidence including research that we have been made aware of through western Sydney university, wet cutting, as I said, will get you generally down to 0.05 but other controls are needed, so yes, it will prompt further investigation. In terms of the transitional arrangements for a further period of up to three years, that will apply to all businesses. That will be tunnels have to get down to 0.05, quarries have to get down to 0.05, mines, manufactured stone. The transitional period obviously is for the investment in what needs to be done to halve to get down to 0.05.

Mr DAVID SHOEBRIDGE: Are you aware that SafeWork has its own consultant's advice that recommends 0.02 as the safe level?

Ms McCOOL: That is correct. The decision was that it would be 0.05 with a transitional period up to three years, and further research as to whether 0.02 could be monitored, including for extended shifts of more than eight hours.

Mr DAVID SHOEBRIDGE: If the best medical advice is that 0.02 is the safe level, what are we doing exposing workers to 0.05 for another three years? Do you have any evidence about how many workers we would expect to come down with silicosis because we are allowing that?

The Hon. TREVOR KHAN: You have asked two questions. Why do you not let them answer the first one?

Ms McCOOL: The level of 0.02 does not exist in the world, 0.025 is a level, 0.03 is a level in various jurisdictions but the United States of America is 0.05 as well. There is a lot of technology and work practices in able to actually meet. Putting in a standard that is not able to be met essentially, as I said, that is where the research needs to be. Equally, the assessment was done on a health assessment rather than a cumulative assessment that is done in a workplace. So also the methodology behind that exposure standard review did not consider, I guess, the practical implementation within a workplace.

The CHAIR: I want to clarify one point. Is the minimum exposure standard around the world 0.05 or 0.02?

The Hon. DANIEL MOOKHEY: The proposition that came up was the United States of America and Mexico have 0.02.

Mr DAVID SHOEBRIDGE: They do.

The Hon. DANIEL MOOKHEY: And they do. That is coming from the Occupational Safety and Health Administration regulation in the United States.

Mr DUNPHY: They have action levels and permissible exposure levels. I think the permissible exposure level is 0.05. There is an action level that is a lower level which means people need to do certain things. In the United States the permissible exposure level is quite different. It is a prescriptive that allows people to actually be exposed above that level. In our regulatory framework it is about reducing risks as low as reasonably

CORRECTED

practicable. Even though there is an exposure level of 0.05 which we are aiming for there is still an obligation on employers to reduce their risk as low as reasonably practicable.

The Hon. DANIEL MOOKHEY: I accept that the way in which Australian workplace law is framed differently but their actual level is 0.25 and their PEL level is 0.05 but they start enforcement activities at 0.025. That is the difference.

Mr DUNPHY: The action level just means that the employers need to review their actions: that is no different to our legislation where the employer has to always reduce all of the risk to as low as reasonably practicable so they are continually doing that. So it is no different. I think the difference is a permissible exposure level implicitly says that you can expose people above that level, and that is not what we are trying to achieve. We are trying to reduce the levels.

The CHAIR: Thank you for clarifying it. I asked for clarification because earlier there was testimony which is different to what you have just indicated.

The Hon. DANIEL MOOKHEY: Where are we up to in terms of the processes establishing as New South Wales notifiable Dust Disease Register?

Ms WEBB: As I mentioned in my opening statement, we are engaging closely with NSW Health about how the recommendation will operate in practice and what legislative change would need to be made.

The Hon. DANIEL MOOKHEY: Have you identified a date by which it is possible to have that operating by?

Ms WEBB: I think we have identified the steps we need to take. I do not think I could say we have identified a date.

The Hon. DANIEL MOOKHEY: Have you got a target date or a deadline by which you are meant to complete these work and provide advice to government?

Ms WEBB: Most certainly we are going to provide the advice as soon as can.

The Hon. GREG DONNELLY: Are you talking to icare about it? Are icare in the loop on this?

Ms WEBB: Yes, they are aware that we are talking to health.

The Hon. DANIEL MOOKHEY: Our last report made a recommendation that should there not be a core Dust Disease Register operating by the end of 2019 New South Wales should unilaterally establish its own? The New South Wales Government accepted this recommendation, to be fair, in its response. It is rare that it accepts our findings.

The Hon. TREVOR KHAN: That is very unkind.

Mr DAVID SHOEBRIDGE: It was a unanimous recommendation, I think.

The Hon. TREVOR KHAN: It was, indeed.

The Hon. DANIEL MOOKHEY: Is it reasonably foreseeable that such a register could be operating this year?

Ms WEBB: Because it involves the Department of Health and the Department of Health's legislation—that is why I am hesitating. I think it is foreseeable, it just depends on other parts of the Government to change the legislation as well as our activities.

The Hon. DANIEL MOOKHEY: McCool you said previously that you had 70 notifications from icare. Are you getting any notifications from anyone other than icare?

Ms McCOOL: No, and that is why it is important to have a register because we would need to serve a notice on every single doctor in New South Wales.

The Hon. DANIEL MOOKHEY: Sure. I want to be clear about the icare data. It only covers employees?

Ms McCOOL: Employees?

The Hon. DANIEL MOOKHEY: Yes, that is what they say. They said it only covers people who are a party to an employment relationship, not contractors, for example?

Ms McCOOL: No, so that is anyone can attend that service. You do not need to show that you work for—you can be self-employer.

CORRECTED

The Hon. DANIEL MOOKHEY: No, I am not asking about the service, I am asking about the cases that they certify and put into the figures. When they report 40 or 70 they have made it very clear to this Committee that is just employees, that is, people who are eligible to make a claim.

Mr DUNPHY: That is correct. The compensation cases are purely that you have to have worked in New South Wales and your industrial history.

The Hon. DANIEL MOOKHEY: Does SafeWork NSW have any measures in place to monitor or detect for anyone outside of the compensation system currently? Does any of your enforcement activities and strategies informed by lower elements of the supply chain to installers only?

Mr DUNPHY: We are only workplace and safety regulators so we would only be looking t work health and safety exposures. The beauty, I guess, of the register would be that it would capture all cases.

Mr DAVID SHOEBRIDGE: You say if you wanted to capture the data outside of icare in the medical sphere, Ms McCool, you would have to issue a notice to every general practitioner. Is that right? Is that your evidence?

Ms McCOOL: Yes, unless, as I said the work that we are doing with NSW Health changes the Public Health Act.

Mr DAVID SHOEBRIDGE: You see, the thoracic surgeons that we had in here said a far more sensible focus of your attention would be upon the thoracic surgeons—the ones who are experts in this—a much, much smaller corpus of people, a much, much more achievable goal for you. Have you developed any protocols? Have you issued any notices? Have you thought about tapping that pool of evidence, which seems to be a pretty obvious one?

Ms McCOOL: There are also hospital admissions. I looked at the questions on notice you served to NSW Health. That would not capture your thoracic physicians. We are trying to triangulate—

Mr DAVID SHOEBRIDGE: No, I am asking you about thoracic physicians. You said "all GPs".

The CHAIR: Mr Shoebridge, allow the witness to answer.

Mr DAVID SHOEBRIDGE: You said "all GPs". I am asking you have you considered the thoracic surgeons, the most obvious study group.

Ms McCOOL: Again we need the change in laws to require it to be notifiable. That will achieve it through all data sources, whether you go to a hospital, you go to a physician, you go to your GP, you go to icare. That is what we are trying to achieve.

Mr DAVID SHOEBRIDGE: And you support that change? Because that will make your job, I assume, not only easier but it will make the evidence you have much more comprehensive. Do you support that change?

The Hon. DANIEL MOOKHEY: And you will have the ability to respond much faster, presumably.

Ms WEBB: We are working towards the development of the register with NSW Health.

The Hon. ANTHONY D'ADAM: Following on from that, Mr Shoebridge's questioning is suggesting that perhaps it is an immediate action that you could take. Rather than waiting, you could serve notices on the thoracic surgeons and that would produce an immediate response. You do not have to wait for the Department of Health. It is a manageable number—a much smaller number than all the GPs. Have you considered that? Why would you not take that option?

Ms McCOOL: We could consider it. Notices can be appealed, as you know. But again essentially by having it notifiable that would remove all barriers.

Mr DAVID SHOEBRIDGE: I think we all agree that would be a much better outcome but we do not seem to be hastening quickly to that in the interim.

Ms WEBB: We will take that on board as a possibility.

The CHAIR: Has anybody got any final, further, quick questions?

The Hon. TREVOR KHAN: No.

Mr DAVID SHOEBRIDGE: Could they take one question on notice, which is about finding five?

The CHAIR: You can put the question on notice in writing.

Mr DAVID SHOEBRIDGE: I could just do it now.

CORRECTED

The CHAIR: We will put it in writing. I thank the witnesses for attending the hearing today. The Committee has resolved that any answers to questions on notice will be returned within seven days. The secretariat will contact you in relation to the questions you have taken on notice.

Mr DAVID SHOEBRIDGE: Is there a further questions on notice process, given our reporting date? I did not think there was.

The CHAIR: There is, with the seven-day time frame.

Mr DAVID SHOEBRIDGE: No, is there a process for us to put further questions on after this?

The CHAIR: Yes.

(The witnesses withdrew.)

The Committee adjourned at 13:02.