REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

2021 REVIEW OF THE DUST DISEASES SCHEME

CORRECTED

At Jubilee Room, Parliament House, Sydney on Wednesday, 16 February 2022

The Committee met at 9:00 am

PRESENT

The Hon. Wes Fang (Chair)

PRESENT VIA VIDEOCONFERENCE

The Hon. Lou Amato
The Hon. Mark Buttigieg
The Hon. Anthony D'Adam
The Hon. Greg Donnelly (Deputy Chair)
The Hon. Scott Farlow
The Hon. Taylor Martin

* Please note:
[inaudible] is used when audio words cannot be deciphered.
[audio malfunction] is used when words are lost due to a technical malfunction.
[disorder] is used when members or witnesses speak over one another.

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The CHAIR: Good morning and welcome to the first hearing of the Standing Committee on Law and Justice—its 2021 review of the dust diseases scheme. The inquiry is a follow up to the 2019 review which focused on silicosis in the manufactured stone industry. We will be seeking to understand what progress has been made to address the issues identified in that review. Before I commence I would like to acknowledge the Gadigal people, who are the traditional custodians of the land on which the Parliament sits. I would also like to pay respects to the Elders, past, present and emerging, of the Eora nation and extend that respect to other Aboriginal people present.

Today's hearing will be conducted virtually. This enables the work of the Committee to continue during the COVID-19 pandemic without compromising the health and safety of members, witnesses and staff. I would ask for everyone's patience through any technical difficulties that we may experience today. If participants lose their internet connection and are disconnected from the virtual hearing, they are asked to rejoin the hearing by using the same link provided by the Committee secretariat. Today we will be hearing from a number of stakeholders including legal advocates, unions, medical professionals and occupational hygienists as well as representatives of the manufactured stone industry. I thank everyone for making the time to give evidence to this important inquiry.

Before we commence I would like to make some brief comments about the procedures for today's hearing. Today's hearing is being broadcast live via 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 broadcast guidelines, media representatives are reminded that they must take responsibility for what they publish about the Committee's proceedings. While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the hearing. I therefore urge witnesses to be careful about comments you may make to the media or others after you complete your evidence.

Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard, it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. If witnesses are unable to answer a question today and want more time to respond they can take the question on notice. Written answers to questions on notice are to be provided within 21 days.

Finally, a few notes on virtual hearing etiquette to minimise disruption and assist our Hansard reporters. Can I ask Committee members to clearly identify who questions are directed to and could I ask everyone to please state their name when they begin speaking. Could everyone please mute their microphones when they are not speaking. Please remember to turn your microphones back on when you are getting ready to speak. If you start speaking while muted, please start your question or your answer again so that it can be recorded in full for the transcript. Members and witnesses should avoid speaking over each other so that we can all be heard clearly. Also to assist Hansard, may I remind members and witnesses to speak directly into their microphones and avoid making comments when your heads are turned away from microphones. I now welcome our first witnesses.

Ms JOANNE WADE, Asbestos/Dust Diseases Practice Group Leader, Slater and Gordon Lawyers, Representative, Australian Lawyers Alliance, before the Committee via videoconference, sworn and examined

Mr JONATHAN WALSH, Principal Lawyer, Maurice Blackburn Lawyers, before the Committee via videoconference, sworn and examined

Mr TIMOTHY McGINLEY, Senior Associate, Maurice Blackburn Lawyers, before the Committee via videoconference, sworn and examined

The CHAIR: I will start by asking for any opening statements. Ms Wade, do you have a short opening statement?

JOANNE WADE: Thank you. I am appearing today on behalf of the Australian Lawyers Alliance [ALA]. I welcome the opportunity to give evidence to the Standing Committee on Law and Justice inquiry into the 2021 Review of the Dust Diseases Scheme into silicosis. Today I represent the ALA, being a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual. The ALA estimates its 1,500 members represent up to 200,000 people each year across all States and Territories in Australia. The ALA promotes access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA has made written submissions to this review dated 11 November 2021. I refer to those submissions. Silicosis is a disease that is preventable. Silicosis is caused, as we know, by the inhalation of crystalline silica. We have noted a rise in workers in the manufactured stone industry being diagnosed with accelerated silicosis. The disease is manifesting much earlier and we are seeing the need for complicated treatment, including lung transplant. I recently had a client who we assisted in 2015. He was only 39 years old and last year, in 2021, he had to undergo a double lung transplant. It is the ALA's submission that we continue to call for the updating of the definitions of dust diseases in the Act. We note that SIRA has undertaken an actuarial study and presented it to icare and the ALA calls on icare to now make those recommendations to the government based on that report. The ALA continues to call for free ongoing screening for all workers exposed to silica. The ALA continues to support a reduction in the exposure standards to 0.02 milligrams. And the ALA welcomes the National Dust Disease Taskforce and the report that it has released. Thank you.

The CHAIR: Thank you very much, Ms Wade, for that opening statement. If you and the other witnesses who are making opening statements have a pre-prepared statement, would you mind emailing it to the secretariat? It benefits Hansard when they are doing the transcription. Mr Walsh or Mr McGinley, do either or both of you have opening statements?

JONATHAN WALSH: Thank you, Chair. Yes, I have a prepared statement on behalf of Tim and me. On behalf of Maurice Blackburn, thank you once again for the opportunity to present to the Committee on this really timely review of the dust disease scheme in New South Wales. Tim and I presented to the Committee in 2019 and we feel it is a good circularity to come back and present again in 2022. Importantly, in our written submission and any verbal evidence we will give this morning, our comments and recommendations are based and drawn directly from our experiences from our clients. Indeed, it is their stories and their experiences within the system that drive our push for a better, more compassionate approach to improving the lives of these workers.

We note that this year's review is aimed at evaluating the progress of the recommendations made in the 2019 review on the management of silicosis in the manufactured stone industry. Our submission, which you will have, offers input in relation to the observable success or otherwise of the implementation of the 2019 recommendations. But if we were to draw a couple of overall themes from our response, they would be: firstly, that the implementation of the recommendations has been, across the board, disappointing; and, secondly, that it would now be timely for the Committee to expand its thinking outside of a tight focus on manufactured stone to a consideration of impact of silicosis and silica-related disease on a broader range of workers in industries well beyond stonemasonry.

Our on-the-ground experience would suggest that important, straightforward and beneficial recommendations from the 2019 review have not been actioned or not been actioned effectively. This is particularly noticeable in some of the more important findings from that review such as: the implementation of free screening, which was recommendation 2; improvements to retraining, which was recommendation 4; the development of a registrational licensing scheme for the manufactured stone fabrication industry, which was recommendation 8; and the introduction of a ban on dry cutting, which was recommendation 9.

In our submission we awarded the Government's response to the recommendations as, disappointingly, a D-minus. We maintain there simply has not been sufficient urgency applied to the implementation of what could be life-saving measures explicit in these recommendations. Maurice Blackburn of course is pleased to offer our

experience and expertise to the Committee, and we commit ourselves to supporting the work of the Committee well into the future. With those opening remarks, we thank you once again and welcome any questions.

The CHAIR: Thank you very much for that, Mr Walsh. I will now pass to the Committee for questions. I am looking for the first person. Mr D'Adam, would you like to open the questioning?

The Hon. ANTHONY D'ADAM: Yes, I would like to perhaps direct a question to both panellists. I thank you also for attendance today. I wanted to ask you about your observations on recommendation No. 8. The Committee proposed a registration scheme; in Victoria they have gone much further than that. They have introduced a comprehensive licensing scheme. Can you perhaps make some observations about what you have seen from clients in Victoria, the impact of that initiative from the Victorian Government and why New South Wales should perhaps consider following suit?

JONATHAN WALSH: I am happy to answer that, Mr D'Adam. From Maurice Blackburn's point of view—and I am sure this is shared by ALA—the Victorian introduction of new regulations which cover the field for silica and silica exposure in all workplaces, not just stonemasonry, is really the gold standard in Australia. Our certain hope is that those recommendations and that regulation is applied across all States and Territories in the nation. It is an obvious step to be made. It is obvious that silica-related disease and the problems stemming from excessive exposure to silica is not just captured and confined to the stonemasonry industry, and these issues are huge. Young clients are getting affected—tremendously so—by all manner of silica-related disease. Positive, progressive action needs to be taken, in a regulatory sense, immediately. We hope, as I said, that the rest of the States and Territories in this country follow Victoria's lead in this regard.

The Hon. ANTHONY D'ADAM: Ms Wade?

JOANNE WADE: I would support what Jonathan has said. I would suggest that the Victorian system should be replicated in New South Wales, and I would echo my colleague's words.

The Hon. ANTHONY D'ADAM: In the Maurice Blackburn submission I think you refer to the dust diseases Act as being antiquated—"archaic", I think is the wording you use. Can you perhaps elaborate on the elements of the Act that you think need attention?

TIMOTHY McGINLEY: Good morning. This is Timothy McGinley from Maurice Blackburn Lawyers. I thank the honourable member for the question there. Just before I answer that question, I might just add something to what was asked previously. Introducing a licensing or registration system in New South Wales will go a long way into allowing the other recommendations made by the Committee to be met as well. If there is a licensing and registration system, it will make it a lot easier for organisations such as icare to undertake screening if they know where those employers are located and who they are, as well as allowing any of the safe work regulatory bodies to be able to conduct proper inspections and enforcement of mechanisms.

Turning to the honourable member's second question about the state of the dust diseases Act, the problem with the dust diseases Act can probably be summarised in two different points. First of all, the particular disease compensated by the current wording of the Act limits to a number of named diseases in the Act. These very much reflect the medical science at the time that the Act was implemented. They have not been updated. There are a number of diseases that are now known to be linked to silica and other dust exposures in the workplace which are not listed in the Act. As a result, people who suffer these diseases, which are very much being caused by workplace dust exposure, essentially fall through the cracks. A couple of examples include people who get silica-induced scleroderma. That is a connective tissue disease caused by exposure to silica dust. While silicosis, being a disease that affects the lungs, is covered under the Act, those who develop scleroderma are not covered under the dust diseases Act because it is not a named disease under the Act. That is one example simply that the diseases do not reflect all the known diseases now that can be caused by dust exposure.

The second way that the Act is a bit antiquated is in terms of its compensation scheme. The way that compensation is paid under the dust diseases Act is very much aimed at the more traditional dust diseases that have been seen, such as asbestos-related diseases and silica-related diseases that occur once a person is already in retirement; that is, it is not well designed for people who develop a disease while still in their working life. The compensation as paid, in terms of weekly compensation—while it is good for someone who is already retired, it is not good for someone who is already working in the prime of their life and might be earning a high income. It also does not provide proper resources for retraining into other areas if people need to leave the industry. This is probably all of a result of the fact that when the Act was designed originally, it was considering people who were near the end of their working life or already retired, as these traditional diseases often affected people. But that does not reflect the people who are now being affected as a result of accelerated silicosis.

The Hon. ANTHONY D'ADAM: Can you elaborate just on that point about the retraining? What kinds of benefits are available for redeployment and retraining of younger workers?

TIMOTHY McGINLEY: Currently icare does have a system for vocational rehabilitation. That is really limited to educating people on how to go about finding another job once they have suffered a workplace injury such as disease. The problem with the system is twofold. First of all, many people, especially stonemasons working in the stonemasonry industry today, earn above Australian median wage—up towards $80,000 and even, with some senior workers, as much as $100,000 and beyond that. That means it is very difficult for them to find another job that pays as well without undergoing significant retraining, such as taking up a TAFE course or a university degree, in order to get another job.

Unfortunately, not much support is provided under the current scheme for people who do want to undertake retraining. That could create a barrier for people wanting to leave the industry because they are faced with this prospect that they are not going to be able to get a job with their current training that pays anywhere near as much. They do not have the support available to be able to undertake the further training or university or tertiary studies. As a result, they may make the decision that it is worth staying in the industry, notwithstanding that they might suffer a disease, because they do not know how they are going to support their family otherwise with this transition.

The second problem with the current scheme when it comes to retraining is more about the compensation aspect. Under the current system, someone who is diagnosed with a compensable dust-related condition receives a wage replacement allowance in the first 26 weeks, which then goes down to a statutory rate after that. Now, if someone wants to undertake tertiary studies afterwards, that might not be enough to support their family—if they have got a young family, for example—while they are doing that. They may make the calculation that they cannot afford to cease working to do that. The other problem is that the compensation is related to your level of disability. If a person finds out quite early on that they have silicosis—for example, before they have significant disability—they may not actually be entitled to any compensation at the time, which acts as a barrier for them leaving the industry to undergo retraining because they will not have an income.

The Hon. ANTHONY D'ADAM: Have you encountered experiences where workers who have been diagnosed with the early-onset silicosis return to the workplace rather than finding alternative—

TIMOTHY McGINLEY: Actually, I might turn to Jonathan for that. I know my colleague Jonathan has one example of that. Before I do, I will say that I actually unfortunately happen to see, most likely, the opposite thing occurring: that people do not feel like they can undergo the retraining and are not able to change to another job. I have had many examples of people being diagnosed with early-onset silicosis either staying in the industry and deciding to chance it for a bit longer—to see if they could at least work up enough money to be able to support themselves if they want to study and do something else—or, unfortunately, take a significant pay cut by moving into another industry because they cannot find something that they are trained enough to go into which pays the same.

JONATHAN WALSH: Just to supplement Tim's commentary, which I fully agree with, in our experiences—and this is common amongst all the States, not just an experience in New South Wales—whether you are a high income earner or a low income earner, clients of ours have been chancing it. One example is a client who is now 49, about to turn 50. He was informed of his silicosis disease on a review back in 2012. He had young children at that time. He was not told he should not return to that workplace because of the dust and the risk that posed to him with regard to exponentially increasing the chances of a much worse disease. He has continued to work in that industry, with that same level of dust exposure, simply because he did not believe he could be retrained and there were no other options presented to him at that time. Very sadly, six years later in 2018, he was then diagnosed with progressive massive fibrosis. It complicated the former silicosis because of that prior eight-year exposure that he had subsequently to his original diagnosis in 2012.

That is a very live and prime example of the pressure that is placed upon these workers, with insufficient weekly benefits available and insufficient retraining options available. This is now the devastating effect that he has had. He has moved around from project to project now. He has finally sought legal advice, and we are assisting him. But that, I think, is a good example of how the system does not work for a client and a worker in that particular situation.

Mr DAVID SHOEBRIDGE: Thanks to the three of you for your attendance and your submissions. Perhaps starting with you, Ms Wade, what is the solution when you know you have a worker who has been exposed, whether it is to manufactured stone or it is silicosis from tunnelling through sandstone? You know they have been exposed and you know that they have early signs of silicosis or a silica-related disease, but they have not suffered any incapacity. The law basically says that until you have an incapacity, we will not shell out any decent money for you. Is that the problem? If so, what is the solution?

JOANNE WADE: Thank you for that question, Mr Shoebridge. If they have been exposed to silicosis and they are told they have got early silicosis on their CT scan—no impairment and it is not really affecting them

at the moment but, equally, they should still leave the industry—the solution that I see and the ALA sees is that they do need to be supported to leave the industry. That, in my view, would mean that they should be paid what they were earning for a period of time—and that might be up to two years—to help them get retrained. We are talking about a cohort of workers who generally have left school aged maybe 15 to 17. They have joined this industry. They have been earning, as my colleague Mr Walsh has said, very good money. They have got young families and they are at a loss as to what to do. I think the solution is they need to be supported with wage replacement for up to two years to get them through a retraining program.

Mr DAVID SHOEBRIDGE: Is that available? My understanding is icare or Dust Diseases Care have said the law does not allow for that because they are only allowed to pay for incapacity, and it is very difficult to mount the argument for that incapacity payment for two years.

JOANNE WADE: At the moment icare tends to award a 1 per cent incapacity, which means, yes, they have got very early silicosis, but technically they are not really impaired. They award them a 1 per cent impairment so that they then can pay them for the first 26 weeks at what their wage was, and then that does drop down to the statutory rate. That is not enough to support, say, someone in their 30s or early 40s with a young family who might have been the breadwinner, earning $100,000.

Mr DAVID SHOEBRIDGE: I will go to Mr Walsh and/or Mr McGinley. First, do you agree with that analysis? If so, should we be recommending that there be a two-year transition benefit payable to particularly move workers who have early-onset but minimal or no measurable impairment? Should we change the law to allow that to happen?

JONATHAN WALSH: Yes, definitely, Mr Shoebridge. I agree with what Ms Wade has indicated and with the proposition you put in your question. Undoubtedly, and very clearly, a change in the law is required to ensure that these workers get compensated for a period of time. By way of comparison, in Victoria, there is two years' lost wages—a 126-week period of time where workers diagnosed with even nil-disability silicosis are paid back wages. It is even debatable whether the two-year period is sufficient. Compare it to Queensland: Up to five years of wages can be paid before that particular worker is exited from the scheme.

The problem lies in that two years may well not be enough to properly understand the nature and extent of the silicosis diagnosis for that particular worker. Particularly, it becomes problematic where there are secondary diseases like, for example, a psychological condition, anxiety, depression, adjustment disorder—which is extremely frequent, particularly in younger workers with a diagnosis like this. Those diseases, those particular injuries, take a long time to resolve—well beyond two years. The second separate issue we are seeing, as we have mentioned in our submission and verbally already, is silica-induced autoimmune diseases: scleroderma, rheumatoid arthritis, lupus and renal failure. These particular conditions also take a long time to manifest themselves. Oftentimes, we have found that a two-year period, particularly for clients based in Queensland, is insufficient time to understand the nature and extent of their injuries. We would certainly advocate for a longer period of time—at least two years, but it should be longer—to allow these workers to get the medical attention they need, understand the nature and extent of their injuries and be presented with options regarding retraining or medical treatment which are fit for purpose for their individual situation.

Mr DAVID SHOEBRIDGE: Where a condition such as one of those secondary conditions, an autoimmune response or similar, is not compensable under the dust diseases legislation, does that mean that the worker then has to make a separate claim under the workers comp legislation? How is that compensable to them, or is it compensable?

JONATHAN WALSH: That is exactly how a worker needs to address that particular issue, Mr Shoebridge, and it is very problematic when we are coming to representing and pursuing cases on behalf of workers who have both conditions—silicosis, a very clear lung disease, and a secondary autoimmune disease like rheumatoid arthritis. The law is not clear as to how the courts would award damages in those particular circumstances. But on a practical level that particular worker, that client, needs to make two separate applications, both to different arms of icare: one to icare Dust Diseases for the silicosis component and then one to icare generally for the work-related component, that being the autoimmune condition. We have proposed, in our written submission, a very simple fix: an update of the definition of a dust disease to include "any pathological condition caused by exposure to dust". That would cover the field; that would cover all the issues around dust-induced COPD, dust-induced emphysema and bronchitis and autoimmune conditions. It just seems illogical that both icare and Dust Diseases Care cannot cover the field for all dust-related injuries.

Mr DAVID SHOEBRIDGE: Ms Wade, do you support that descriptive addition to what is a compensable dust disease injury—that instead of just a list, you have a descriptor that says those diseases but also includes secondary diseases that flow from exposure to dust?

JOANNE WADE: Yes, I definitely support that.

Mr DAVID SHOEBRIDGE: On notice, will you have a look at the proposed recommendation that Mr Walsh has just referenced and see if there are examples around any other jurisdiction that we could pull off the shelf? I will ask Mr Walsh the same on notice.

The Hon. GREG DONNELLY: Thank you, witnesses. My questions are general in nature, and I will direct them to witnesses from both respective organisations, the ALA and Maurice Blackburn Lawyers. I thank both organisations for putting in your submissions. It is so important to have quality information before us to help guide our thinking and ultimately prepare our recommendations. I do not speak for all members, but the majority share frustration about seeing the slowness of the progress in dealing with this matter.

I note particularly in the opening statement from Maurice Blackburn Lawyers some reflection on the failure to proceed with significant recommendations from the 2019 inquiry report, particularly around recommendations 2, 4, 8 and 9, which brings me to this point. When we last looked at this important policy area, there was some torpidity in acknowledging that what we were looking at and what was staring at right in the face was something that potentially was our asbestosis issue to deal with today. In other words, this is what is before us to deal with. There were some witnesses who were reluctant to compare what we are looking at to what in fact we saw back then. I invite the witnesses to comment about the fact that we really have to step change in our thinking that clearly this is equivalent at least, in term of its impact, to what we saw then, and time now is well past to move to implement these structural changes to our legislation, which you have outlined.

TIMOTHY McGINLEY: I thank the honourable member for the question. I believe we made some submissions regarding this particular issue during the last review and specifically the similarity drawn between the asbestos issue of the 1990s and 1980s and what we are facing now. I would say that certainly in terms of the public health risk that this product presents, certainly, yes, this is a test of similar magnitude in terms of a public health response, although it presents much different issues that have to be dealt with compared to what we did with mesothelioma and asbestos-related diseases. First of all, most of these diseases are striking people in the prime of their life rather than asbestos-related diseases, which generally strike people once they are already retired. So there is actually much more significant economic consequence both to an individual and to the larger compensation and public health system at large, presented by accelerated silicosis that was not seen during the greater use of asbestos-related claims.

The advantage I think we see here is that, compared to what happened with asbestos, we are still very much at the beginning of this particular epidemic, so steps can be taken now in order to prevent it becoming much worse, as long as there are steps taken so that we do not face the same human casualties as we did with asbestos-related diseases previously. So, yes, this should be seen as a public health emergency in the way that asbestos-related diseases were, but I think we are in a good position to be able to take steps now. It would spare a lot of lives if we take steps now. If we do not take those steps, potentially the economic and human consequence of this could be worse than what we have seen with asbestos.

The Hon. GREG DONNELLY: Thank you. I am just wondering whether Ms Wade would like to comment about the potential dimension of what we are looking at? In other words, it is perhaps in some sense what one could consider early days but if one considers that we are now in 2022 talking about a 2019 report with recommendations they are precious years that have slipped away.

JOANNE WADE: Thank you for that question. I know in the national task force report they did make a recommendation that if the industry could not be cleaned up by 2024, then a ban should be placed on the engineered stone products. That is only two years away so something does need to be done to make sure that the industry is complying: introducing the registrations and the licences, making sure the factories are inspected and complying with dry cutting bans, making sure that dry cutting is not taking place when they are installing these benchtops. So, yes, three years have slipped away. There is urgency around it because these young workers are still being diagnosed with the silicosis and these other diseases.

The Hon. GREG DONNELLY: Thank you. I might allow the Hon. Mark Buttigieg some time to provide for his questions.

The CHAIR: Thank you, Mr Donnelly. I was actually going to see first if the Government members have any questions that they wish to ask before I go to Mr Buttigieg.

The Hon. SCOTT FARLOW: Thanks very much, Chair. I have a couple of questions. Just looking at it in terms of the definition for which you have advocated, how many people are falling outside of the scheme at the moment because of the definition? What have you seen in terms of people who are coming to you who cannot access the scheme because of the current definition?

JONATHAN WALSH: The problem with that answer to that question I would like to give is that we simply do not know. There has been no comprehensive Australian law across the nation, particularly New South Wales, to understand the nature of the related disease. The comparison we had to asbestos and the asbestos-related disease is just, and I certainly agree with that when we face the silica-related problem, it is massive, but we do not know how big the problem is. But the asbestos disease was a way to follow the product, to then identify the industry and the particular worker as to who would be at risk.

The difference, and the fundamental difference with silica, is that it is not just engineered stone. It is naturally occurring silica, which is disrupted and disturbed every day of every week in many particular industries, including tunnelling, road construction, metalliferous mining, quarrying, general construction, abrasive blasting, concreting, concrete manufacturing and many, many other industries where we do not even know that silica product is being put into the manufacturing process. We can give anecdotal numbers of clients who have fallen through the cracks, but the problem is large based on the corporate samples that we have of clientele bringing these cases presently, but the problem is that we cannot effectively answer that question as to the extent of the problem.

The Hon. SCOTT FARLOW: Thanks very much, Mr Walsh. I know the Australian Lawyers Alliance did not make the same corporate recommendations when it came to the definition, but did raise this issue as well in terms of the definition. Do you have any comments to make on that point either?

JOANNE WADE: I only add that I have seen the reports that have been published that SIRA has undertaken an actuarial study in relation to the definitions and the diseases. I think icare should have responded to that report and make recommendations to the Government about the definitions and the diseases to be included.

The Hon. SCOTT FARLOW: Thank you very much. Just another question to Maurice Blackburn Lawyers with respect to Recommendation 2 regarding the free screening service for all workers. I know that you say that you are unaware whether a free screening for all workers has been conducted, but have you had any clients who have had experience with either the lung bus that has been provided or with the icare street service either? Has anyone provided you with any feedback on usage of those facilities from icare?

TIMOTHY McGINLEY: I thank the honourable member for the question. Yes, certainly we have had experience with people who use both the lung bus and the icare facilities in the CBD. Generally speaking, the outcome of those have been good. The clients find that it assists them greatly and they have led to lots of diagnoses. The issue with those is that the lung bus can only be in one location at any one point in time and the facilities in the city are right there in the city whereas the industry is spread throughout New South Wales. The current scheme is that icare provides subsidised free screening for employers that have under 30 employees and subsidised screening for people over that. But unfortunately the way the system works currently is it is still on the employer to organise screening.

Despite that, we have had clients who had experience with the lung bus and with icare facilities in the city. The majority of the clients over the last two years that have come to us diagnosed with silicosis as a result of being the subject of exposure have come to us as a result of organising screening themselves. They come from workplaces where no organised screening has been organised but they have seen something on the news or heard about a colleague who has been diagnosed with silicosis and go to their own GP or to a respiratory physician and get a referral themselves, and as a result get a CT scan.

While it is great that employees are getting the message and getting themselves checked out, it should not be left to the employee to have to do these in the circumstances. Certainly most employees, when they organise it themselves, particularly if they do not have private health, end up paying an out of pocket cost—if they go to a specialist or if they have to have a CT scan—which can equal hundreds of dollars. While we see the people who do go and get scanned themselves and get diagnosed and come to us for advice, we do not see the many more people who that cost barrier might prevent them or deter them from going and getting screened and whose employers have not organised screening for them.

The Hon. SCOTT FARLOW: So outside of the heavily subsidised screening processes, what sort of costs are injured workers, or potentially injured workers, incurring for these screenings? I know you talked about the CT scans, but what are we looking at in terms of a quantum?

TIMOTHY McGINLEY: That varies from location to location, depending on what a particular service charges for an elective screening. But usually the two costs that might be paid are if the person goes to a respiratory physician or specialist and does not have private health insurance, or their private health does not cover the entire gap, as well as if they go for a CT scan. But usually we are talking in the hundreds of dollars for a screen.

The CHAIR: Thank you very much, Mr Farlow. Mr Buttigieg, we have only got a few minutes left so I will give you the opportunity to ask a quick question and then we will have to draw this session to a close.

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The Hon. MARK BUTTIGIEG: Thanks, Chair. I have got a few but I will zero in on one particular one that struck me, when you mentioned the Victorian jurisdiction as being the gold standard. I think the general view from the submissions I read is Queensland is much better than New South Wales as well. Presumably, there is a proliferation of screening and testing down there. I was just interested in any commentary around the evidence coming out of what appear to be better systems in those States. Is it the case that we actually get more evidence of silicosis contracted diseases as a result of a more transparent regime where people are coming forward and getting tested and employers are encouraging it, so that the evidence actually shows that there are more incidents of silicosis in those States as a result? And, if so, some employers may want to use that as evidence that it is not necessary to go down that path because we have lower rates in New South Wales. Is that the general trend in terms of what has been happening?

JONATHAN WALSH: Yes, Mr Buttigieg. This is Jonathan from Maurice Blackburn. I can certainly speak to the Queensland experience. WorkSafe Queensland in conjunction with WorkCover Queensland screened 1,200 stonemasons in the State, of which around 25 per cent were all diagnosed as having a silica-related disease. We anticipate that that type of one in five worker with a silica-related disease is probably going to be reflected throughout the other industries too—[inaudible] mining, tunnelling, road construction, things of that nature. It is true that the more you look, the more you will find. But that cannot be a reason for New South Wales employers to object against the full screening of all workers in affected areas. As I answered the question previously put, it speaks to how you do not know the extent of the problem. In order to tackle the problem effectively, we need to know the nature and extent of the problem. And without proper [inaudible] screening industry wide, we will never know that answer. But we do need to know it. So all the flow-on effects—the health system in particular around cost, treatment and things of that nature, the economic impact on incomes, families, mortgages and things of that nature—can all be factored into the whole-of-government response.

The Hon. MARK BUTTIGIEG: Chair, any more time?

The CHAIR: I was just about to indicate to members that we have run out of time. If there are questions that members may have, perhaps they could go on notice. I am sorry, we are quite tightly packed today. I just want to try and keep us on schedule as much as possible. So I would like to thank the witnesses for attending the hearing today. The Committee has resolved that answers to questions on notice will be returned to us within 21 days. The secretariat will be in contact with you about those questions on notice. We will now just have a very quick transition to the next set of witnesses and we will do an audio check before we start to go back to the questioning.

(The witnesses withdrew.)

Mr BEN KRUSE, Legal/Industrial Officer, CFMEU, Construction, before the Committee via videoconference, affirmed and examined

Mr CHRIS DONOVAN, National Work Health and Safety Director, Australian Workers' Union, before the Committee via videoconference, affirmed and examined

The CHAIR: Thank you very much. Do either or both witnesses have a short opening statement?

BEN KRUSE: Yes, I will give an opening statement, thank you. The CFMEU remains concerned about the high incidence of silicosis in New South Wales and the lack of action in banning high-risk, high silica content products such as manufactured stone. The shocking truth of this crisis, is described in the Federal Government's National Dust Disease Taskforce report of June 2021 that estimates that nearly one in four engineered stone workers who have been in the industry since 2018 are suffering from silicosis or some other dust-related disease. So it is extraordinary that the submissions and responses to this inquiry provided by our New South Wales safety regulators are so banal. The Parliament has taken some important steps over the last 12 months to improve regulations, but more needs to be done by Parliament, and these initiatives are outlined in our submissions. Most important of all is a ban on the use of high-risk manufactured stone products. The data from SafeWork continues to demonstrate extraordinary levels of non-compliance with work health and safety regulations.

This partly explains the incredibly high incidence of illness and the significant mortality rate. In the case of manufactured stone, as with asbestos the nature of the substance is so inherently dangerous that workplace controls are not the answer and the substance just has to be substituted for something else. We remain concerned that much of the SafeWork response appears to be directed towards the fabrication side of the industry. There have been inspections in the construction industry; however, it simply is not clear to what extent inspections are being carried out where the most high-risk work is performed: in installation settings. We are also concerned about responses from SafeWork to the pre-hearing questions and the extent to which there can be confidence that dedicated teams of inspectors will be out doing this work and not be distracted by other perhaps less challenging or more entertaining jobs in liquor and gaming.

The results of the case finding study reported by SafeWork are terribly disappointing. As was anticipated by the last parliamentary inquiry, the case finding studies should have involved cooperation between safety and health regulators and professionals. What appears to have happened instead was that a consultant was employed to review the existing data. Over the last couple of years NSW Health has developed sophisticated skills in forensic contact testing. These skills should have been used in the case finding study so we could follow the path of toxicity from import to fabrication and installation. But as it was implemented by SafeWork, the case finding study appears to have been not much more than a data analysis, and in our view did not meet the requirements of the regulations. Interestingly the submissions from Caesarstone and Smart Stone go some way towards recognising:

> … that a ban of certain high-RCS-content engineered stone may be considered if reforms do not tackle the re-emergence of silicosis …

Given the privileged knowledge that the manufacturers and importers have about the content and nature of their products, perhaps they could see the writing on the wall. If so, one wonders why there is such poor compliance on the part of government and regulators about getting on with implementing the ban. The importers and fabricators argue that time is needed to measure the effectiveness of recent regulatory reforms, and propose a licensing system. However, I have attended enough of these inquiries to be confident in saying that enough time has already passed and that action needs to be taken on the ban now. Imagine the outcry if one in four dentists, lawyers or politicians were being poisoned by their working environment. Things would get done pretty quick smart. Manufactured stone is not essential to our economy. It is not an essential product in steelmaking, agriculture or future space exploration. It is just part of an architectural aesthetic that has only existed since the 1990s and eventually will pass like less destructive trends such as the vertical grilles of the 1970s. We need to have the courage to take action.

The CFMEU is also concerned about the lack of engagement from the regulators. SafeWork's submission to this inquiry is half-hearted at best. The regulator says they are about to roll out the response to the national Code of Practice and are liaising with industry about that, but there has been no communication with the CFMEU at all on policy or practical matters in this area since the abrupt dismantling of the Manufactured Stone Task Force over two years ago. We actually do have skills and knowledge in this area and, for example, have dozens of health and safety representatives representing thousands of workers on building sites across the State. Notably, the Royal Australian College of Physicians also appears concerned about the lack of consultation. The 2019 task force discussions were challenging and contestable. SafeWork now appears to be so close to the manufacturers that consultation has become a process of speaking into an echo chamber. Real change will only come through

engagement with a broader range of stakeholders. There are some important regulatory changes that can be made, and I am happy to talk about those further to the inquiry.

There needs to be more research about the toxic nature of these ingredients and the development of new monitoring technology to support the further halving of the workplace exposure standard. I note that SIRA have reported on research initiatives funded by the Dust Diseases Board. As a member of the Dust Diseases Board I am not here to speak today on behalf of the Board, but it is common knowledge that while over the last couple of years the Board has been able to direct some focused funding towards silica-related research, from time to time these focus areas have had to change so that progress does not fall behind in other important areas, such as mesothelioma treatment and quality of life research. There is a strong argument for government to support a specific funding initiative directly tackling the causes and prevention of silicosis and technical advances in air monitoring. Thank you.

The CHAIR: Thank you, Mr Kruse. Just in relation to your opening statement, I note you were reading from some notes. If it was a pre-prepared statement, would you mind emailing it through to the secretariat because we did have a number of audio issues while you were broadcasting then and there were some dropouts. For the benefit of Hansard—and perhaps other members—if it can be emailed through, we can pass it over to them for the transcript. Mr Donovan, can I invite to you make an opening statement, please?

CHRIS DONOVAN: Yes, thank you. The Australian Workers' Union represents members in a diverse range of industries. Members in tunnelling, quarrying, cement work, mining and construction are among those facing the greatest risk from silica exposure in the workforce. It is noted that the current review is concentrated on the engineered stone industry, as were prior reviews. While the AWU understands there is a particular crisis in this industry and supports swift, preventative and regulatory action—including the banning of the engineered stone itself—the focus of the New South Wales Government must not be limited to the engineered stone industry alone. Silica dust does not discriminate based on what industry a worker is in. Workers exposed to silica dust in tunnelling, quarrying, cement work, mining, construction and other industries must be given equal consideration for the purpose of this review and subsequent recommendations. New South Wales will see cases of silicosis rise in the coming years and decades if swift, preventative regulatory and compensatory measures are not quickly adopted by governments to protect workers exposed to silica dust. Thank you.

The CHAIR: Thank you, Mr Donovan. I will start the questioning with the Hon. Anthony D'Adam.

The Hon. ANTHONY D'ADAM: Thank you, Chair, and I thank Mr Kruse and Mr Donovan for their appearance today. Mr Kruse, I wanted to ask about the workplace exposure standard that has been reduced to 0.5 milligrams per cubic metre. Is that a safe level now?

BEN KRUSE: The reports that the national inquiry heard last year were that a truly safe level will not be implemented until the WES is reduced to 0.02. The difficulty is that the technical know-how just does not exist at the moment, except for extraordinary expenditure, to actually measure levels at that safe standard. That process at the national level of the reduction of the WES has been postponed until the technology catches up. The point I make is this: If this substance, particularly with engineered stone, is so dangerous that it can kill you at such small levels of exposure that cannot be presently measured, surely that is one of the strongest arguments of all for the substance to be banned. The admission on the part of the national task force is that we cannot actually monitor for safe levels, so therefore the present WES of 0.05 is actually more than double what is understood from a health perspective to be the safe level.

The Hon. ANTHONY D'ADAM: You are effectively saying workers are not safe unless the workplace exposure standard is at 0.2 and, in that case, the products cannot be safely [inaudible].

BEN KRUSE: That is right. The SafeWork statistics from September last year indicate that 16 per cent of businesses, or 24 out of 147, were not complying with the new workplace exposure standard. There is an extraordinary level of noncompliance with a standard which is more than twice the density of what a safe exposure would be. It is just not possible to control this substance, other than by substituting it for something else.

The Hon. ANTHONY D'ADAM: How would you measure the workplace exposure in an installation context?

BEN KRUSE: Our concern is that that is just not happening. There are methods of measuring exposures in installation contexts—and, of course, hygienists do exactly that. But our concern is that the focus with SafeWork is on working with the fabricators, which is where the big money is in terms of the importers and where most conversations appear to be happening. We are just not confident that enough monitoring work and inspectorate work is being done at the installation level, which is where all the small businesses are. They are not as strongly unionised so we do not see as much of those people. We think that is where a lot of the disease and deaths are occurring.

The Hon. ANTHONY D'ADAM: How practical is it for SafeWork to be inspecting for, say, dry cutting in an installation context? These guys are out in homes, new constructions in the housing sector. How does an inspector monitor and enforce the dry cutting ban in that context?

BEN KRUSE: It is just not practical, and that is why asbestos was eventually banned—because eventually it dawned on everyone that the substance just cannot be satisfactorily controlled. You cannot follow the installers around and make sure that they actually comply with the regulations.

The CHAIR: Mr D'Adam, do you mind if I pass the questioning to Mr Buttigieg, then Mr Shoebridge? I will come back to you if there is more time. I want to make sure everyone has the opportunity to ask a question.

The Hon. ANTHONY D'ADAM: I just have one further question about the Victorian regulatory regime that has been put in place: What is your view about that? It is licensing employers and subcontractors. Do you think the licensing regime should extend to individual workers who are handling manufactured stone?

BEN KRUSE: Victoria has the best of the licensing schemes that are around. One of the impressive things about it is that it follows the chain of supply and so it does, to a degree, have that sort of tracing element. It has requirements about training and, of course, the employers and the installers have to be licensed. But our view is that that is not sufficient. The substance itself should be banned.

The Hon. MARK BUTTIGIEG: Mr Kruse, I have some sympathy for the banning edict, given the experience that we have had with asbestos and mesothelioma over a protracted period, where you have a substance embedded all through the economy and the spectre of it becoming what they call friable. Where it is always in the hierarchy of controls, you eliminate the hazard if possible. Has a ban been done in any other jurisdictions, either interstate or internationally?

BEN KRUSE: I am not aware of bans being put in place in other jurisdictions. What I am aware of is that companies that are making and supplying these products are international conglomerates, and they have extraordinary political and market power, and so Governments do appear to be influenced by that.

The Hon. MARK BUTTIGIEG: What would you say to one of those conglomerates? Presumably, one of their arguments would be, "Once it's manufactured and polished, unless it's disturbed—which is highly unlikely—it no longer poses a threat. If we can put in appropriate PPE and workplace safety measures to protect workers then that will solve the problem." What is the response to that?

BEN KRUSE: The problem is that the evidence is that you cannot control the installation process because particularly with the small installers who are doing domestic work, and even the installers on large building sites, the controls simply are not implemented. I know that is the argument that is put forward, but the data from the few inspections that are occurring in New South Wales simply does not reveal that.

The Hon. MARK BUTTIGIEG: Is it a simple calculus of economics? In other words, what do they say the stone industry is worth to the economy in Australia?

BEN KRUSE: Off the top of my head, I cannot say. That is not really my field. What I can say is that all of this stuff is important. If you make a comparison to the asbestos industry, which was shut down, that was an industry that involved mining in Australia—jobs in mining, jobs in transport and factory jobs in packaging and distribution. Here, the process of substitution really would not be that difficult. There are many other products that can replace this, whether they be wooden products, steel products or other conglomerates. Even the manufacturers themselves are starting to highlight the idea of low-silica products that can be manufactured to perform this task.

The Hon. MARK BUTTIGIEG: I am conscious that my colleague Mr Shoebridge wants to ask a question, so I have one more question for Mr Donovan. In your submission, you emphasise that this is not just about the manufactured stone industry. Notwithstanding the crisis in that industry, there are a whole range of occupations outside tunnelling and whatnot that are just as exposed. Will you give us a sense of the percentage of workforce exposed vis-a-vis the manufactured stone industry—in other words, the breath of the problem outside manufactured stone and (inaudible)?

BEN KRUSE: I do not have that data at my fingertips, but obviously the construction industry, more generally, is a much larger industry. I note that that the Victorian scheme does not solely focus on manufactured stone but focuses on silica regulation more generally. It is the case that over the last several decades there has been a much higher incidence of the use of mechanised tools. The AWU obviously have experience with the tunnelling side of things. There has been a huge increase in silica exposure in those environments, and I am regularly dealing with members who are discussing silica exposure in that environment. It is much higher than it has been in recent decades.

The CHAIR: I will pass to Mr Donovan for a quick answer, and then Mr Shoebridge will have the call.

CHRIS DONOVAN: Yes, certainly. We are certainly terrified at the potential rate of silica exposure to workers outside of the engineered stone industry. I think I make reference in my submission to, basically, a number of workforce participants which was approximately, if I recall correctly, around 600,000 Australian workers currently exposed to silica dust. Stonemasons do make a portion of that and, obviously, their exposure is arguably greater, as we have seen here in the number of cases of silicosis in those workers, due to the materials worked with. However, when looking at tunnelling and quarrying in particular, we are extremely concerned—given the large quantity of workers in those industries—that if this matter is not dealt with across the board then we are likely to see silicosis cases rise substantially moving forward.

The CHAIR: Thank you for that, Mr Donovan. I will now pass to Mr Shoebridge, and after that I will give the Government or the crossbench an opportunity to ask some questions.

Mr DAVID SHOEBRIDGE: Thanks to the two of you for your evidence today and the work that both of your unions do towards safety on the ground. Have you had the opportunity to read the icare submission, Mr Kruse?

BEN KRUSE: Yes.

Mr DAVID SHOEBRIDGE: What do you make of the situation where icare has a 59 per cent funding ratio? What has led to that, be it higher claims management or a stuff-up in past underpayments? What do you make of that?

BEN KRUSE: I am sorry, I did miss a little bit of that. Were you talking about the underpayments issue, Mr Shoebridge?

Mr DAVID SHOEBRIDGE: According to icare, the Dust Diseases Care scheme has only a 59 per cent funding ratio, with $1.2 billion in funds under management. When I do the numbers, that is a deficit of some $833 million. They say that the scheme's liabilities have been adversely impacted by a higher than expected number of claims, an increase in expected claims handling expenses and allowances for remediating past underpayments for some workers and revising future payment practices. A lot of that seems to be stuff-ups from icare, but I could be wrong. What is your view?

BEN KRUSE: Yes. Look, we addressed that at point 11 on page 16 of our submission. There have been concerns with payments. There are some retired and disabled workers that were paid the statutory rate rather than the actual rate of pay for 26 weeks of incapacity. I mean, that is a stuff-up. There are also overpayments made in some circumstances. Rather than focusing on the past, I am more concerned with the future. One of the concerns we have is that the standard icare response is to engage external advisers, such as PricewaterhouseCoopers, to come and resolve these issues. What clearly needs to happen is that they need to improve their competence within the organisation to actually address these issues themselves.

Mr DAVID SHOEBRIDGE: Mr Donovan?

CHRIS DONOVAN: I just echo the comments of my comrade in the CFMMEU, to be honest. It is obviously not too good and, just like him, I think I would like to concentrate on the future in terms of having this matter is resolved. But in all of these things it might be a question worth posing as well to the lawyers, given they might have better sight of that.

Mr DAVID SHOEBRIDGE: In one of the matters of the icare submission they point out how the underpayments have arisen and how, on their fresh reading of the law, some incapacitated workers' dependants are not entitled to even the very modest payments under dust diseases and it really depends on when you are found to have a hazardous dust disease. They say that they have recommended to the Government that that be fixed by legislation so that, regardless of what your injury is, you and your dependants have the right to the same fair compensation. Have you been consulted about any of the amendments to that effect?

BEN KRUSE: I am not aware of any direct consultation about that with us about that matter. If I could also just be a bit opportunistic and point to one concern that it is in our submission about legal issues. Our lawyers who represent injured workers tell us that there is a real problem for the tribunal, the Dust Diseases Tribunal, in deregistered companies having to be reinstated through expensive and timely Supreme Court actions. This issue needs to be resolved. I used to run dust diseases cases myself and I am well aware that there is often a real race to get these hearings on because people's health conditions can turn very quickly. It really needs to be done to streamline the process for people getting their cases heard before the tribunal.

Mr DAVID SHOEBRIDGE: Could I ask you, if you could, to give us a brief additional submission on that point? Many years ago when I did practise in this space I recall those fairly pointless summonses to the

Supreme Court with costs and extensive delays to reinstate a company purely to have some kind of Nominal Defendant who is then represented by an insurer—a ridiculous waste of money and time—so if you have a proposed law reform in that regard, it would be great if you could articulate it with some clarity in your answer.

BEN KRUSE: Yes. Well, I take you to page 17 of our written submission. The best example of the problem is identified *In the Matter of Richards Contracting*. All of these procedures are relatively automatic but they are involved moving through, step-by-step, an extraordinary number of applications that were costly. Simply put, the Act needs to be amended so that any claim made by a worker and a former employer can be managed and satisfied by naming SIRA in the proceedings in the Dust Diseases Tribunal without also having to obtain leave from the Supreme Court corporations list to reinstate deregistered corporate employers.

Mr DAVID SHOEBRIDGE: All right. That seems to be extremely rational, although it does cut out some work for lawyers. Maybe that should be part of the scheme. Mr Donovan, do you have a view about the need to urgently implement legal changes, as apparently icare has informed the Government, to ensure that no dependant or worker is worse off with a dust disease claim just depending on some arbitrary date of their injury?

CHRIS DONOVAN: Yes, certainly. We touch on this in the submission. I can only speak anecdotally, really. We have a number of people who fall into that category. If you look at the workforce in general, they are typically the old sort of system of the breadwinner, basically, and the partner who is not working and who typically stays at home to do sort of domestic duties in that fashion. When we see instances of silicosis occur, it is typically quite harsh. It is actually discouraging people and workers who were aware of actually coming forward and who are already displaying symptoms of silicosis or potential lung diseases because there is lack of faith in the system itself, which we are concerned about.

But certainly any changes should also include, given what I mentioned before, provisions for adequate compensation going forward relative to the current role and for that compensation and also extra support for family members. I think you will find as well that many of the tunnelling workers that we represent are on a decent wage, given the amount of risk that their job requires them to do. However, the tunnelling jobs will not be around forever. Typically, what we see is a lot of movement within the industry—that is, workers will go from Victoria to Queensland back down to Sydney to continue to do and work on tunnelling projects, which puts them at further and further risk of developing these sorts of diseases.

Mr DAVID SHOEBRIDGE: Can I ask you both, if you would not mind, just to take on notice and maybe go back and check with other officers what, if any, consultations happened with your organisations about the underpayments issue?

BEN KRUSE: Yes.

The CHAIR: This is your final question, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Yes. Assuming that icare's numbers were right at least as at in the end of December, and they have only 59 per cent of what is required to meet future claims in their kitty, what is the answer to that? Clearly we have a need to expand the definition of dust disease injury to pick up dust diseases that are otherwise having to be separately executed in the workers compensation space. There is clearly a need to make the law work so that no injured worker or dependant is worse off, based upon the date of injury, but there is also a big bloody hole in the finances. How do we square those figures?

BEN KRUSE: Well, if I can go first, obviously the hole needs to be filled. I am not going to propose any significant mechanism but, Mr Shoebridge, the observation that I make is this: In the case of silicosis, these are not onsets that take decades to come about. These come on quickly. We have got members in their late twenties and thirties who are contracting this disease. What we need to do is stop people getting it. If we ban this toxic substance, that will stop the problem and that will also improve the finances of the scheme, which over the last several decades is really focused on mesothelioma and asbestos-related diseases. The silicosis crisis has taken the scheme by surprise, or it did a few years ago, but this is the third or fourth of these inquiries that I have attended. We really need to get the prevention sorted out and fill the economic hole. If we do that, things will look after themselves.

Mr DAVID SHOEBRIDGE: Finances and safety go down the same path.

BEN KRUSE: Absolutely.

Mr DAVID SHOEBRIDGE: If you keep injured workers paid. Mr Donovan?

CHRIS DONOVAN: Yes. I agree with Ben on that one and I would also just like to say that there are some instances of silicosis being developed that has quite a long latency period as well, so if there is lack of funding you would want to really be looking to the future, not just in the next four years or whatever the next

election cycle is. You would want to be looking in the next 10, 20 or 30 years, even if the tide is stemmed currently, which is not currently happening—not fast enough, anyway. If the funding is not now available for people who will contract silicosis going forward, we know that is going to happen, then that just raises a whole bunch of questions in terms of how these people will be looked after under the workers compensation provisions which they are entitled to. There should be far more attention put on this matter. It forms a part of the entire strategy which should be prevention, number one; number two, regulatory changes; number three, adequate workers compensation measures that are available to workers. If that does not happen, we are in a lot of trouble going forward.

The CHAIR: Thank you for that. I will now pass the questioning to the Hon. Lou Amato.

The Hon. LOU AMATO: Thank you, Chair. Thank you for being here today. This is a very important issue indeed. I do not mind who answers this question or you can all answer the question, but I understand that a lot of people engaged in the stone industry come from non-English-speaking backgrounds. Are you aware of what has been done to ensure that business owners and workers understand the hazards and also the safeguards that need to be undertaken to ensure workplace safety? And also do you know what safeguards have been implemented in the stone industry since the last inquiry?

BEN KRUSE: Mr Amato, in my role within the Dust Diseases Board, the Board wrote to the government when this crisis first appeared and called on the government to increase the amount of advertising and education in non-English-speaking languages, and some action was taken initially on that. I am just not sure of to what extent there is continuing expenditure on that front. The big concern that we have at the moment is the lack of engagement with the broader stakeholders. It is just extraordinary that SafeWork have not come near us for several years now, given the high level of engagement we have with workers in the industry and all our health and safety representatives who live and speak these community languages every day in the workforce. So you can only get so far with advertising brochures. You need to engage with workers and you also need to make sure that the regulators engage with the workers' representatives.

The Hon. LOU AMATO: I guess the union would be limited in their access to a lot of these small businesses?

BEN KRUSE: Yes. But it is known generally that small businesses tend to be less heavily unionised. In the construction enterprises, it is now a mandatory provision in CFMMEU enterprise agreements that employers conduct training specifically directed towards silicosis risks, and that is a very practical effort that we have made sure is implemented at all the major work sites where our members are. In our submission, we have also made some very specific comments about training, with a recommendation that the regulation be amended to require businesses to provide training regarding the health risks associated with crystalline silica exposure, similar to those in the Victorian regulations, and to make sure that that training is nationally accredited.

The Hon. LOU AMATO: Thank you, Mr Kruse. Mr Donovan, anything further to add?

CHRIS DONOVAN: I do not have anything further to add on that.

The Hon. MARK BUTTIGIEG: I just want to try and encapsulate what I think are the key elements of both pieces of evidence, and the emphasis is on, particularly from the CFMMEU but supported by the AWU, prevention by getting this thing out of the system altogether. And it is a virtual cycle once you do that, right? Because the associated economic cost goes away and the health of the workers is improved, so you cut the danger out at its source. Instead, what is seen is that you have got a regulatory and compensatory regime which is extremely deficient and lagging. It may get to a point where, once those things become more prosecutable and people's lives start to get an economic benefit, then there will be cases brought and we will find ourselves 10 or 20 years down the track with multibillion-dollar losses and cases, and then there will be a focus on why we did not ban this at the start. I just wonder—and it sounds very callous to do this, but sometimes it seems the only way governments are convinced—have there been any cost-benefit analysis or studies done on the likelihood of economic cost if we do not ban this substance now, over a period of the next, say, 10 to 20 years? Has anyone done that sort of economic analysis?

BEN KRUSE: I am not sure of that. And I think that is an excellent idea. As I said before, I do not know who we are seeking to protect in terms of the commercial side of things with this. The importers come from Israel, Spain, Italy—

The CHAIR: Mr Kruse, if I could just interrupt you. I think your laptop speakers may be just a touch loud. If you could perhaps turn them down, because we are getting feedback when you are speaking now.

BEN KRUSE: Yes, I will. Hopefully that is better. As I said, economically, all products for this are from overseas. The joinery and installation work will continue; it just will be using different substances, as will

the fabrication. There will still be benchtops made; they will just be made from different substances. So I cannot really see any real downsides in terms of economic impacts. Banning the substance should really only improve the economic outcomes.

The Hon. ANTHONY D'ADAM: I just wanted to ask about the impact of HSRs in workplaces and whether you would support, particularly in the manufactured stone industry, a requirement for HSRs to be in place.

BEN KRUSE: Any workplace that needs or wants HSRs can have those elections occur in any event. I think mandating democratic processes like that—I have not really thought that issue through. I think the problem with the installation will continue—where a lot of risks are occurring is in workplaces that are very, very small with just a handful, or even less, of employees—where the need for democratic processes like that to really have an impact is not as great.

The CHAIR: Thank you very much for that. Mr D'Adam—HSRs, for the benefit of Hansard?

The Hon. ANTHONY D'ADAM: Health and safety representatives.

The CHAIR: Mr Shoebridge, one quick question before we close off.

Mr DAVID SHOEBRIDGE: It is to both of you. From your experience in talking to members, particularly those who may potentially have claims or exposure, is there any explanation you can see for the significant reduction in workers presenting to icare with silicosis claims? Because on icare's numbers, their silicosis cases and silicosis-related cases went from 40 in 2018-19 when we first started raising this issue, to 107 when we were enforcing some screening in 2019-20, then down to just 37 in 2020-21 and then down to just 9 in 2021-22, at least in the first three months of that. What, if anything, should we read from those numbers?

BEN KRUSE: It is a really good question, and it has been on my mind too, Mr Shoebridge. I think the explanation is that, during the pandemic, there have been less opportunities for people to present for medical examinations generally. Everyone has been locked up in their homes and there has been less work performed in these dusty environments. So I think there is a very strong likelihood that these figures are anomalous. There is another matter that the physicians have brought up which is a concern, and that is that steps need to be taken to make sure that we screen properly. We have had concerns where we have had to argue with employers who want to use chest X-rays for people coming out of tunnelling environments and where there has been silica exposure.

The West Australians have taken steps on this to pass a regulation to require CT scanning as the principal screening mechanism. And I note that doctors raised some real concerns about the extent to which—even though icare say that people who report silica exposure are sent off for CT scans, icare do not do all the screening. Some of it is done by employers. There need to be steps to make sure that the screening is free, regardless of where the referral comes from, and the regulations need to be changed to make sure that the silica exposure CT scan is the method that is used and employers cannot opt for a cheaper X-ray, which is less effective in picking up a disease.

The CHAIR: Thank you very much for all your—apologies, Mr Shoebridge, we are out of time. I have got to stick to the time. Perhaps Mr Donovan can provide an answer on notice?

Mr DAVID SHOEBRIDGE: If Mr Donovan [inaudible] on notice in that regard, [inaudible].

The CHAIR: Thank you for that, Mr Donovan. Speaking of questions on notice, the Committee has resolved that answers to questions on notice will be returned within 21 days. The secretariat will contact you in relation to the questions you have taken on notice. Apologies for the compressed time, but I thank you for your appearance today.

(The witnesses withdrew.)

Ms NATASHA FLORES, Industrial Officer, Work Health & Safety & Workers Compensation, Unions NSW, before the Committee via videoconference, affirmed and examined

The CHAIR: I now welcome our next witness. Could I ask you to please make a short opening statement?

NATASHA FLORES: Yes—and apologies for the cockatiel. This is quite short. Firstly, I would like to thank the Committee for the opportunity to appear at today's inquiry. Our concerns—the concerns of Unions NSW and the concerns of our affiliate—remain the number of young, healthy workers who are contracting diseases such as silicosis. These are diseases that we associate with the Dickensian era and they did disappear for some time. In the twenty-first century, diseases like this should not be resurfacing. Safety controls measures remain haphazard in the industry. We would like to see immediate government action that quickly eradicates such diseases and ensures that workers who choose to work in this industry or with building products that contain silica—and there are many of them—do not die 10 years into their career, which unfortunately is what we are seeing at the moment. There are a number of building materials that contain silica; most of them do. Silica is everywhere. But our major concern remains the artificial or the manufactured stone bench tops. That is it for my [inaudible].

The CHAIR: Thank you, Ms Flores. I will now pass over to the Committee for questions. Mr D'Adam, I will give you the call. Could you indicate if you are asking Ms Flores or the cockatiel for a response?

The Hon. ANTHONY D'ADAM: Definitely! Ms Flores, thank you for your appearance today. I wanted to start by asking you about the Victorian licensing scheme that has been put in place for the manufactured stone industry. Is that something that we should be doing in New South Wales? Should we be emulating Victoria and putting in a comprehensive licensing scheme to regulate the manufactured stone industry?

NATASHA FLORES: We would agree with an approach similar to that, yes, absolutely. One of the problems when this first began to surface, which was probably when it had some media attention—around 2017, 2018, I think—was there really was not a lot of regulation. I know SafeWork did do some work in the area—many, many visits; some advertising—but I think that needs to continue. Advertising certainly needs to continue. There needs to be greater regulation of the industry.

The Hon. ANTHONY D'ADAM: The Australian Institute of Occupational Hygienists described the silicosis epidemic as a product of the failure of the work health and safety system. Do you agree with that?

NATASHA FLORES: Yes. Work health safety is the prevention. Workers comp and the dust diseases scheme is not really a cure; it is a fix-it. We try to fix things, remedy things through the schemes that are available, but ideally if we can avoid getting these diseases, we should. We encourage people to avoid other diseases—"Don't smoke. Don't get cancer. Get checked regularly. Get breast examinations" et cetera. Far better to get in there early and to get in before the damage is done. From my understanding, these diseases are not curable. They do not, unfortunately, give the person who has the disease a particularly long life span once they have discovered they have this disease. It is very sad to see men in their late twenties or thirties dying because of the career that they have chosen, which is an important career and something that we need. Obviously we cannot get rid of stonework and masonry et cetera, but we do have to put in much, much better control measures, and that comes down to our regulator in SafeWork.

The Hon. ANTHONY D'ADAM: Do you think specifically that the compliance approach that SafeWork has taken has led to the epidemic of silicosis?

NATASHA FLORES: SafeWork has taken an educative approach to much of what it has done over the last five years or so, perhaps longer. I am an ex-teacher. I am not opposed to education. Education is extremely important. But I do believe that there comes a time where, if education is not working and people are dying, a stronger approach is needed. Prosecutions are needed and companies need to be closed until they are able to guarantee that they can provide safe workplaces for their workers.

The Hon. ANTHONY D'ADAM: Do you have perhaps any direct experience of SafeWork prosecuting in the manufactured stone industry? Are you aware of any prosecutions that have occurred?

NATASHA FLORES: As far as I know, there were many, many PINs and notices that were—back around 2019, I think, SafeWork did a blitz. That did result in a number of PINs being distributed and warnings. I think one of the other problems in this industry is it is still somewhat hidden. It is not necessarily easy for SafeWork or anyone to find these places. What I have heard from affiliates is the problem may not be at the factory or it may not be at the warehouse. The problem may be when the manufactured stone arrives at the building site, whether that be a domestic site, a large block or a tower block in the city. When the benchtops do not quite

match the measurements that were given to the workers then unfortunately, I have been told, often the only option is to cut that to the right measurement. That happens, unfortunately, onsite with dry cutting—which is, as we know, the most dangerous form of cutting this product. It is happening in probably hundreds and hundreds of little renovations that are going on all over Sydney. I do not think there would be too many kitchens these days that have been renovated that do not have this sort of engineered benchtop, so it is very likely that dry cutting has occurred in many of these instances. And that is just really hard to find and to locate.

The Hon. ANTHONY D'ADAM: Do you think that highlights, I suppose, a resourcing question for SafeWork? Do you think there is an adequate number of inspectors sufficient for the job in terms of compliance in this industry?

NATASHA FLORES: I have always said there probably are not enough inspectors in the job. There are I think around 7,000, last time I looked—and that was a while ago—businesses across New South Wales. We are a very large State. We are the business State, if you like. There are a number of SafeWork inspectors who are classified as inspectors but, from my understanding, they do not actually go out and inspect. Their jobs are more desk-based, administrative jobs. I do not believe there would be enough. In my fantasy world, you would probably need 1,000 or so—that is, I think, putting it conservatively—to get out there and to really service the entire State the way it needs to be serviced. This is just one issue of many, many safety issues, too. These inspectors are dealing with thousands of issues, a very diverse range of issues, every day. I would not say there are enough.

The CHAIR: Mr D'Adam, I will come back to you if we have time. I will ask Mr Donnelly if he has some questions. If not, I will pass to Mr Buttigieg.

The Hon. GREG DONNELLY: Thank you, Chair. Ms Flores, thank you for appearing today, and thanks to Unions NSW for their submission. About halfway down page 6 of your submission, there is a paragraph that continues onto the next page about the current Minister, Minister Anderson, and comments that he has made with respect to lowering exposure rates to silica to a new lower rate of 0.02 per cent and other matters related to tackling the matter of silicosis. Are you able to provide us with any update or any reportage about bringing those things forward and making them happen, as opposed to announcing them and just talking about them? I presume Unions NSW has been monitoring those announcements and making their own observations. Can you provide us with any report on what you are seeing happening?

NATASHA FLORES: I have not seen anything happening, and I will not blame the Minister entirely. COVID has obviously been the priority, and that is understandable. We are in a national and global crisis at the moment, so I do understand that that is the Government's priority. I am not aware of any movement or change since then, but that was towards the end of last year. We did break for Christmas, and many of us have just returned to work. I would not say that nothing has happened; I just am not aware of it at this stage.

The Hon. GREG DONNELLY: It has certainly not been publicly reported, as far as you know.

NATASHA FLORES: Not as far as I know. I have not received any information.

The Hon. GREG DONNELLY: Which perhaps has answered the question that was to follow, which is in the last paragraph on that page, about monitoring of dust rates in tunnels and related industries. Have you heard any announcements about work being done in this area by SafeWork or anyone else?

NATASHA FLORES: No. Other than PR exercises about the tunnels, no. We actually approached Minister Kean a number of years ago with some disturbing photographs of the dust in one of the tunnels. I think it was NorthConnex.

The Hon. GREG DONNELLY: NorthConnex, yes. It runs through my electorate.

NATASHA FLORES: You could not see a metre ahead of you or beyond your hand if you put your arm out, and he was genuinely concerned. I have no doubt that he was genuinely concerned about the conditions, but that was a number of years ago. From what I hear, conditions waver. You may have a very effective site manager who comes on site and says, "Right, this is going to be done; this is going to be done", and gets everything in place for the proper control of dust. But at other times you may get a site manager on board who says, "No, we don't need to worry about that", or perhaps there is some reason to rush on that particular day. There may be a deadline or something. What we hear is that some days you have got good conditions; other days, not so good conditions. That all depends on, first, the site manager and, second, the deadlines and the movement of work and how it is progressing. But the photos that I saw were certainly very disturbing, and that came from the Australian Workers Union. They have had a number of their workers or members unfortunately pass away as a result of silicosis in the last couple of years. It is quite sad that people are passing away, who are young, as a result of their job—an important job but, you know, very disturbing.

The Hon. GREG DONNELLY: On that very point and looking at this area of silicosis, casting our minds back and looking at the work done, it has quite properly come out of our enhanced understanding of what has been going on in the manufactured stone industry, and particularly benchtops, in the context of the large sites that do cutting or the bespoke work that might be done by a person on site—for example, doing a home installation. But in the AWU submission, recommendation 1 states:

> The current workplace health and safety crisis caused by silica dust is not limited to silicosis in the stone bench industry. Government responses must consider all industries where silica dust exposure is a risk, including, but not limited to:
>
> - tunnelling
> - quarrying
> - cement work
> - mining
> - construction.

I would like you to comment on this. There is now very clear evidence that we are looking at a problem with a much larger remit than manufactured stone. It is an issue in a number of industries. Would you agree with that statement?

NATASHA FLORES: Absolutely, yes. I have read, in some of the readings I have done, teachers who work in art departments with clay have—one teacher in particular died. They often, in schools, re-use clay. Once kids have made pots and figures and whatever they are making, they move on and those pots and what have you get broken up into small pieces and then basically re-used or recycled. That is something I remember from my high school days; I was quite keen on art and pottery. It is an area affecting even artists who are making pots and teachers who are teaching pottery. It is widespread, absolutely—bricks, everything.

As I said, silica is everywhere. It is part of the natural environment. It is in bricks; it is at the beach; it is in all of our rocks. It is everywhere; it is a widespread issue. It really comes down to figuring out what are the best control measures for the different situations and the different industries, ensuring there is adequate training and, I would say, educating the public in relation to the dangers. There is a large proportion of these worker who would be from non-English-speaking backgrounds, and they may not understand the dangers. They also may take on work that is not particularly safe because they want to keep their jobs, and that is actually an issue with a lot of the workers in this field. Speaking to these people, they do not want to lose their jobs. It is a difficult situation, because doctors have also said that some of these workers do not want to know. If they do not know then what they do not know cannot hurt them. If they do not know that they have a problem then they can continue working. Obviously, we all need to keep a roof over our heads and food in our stomachs, so that is often the—

The Hon. GREG DONNELLY: Just one final question, before I cede to another member, on the issue of what is mobile screening—

NATASHA FLORES: Yes.

The Hon. GREG DONNELLY: —you would be aware that there is a single bus that does mobile screening.

NATASHA FLORES: Yes.

The Hon. GREG DONNELLY: Given that New South Wales, in terms of both population and economy, is by far the largest in the Commonwealth—

NATASHA FLORES: Yes.

The Hon. GREG DONNELLY: —you would agree or say that there is a good case for additional funding set aside through the forthcoming budget for the funding of additional mobile screening in this State?

NATASHA FLORES: Absolutely. That would be wonderful, yes, because the buses go to the work site so the workers are all going there together. It is not a case of a worker going off by himself or herself to the GP to hear the bad news. There is a certain amount of collective support, if you like, when the bus turns up and all the workers go into the bus to get tested. That gets people tested which, as I said, can be difficult because people do not want to know. The more we know and the more statistics we have, then the better able we are to deal with areas of concern and we are able to identify, particularly since we know some benchtops are bad. But what else is there, that we do not know.

The CHAIR: Thank you for that. I will now pass questioning to Mr Shoebridge and then to Mr Buttigieg.

Mr DAVID SHOEBRIDGE: Thanks, Chair. Thanks, Ms Flores, for your attendance today. Have you reviewed the icare submission?

NATASHA FLORES: Not yet.

Mr DAVID SHOEBRIDGE: Well, the icare submission states—

NATASHA FLORES: Sorry. I am moving. My dad has cancer. I apologise.

The CHAIR: There is no need to apologise, Ms Flores.

Mr DAVID SHOEBRIDGE: I am very sorry to hear about that.

NATASHA FLORES: That is okay.

Mr DAVID SHOEBRIDGE: It is a hidden demon. The icare submission notes that the funding ratio for the Dust Diseases Scheme is only at 59 per cent and they assert that there are a number of reasons for that being higher than expected claims numbers, an increase in claims handling expenses, and allowance for remediating past underpayments and future payments. Are you aware of those issues that they have been facing?

NATASHA FLORES: Yes and, look, we have always said that the worker should not bear the brunt of problems that have been created through perhaps icare itself or mismanagement by management.

Mr DAVID SHOEBRIDGE: Has icare engaged with you and given an explanation about what their higher than expected claims handling expenses have arisen from?

NATASHA FLORES: We do engage quite regularly with icare—myself, a number of my colleagues and employer representatives. Yes, there are many reasons, I guess you could say, as to why this is happening—new computer programs, et cetera—but it is often we come out of these meetings and there is an awful lot of filling and repetition in them. We do meet.

Mr DAVID SHOEBRIDGE: They engaged with your organisation in relation to remediating the past underpayments.

NATASHA FLORES: Yes.

Mr DAVID SHOEBRIDGE: Are you satisfied with that remediation to date?

NATASHA FLORES: Well, given the time that it has taken, given the pain that people have endured, at this stage we want the problem resolved and we want people to have that money in their pockets. So, at this stage, yes, as long as people are able to go back and, you know, dispute possible underpayments, which apparently they will be able to, then that is okay.

Mr DAVID SHOEBRIDGE: All right. In terms that icare says that it has proposed to the Government that the law be fixed—

NATASHA FLORES: Yes.

Mr DAVID SHOEBRIDGE: —that nobody's payments are cut or their dependants refused support based on the date of the injury, has icare approached you in that regard?

NATASHA FLORES: Yes. We have met with icare. Sherri, myself and Alan Mansfield along with three employer representatives, who have just recently changed, have had meetings with icare.

Mr DAVID SHOEBRIDGE: Has an explanation been given to you about why the Government has not legislated to fix that?

NATASHA FLORES: No.

Mr DAVID SHOEBRIDGE: I assume you would support the Government—

NATASHA FLORES: Yes.

Mr DAVID SHOEBRIDGE: —rapidly fixing that?

NATASHA FLORES: Oh, yes.

Mr DAVID SHOEBRIDGE: I am assuming that Sherri you refer to is Sherri Hayward?

NATASHA FLORES: Yes, sorry. Sherri Hayward—correct.

Mr DAVID SHOEBRIDGE: All right. My final question is this: The scheme's finances seem to be in a mess—

NATASHA FLORES: Yes.

Mr DAVID SHOEBRIDGE: —much created by icare itself—

NATASHA FLORES: Yes.

Mr DAVID SHOEBRIDGE: —by failing to pay a proper rates in the past and now having to meet them in a lump sum and not properly putting in place provisions for those future payments, as well as this mysterious term of "increased to claims handling expenses" would seem to be just icare getting bigger and bigger.

NATASHA FLORES: Yes. That is what we have all heard, yes.

Mr DAVID SHOEBRIDGE: What do you see is the pathway to fixing up the deficit in those circumstances?

NATASHA FLORES: Look, if I had an answer, I would probably be a very wealthy woman, not sitting where I am now. But let me just say that part of what I do is I run a committee of other union affiliates who work in this space and these are positive conversations that we have. Any proposals that we have, ideas that we have, we are able to—and to icare's credit—bring those to icare. They do listen. They do not always do what we would like them to do, but they are listening. Compared to three years ago, that is an improvement. In this business I am not used to changes very rapidly, but given that these are people's lives we are talking about we do need pretty rapid changes in this area. But we do have some concerns.

You know, we have heard that the PIAWE calculations have been offshored. We just have no idea why an organisation would offshore something like that because that could surely create less expense. It slows the process down so it has got to create more expense. Things like that, which we do not necessarily know about, often come out accidentally in the course of our conversations.

Mr DAVID SHOEBRIDGE: Ms Flores, can I just thank you for your engagement today and your ongoing engagement in this space. I can express my regards and concerns in relation to your family matters.

NATASHA FLORES: I am sorry about that.

Mr DAVID SHOEBRIDGE: No, no. I genuinely appreciate your coming here today and giving us your experience in this space.

NATASHA FLORES: Thank you so much and thanks for the understanding. It is just part of life. Thank you.

The CHAIR: Thank you, Mr Shoebridge. I will now pass questioning to Mr Buttigieg, and then Mr Martin.

The Hon. MARK BUTTIGIEG: Thank you, Chair. Ms Flores, I just want to take you to some evidence we heard from a couple of your affiliates this morning who included the director of the AWU and the evidence of this whole concept of there being a bit of a dichotomy, I guess, and conflicting outcomes between eliminating the substance altogether and the concerns that you are cutting material to very fine, almost atomic granular particles, which cannot be detected; therefore, the only way to really tackle this thing is to get it out of being an input to the economy for a start, which Mr Kruse said was the way to go because it is largely an import industry whereby importers are obviously gaining a windfall.

NATASHA FLORES: Yes.

The Hon. MARK BUTTIGIEG: Obviously there is the regulatory and compensatory approach to deal with the issue as it stands now. I just want to get your view on whether or not—I suppose the more we fix the system to deal with what we have now, the less emphasis there will be on banning the product. I just want to get your views on where you stand on that particular issue.

NATASHA FLORES: There are some differing views due to the fact that these are jobs that we are talking about—people's jobs. Obviously unions do not want to see people lose jobs. We want people working and we want people working in good work. As I said, silica is a product that is everywhere. It is in very high concentrations in manufactured stone and I would love to see some innovation and some work done in Australia because we are not stupid people. We have, I think, to the capacity to look at other substances and look at other products. Let's be honest—this is a fashionable item. This is something that is in fashion at the moment. It has not always been in fashion and it may not always be in fashion. But I would love to see—and I know there is some work being done out there—some really innovative companies doing some work to produce items that can be used for benchtops in kitchens, bathrooms et cetera that are not as deadly. There is still a lot we do not know from my reading about it and my discussions with the Thoracic Society. There is a lot that we do not fully understand

about with the manufactured stone, and it may not simply be the high content of silica. It could also be a combination of the resins and other products that are in there and how they interact together.

My view would be we should be putting money into businesses who want to investigate, design and look at products that are going to perform a similar task and that would be equally beautiful and fashionable but hopefully not as deadly. I know that there are some of these organisations. I live near one, actually, who is probably one of the gold standard companies. They do not manufacture the product but they do sell all sorts of stoneware, marble, manufactured stone et cetera. The reason I have done this is because I am moving and I am looking at my own kitchen. They do all of their cutting in a particular room. Nobody is allowed in that room. The room is completely sealed et cetera. That does not necessarily mean, though, that fibres are not going to end up on the floor. That was one of the first things that alerted people to this problem. Tradies' dogs were dying because they would spend their day on the floor of the factory breathing this product in. That was one of our first indicators that there was a problem.

Whilst at this stage I'm not going to say let's ban the product altogether, I would really like to see the government put some money into encouraging businesses to look to other products and to consider what else we could use. And, as I said, it is fashionable. It is fashionable now. It was not fashionable 20 years ago. It may not be fashionable in 10 years' time. Wooden benchtops may be back in. Marble, I am seeing, is being used quite a lot, which is still not entirely safe. It has a much lower content of silica. We are talking about something that is a fashion item, essentially. So when you put it like that, you think, "Surely that's not worth dying for." Surely fashions come and go. Surely we can find something else that will do the job and look just as great.

The Hon. MARK BUTTIGIEG: Just quickly, Natasha, I take you to page 8 in your submission. Unions NSW strongly supports recommendation 49 of the McDougall Review.

NATASHA FLORES: Yes.

The Hon. MARK BUTTIGIEG: It says that the responsible Minister for SafeWork NSW, which is Anderson, I think, should conduct a public review of that agency's performance of its regulatory and educational functions under the Work Health and Safety Act 2011. The implication of that paragraph is that the Act itself has got enough provisions in it that, if it is properly enforced and implemented, we could go a long way to ameliorating some of these concerns. Is that the implication to take out of it or do we need to change the Act as well to give it more teeth?

NATASHA FLORES: It would probably be something that would need to be placed within the Act or have another written—I personally would like to see some sort of oversight similar to the oversight that happens in the workers comp system. You have [audio malfunction] review, you get to [audio malfunction] and anybody who is interested is able to write a submission and appear at an inquiry. I think that sort of independent oversight is really important in any sort of organisation. So the fact that SafeWork does not really have that I think is lacking. It is a problem and I think it would be a great remedy to have an oversight—some sort of committee such as this—that does an annual review. And there may well be, after COVID or once we go back and we look at the pandemic and we try and figure out what we can work on better. That may be one of the outcomes from that.

The CHAIR: Mr Buttigieg, I might ask you to hit mute on your computer because I can hear the feedback again. Mr Martin, you now have the call.

The Hon. TAYLOR MARTIN: Thank you, Chair. Thank you for your time here today, Ms Flores. Have you got any feedback on the user experience from any of your members who have used the lung bus or the Pier Street clinic?

NATASHA FLORES: No, I do not. That is probably a better question for my colleagues, because we do not deal directly with members. We deal with the unions who have the direct dealing with members.

The Hon. TAYLOR MARTIN: Sure.

NATASHA FLORES: I have been in touch with the Thoracic Society. They are very keen to see more of those buses, although they will also explain why some of the buses need to have higher levels of technology. That is certainly not my area. I am not an X-ray specialist or a thoracic specialist but my discussions with the society suggests that, yes, more buses would be great and the buses also need to have the capacity to do one other sort of test which I cannot remember at this stage, I am sorry.

The Hon. TAYLOR MARTIN: That is okay. We will take it up with them later on in the day. I will pick that up. Just going back a second, your involvement with the affiliate unions—are you aware of any of the unions pushing any education campaign in this regard to its members directly?

NATASHA FLORES: Yes. As far as I know, the AWU have been running a fair bit of—I do not know if you would call it a campaign but certainly information to their members in relation to tunnelling, which is their particular area because that is where their members are working. I know that the CFMMEU does have meetings with members and they do discuss this because their concern is not so much their members actually cutting this product but their members are on site, often on building sites when this product is being cut. So their members are not cutting the product but they are exposed. I guess it is a little bit like secondary smoke. They are working in a building and they then also breathe in this silica dust.

The Hon. TAYLOR MARTIN: Just following on in regards to the exposure on the site—and much of your submission does talk about reducing the exposure limit, lowering that exposure limit.

NATASHA FLORES: Yes.

The Hon. TAYLOR MARTIN: The exposure rate, rather. Out of curiosity, do you have any idea how exactly that is measured or monitored on site or in a factory setting?

NATASHA FLORES: It is not an easy thing to do but I do know that, through SafeWork's work health safety research centre, work is happening in this area. The work that is happening is around a very cheap device that a worker would be able to wear individually and that would clip on to the worker's shirt or whatever. That device would be able to provide a reading. There is work happening in this space, and it is certainly a ripe business opportunity for anyone who is interested in or has the capacity to do this, and I think that, again, any government assistance that could be given to any organisation that has the capacity to do this work would be, I would say, money very well spent, because workers can then identify, themselves, "Okay. This area that I'm in is a high-risk area. We need to do something, get out of this space and fix it up".

The Hon. TAYLOR MARTIN: Thank you. That is all from me. Thank you again for your time today.

The CHAIR: Thank you very much for that. We have pretty much reached the end of our session today. Ms Flores, for the questions that have been taken on notice, the committee secretariat will be in contact with you to organise the tabling of them. That is within 21 days. We are now about to take a short break. We will be returning here at 11.30, with the next session.

(The witness withdrew.)

(Short adjournment)

Ms KATE COLE, President, Australian Institute of Occupational Hygienists, before the Committee via videoconference, sworn and examined

Mr MICHAEL SHEARER, President, Mine Ventilation Society of Australia, before the Committee via videoconference, sworn and examined

The CHAIR: Welcome back to the next session.

KATE COLE: Sorry. I can just hear your feedback, but I will ignore it.

The CHAIR: Did you say you are getting feedback through the system?

KATE COLE: Yes. I can hear myself on repeat and you on repeat about five seconds after you have spoken.

The CHAIR: Roger that. We will see what we can do, if there is anything on our end. What we might do is reverse the order for opening statements. So, Mr Shearer, if you might like to start with an opening statement, and then we will see if we can do anything about Ms Cole's connection.

MICHAEL SHEARER: As I mentioned, my name is Michael Shearer and I represent the Mine Ventilation Society of Australia. The society was founded 10 years ago, in 2012, by a group of mine ventilation practitioners such as myself. Our members all share common passion, dedication and commitment to ensuring a safe and healthy work environment is designed and implemented for fellow workers in industries such as mining, tunnelling and associated work groups. Albeit there is no current legislation that supports the stone bench group, potential risk of exposure to airborne substances is an important issue in other industries as well and certainly needs to be addressed through regulatory support. Our vision is to help provide industry and regulatory bodies with the understanding, advice, best practices and practical management controls to lower and mitigate potential risk of personal exposure to any harmful airborne substances that are in the workplace.

The strength of our membership and industry partners provides access to decades of knowledge and experience from both local and international individuals and groups. This partnership, through sharing, enables collaboration to create practical and functional solutions. The MVSA has previously provided feedback and review of related guidelines, codes of practice and training to other regulatory bodies and industry groups to further improve practices and understand practical solutions. The industry needs to be supported by regulatory changes with alignment of current best practices and a commitment for improvement. The introduction of statutory appointments with competently trained ventilation practitioners and certified occupational hygienists will help ensure that the industry is supported with the knowledge, skills and experience that is required to keep workers safe and maintain a healthy workplace environment. Thank you for your time.

The CHAIR: Thank you very much, Mr Shearer. Ms Cole, we will now try and see if we have got any improvement there. If you would not mind making your opening statement. Thank you.

KATE COLE: Thank you very much. I would first like to acknowledge the traditional owners of the land that we are meeting on today and to pay my respects to Elders past, present and emerging. I am here to represent the Australian Institute of Occupational Hygienists as their president. We are the largest organisation representing professionals in this field in this country. I have worked across many industries where silica dust exposure occurs and where the resulting debilitating silica-related diseases, unfortunately, still exist. I am a Winston Churchill fellow on this very topic.

As occupational hygienists, we are the ones who assess the risk of exposure. We are the ones who measure silica dust and verify if the measures in place are enough to keep workers safe. We remain concerned that the true magnitude of silica-related diseases in this State is underrepresented, and the experience of our members and information that has been provided to us is that the level of compliance with existing work health-and-safety legislation, in the main, remains low—so low, in fact, that very few companies are completing air monitoring for silica dust. It has been reported to us that, when SafeWork NSW undertook inspections during 2020 and 2021, they found that only 15 per cent of businesses in engineered stone had some form of personal air-monitoring report.

At these inquiries there is always a focus around the workplace exposure standard, but a number on a piece of paper does not prevent silicosis. Indeed, that number is worthless if air monitoring is not undertaken and if actions are not taken as a result. This is not just an issue in engineered stone but, indeed, across other industries, highlighted most recently with 42 per cent—or almost half—of cases of silicosis reported to 30 June 2021 being from industries outside of engineered stone. So our concern extends to workers in construction, quarrying, demolition and tunnelling, for example. We are also concerned that, despite the improvements made since the 2019 review, significant work still remains, to protect New South Wales workers from silica-related diseases.

The key improvements that we see as necessary include, firstly, a registration or licensing scheme that includes air monitoring and provision of those results to the regulator. Air monitoring is the primary key leading indicator to the development of disease, and yet it is not being used to inform compliance strategies as best it could. Secondly, our view is that we need stronger regulation to get rid of the grey areas that still exist, that enable workers to get sick. And, thirdly, increased enforcement of work health-and-safety regulations, which at a minimum means undertaking inspections across high-risk workplaces. I note that, during the period between 2020 and 2021, it was reported to us that SafeWork NSW were only able to undertake an inspection across less than 60 per cent of engineered stone businesses. Finally, we need improvements to requirements around education, training, health monitoring and labelling information. Thank you for the invitation to be here this morning. I am very happy to take any questions that you may have.

The CHAIR: Thank you very much, Ms Cole. Thank you for your opening statement. For those opening statements, if they were prepared, if you would not mind just emailing them through to the secretariat so that we can pass them to Hansard. It helps them with their transcription. I will now pass to the Hon. Anthony D'Adam to open the questioning.

The Hon. ANTHONY D'ADAM: Thank you, Chair. Thank you both for your attendance today. I might start with you, Ms Cole. What is a safe exposure standard for RCS? You are muted.

KATE COLE: It is important to understand that a workplace exposure standard is not a fine dividing limit of what is safe or unsafe. It is what can be complied with. It is what is measurable, and it is what actually results in safer workplaces and a lower prevalence of disease. To refer back to my opening statement—if we do not have workplaces that are measuring compliance to that workplace exposure standard, that number is useless. I would also say [disorder]—

The Hon. ANTHONY D'ADAM: Accept that, Ms Cole. But, surely, we have to set the level somewhere in order for compliance to occur. It should be set at a safe level. What should be that safe level?

The CHAIR: Just before I ask Ms Cole to answer that—Mr D'Adam, RCS, for the benefit of Hansard?

The Hon. ANTHONY D'ADAM: Respirable crystalline silica.

KATE COLE: The current workplace exposure standard, as you know, is 0.05 milligrams per cubic metre, which is a level that can be measured. I note the many other inquiries and task forces that have recommended a reduction of that exposure standard to 0.2 milligrams per cubic metre. I will note that a significant body of work needs to be done to enable the accurate measurement at sufficient certainty when measuring respirable crystalline silica at that level. So, if you reduce the workplace exposure standard, you start to have issues with regard to enforcement of that and how accurate that number is. The lower you get to the level of detection, the higher amount of uncertainty you have. In our experience, exposures to workers, of respirable crystalline silica, are well above the existing workplace exposure standard and, in fact, in some industries, orders of magnitude above the workplace exposure standard.

The Hon. ANTHONY D'ADAM: But the experts are saying 0.02, are they not? That is the safe level, the emerging consensus in terms of exposure.

KATE COLE: I guess back to my previous points, it is important that whatever level is set that it can actually be measured. I absolutely support the reduction of lowering the workplace exposure standard to 0.02 and the necessary work that needs to be done to get to that point, absolutely. But even at 0.02 milligrams per cubic metre, I do not want to give the Committee the view that it automatically defines the workplace is automatically safe or unsafe. These are upper limits. We have to reduce exposure so far as reasonably practicable, which in all cases means below that workplace exposure standard.

The CHAIR: I remind all Committee members and witnesses, it is hard for Hansard to transcribe if we talk over each other. It is best to wait a short pause after you have finished your answer to allow any lag before the next question. Thank you, Mr D'Adam, you have the call.

The Hon. ANTHONY D'ADAM: Sorry. I was going to say that obviously if there is no safe level there is an alternative. If we cannot measure at a safe level, then the alternative is ban the product, surely.

KATE COLE: We support a ban of manufactured stone, absolutely. It is a high-risk product. We have seen that the level of compliance in the engineered stone sector is incredibly low. Yes, we support a ban of it. But please understand that banning manufactured or engineered stone does not solve the problem of silicosis in this State. High quartz is ubiquitous. It is in construction, demolition, tunnelling, in sectors that do not even handle that type of product. So, yes, banning it is one solution, but it is not the bigger picture.

The Hon. ANTHONY D'ADAM: You say you are supportive of a stronger enforcement regime, you would be familiar with the measures that have been introduced in Victoria, does the Victorian system in their engineered stone control plans require air monitoring?

KATE COLE: Not to my knowledge. With regards to what we are calling for in terms of the licensing or registration scheme, we need to add the provision of air monitoring to our regulator, because that is the best leading indicator we have. Whilst counting how many workers have silicosis helps us understand the issues that have happened historically, this is actually helping us understand what may happen in the future and helps hone regulatory efforts to the highest risk areas. There are a limited number of inspectors, granted, so they need to make sure that their efforts are best placed on the highest risk workplaces and the only way they can really do that is to attribute to them standardised information to help inform their decision-making of where their efforts are best placed.

The Hon. ANTHONY D'ADAM: Thank you. I will hand over to another member now.

The Hon. MARK BUTTIGIEG: Feel free for any of you to answer this, but probably following on from some of my colleagues questions, Ms Cole, if there is a consensus emerging that it is 0.02—and I am looking for an analogy I guess with the way we have dealt with mesothelioma and asbestosis in that particular pernicious part of the industry—have we determined what an unsafe level of microns is for inhaling asbestos, and could you give us an analogy in the silicosis industry? In other words, what I picked up from what you said before, 0.02 is not necessarily a safe amount either, therefore if you lower it, which there seems to be a consensus that we should, it does not necessarily mean that 0.01 will not be a hazard as well. Is it different with asbestos in that we have determined what a safe level is, or not?

KATE COLE: The workplace exposure standards relate to comparing measurements that we take to a compliance number. Again, they are the highest level that shall not be exceeded and the duty of care is to reduce exposure so far as is reasonably practicable. There are some similarities with regard to silicosis and asbestos-related diseases, but there are also some significant differences in some of them. Because at the moment—

The CHAIR: Sorry, Ms Cole. Mr Buttigieg, would you mind muting your microphone again. Ms Cole, if you could restart your answer, apologies. We get some feedback when Mr Buttigieg has not muted.

KATE COLE: No problem. Just reiterating, the workplace exposure standard is the highest level not to be exceeded and the duty is on the employer to reduce exposure so far as reasonably practicable. What I mean by that is even if the exposure standard is 0.05 milligrams per cubic metre for silica dust, which it is, it does not mean that just because you measure a sample at 0.04 that you do not have to do anything. If there are reasonable measures that can be put in place, i.e. ventilation, engineering controls or respiratory protection, then they need to be put in place to lower exposure so far as is reasonably practicable.

But to the question around asbestos-related diseases and silica-related diseases and air monitoring, a licenced asbestos assessor, if they go to a workplace and they measure asbestos in air above a certain limit, they are required to report that to SafeWork NSW. If an occupational hygienist does air monitoring in tunnelling or engineered stone, for example, and they return a result well above the workplace exposure standard, that result does not go anywhere except the employer. Arguably the employer has a duty to inform their workers, but that result does not go to SafeWork NSW, just like it does for asbestos.

The Hon. MARK BUTTIGIEG: I interrupt you, because I think that is a very important point you are trying to make. Leaving aside the thresholds, and I am presuming that you would agree with the logic that if you do reduce it to 0.02 then it is likely to trigger more testing and reporting below those levels, which would in theory make it safer, but leaving that aside, what you are saying is that the analogy with the asbestos is interesting because if a hygienist does an air quality check in a tunnel, for example, and they return a result that is above the acceptable standard of 0.05 only, then they are not required to report, whereas if it was asbestos they are. Is that correct?

KATE COLE: Correct.

The Hon. MARK BUTTIGIEG: In your view that would be a key legislative reform at the moment that would compel those employers to report above that level mandatory, that would be a significant reform, would it not?

KATE COLE: It would be a significant reform and it is the type of step change that is needed in this State to actually reduce the cases of silicosis.

The Hon. MARK BUTTIGIEG: Have you got any commentary as to why that obvious sort of levelling with the asbestos standards has not been transferred across to the silicosis industry? Can you offer any commentary as to why that is the case?

KATE COLE: I think that is a question best posed to our regulator. I do not have insight as to why.

The Hon. MARK BUTTIGIEG: If you had anything else to add to the previous answer, continue. I felt it was important for me to tease some of that out.

KATE COLE: I would just maybe like to—the previous questions around the safe level and the 0.05 and 0.02, as permitted concentrations become lower, determining compliance becomes more difficult, so it requires increasingly accurate and precise field and laboratory measurements. I refer to a paper that was commissioned by Safe Work Australia on this very topic which outlines a series of recommendations of actions that needed to be done in order to measure accurately to that level. That came to the Australian Institute of Occupational Hygienists and we supported all of those recommendations. I am not at privy to divulge the contents of the report as I do not have it in front of me at the moment, just to say that worker health protection is paramount to us, but how do we get there is ensuring that our regulator can successfully enforce existing regulations, employers comply with low exposure standards, and unfortunately the case is that is not happening at the moment.

The Hon. MARK BUTTIGIEG: Ms Cole, just a couple of follows up on that. In theory, if we were to go down with that point it is not possible to measure that currently, is it, without significant extra investment is my understanding?

KATE COLE: Without significant work, not accurately.

The Hon. MARK BUTTIGIEG: Just one more, again using the asbestos industry analogy, what is the current requirement in Victoria for carrying out air quality monitoring in a silica space environment? Is there a trigger that mandates when that has to be done?

KATE COLE: It relates to regulation 49 and 50 of our work health and safety regulation, which I do not have exactly in front of me, to the effect that if they are unsure that the workplace exposure standard will be exceeded or if there is a risk to health. Unfortunately, we do not have a prescriptive requirement but we have seen other States that develop prescriptive requirements around air monitoring and we need that prescription in New South Wales. So not just how frequent that monitoring is done but by which profession. If we are talking about accuracy it is not as simple as getting pumps and putting it on a worker and getting a result. This is why we have certified occupational hygienists we have very robust membership and certification in such that when employers are engaging certified occupational hygienists they have confidence that such air monitoring will be done with appropriate standardised methods and a level of quality that is needed to get that correct result and I think we need it enshrined into our regulation.

The Hon. MARK BUTTIGIEG: So Ms Cole what you are advocating, which I think you make an important point, at the moment it is too open to interpretation with too much latitude for employers not to do the air quality testing. Is that the same as required in the asbestos industry or is it more prescriptive in that space?

KATE COLE: The asbestos industry is far more prescriptive to the point that the person that does the air monitoring must be a licensed asbestos inspector. A business that removes asbestos must be a licensed asbestos removalist. There are licensing schemes, there are standardised practices, there are specific practices that relate to that industry. We looked at the same for silicosis and dust exposure prevention, it is very lacking.

The Hon. MARK BUTTIGIEG: In summary, if we were legislating this sort of thing, looking for reforms, we could learn a lot from what we have done in the asbestos space, in other words?

KATE COLE: We could definitely learn a lot but I also say that to the Committee that we in this State could learn a lot from the work that has been done in Victoria with regards to its improved regulation and also the licensing scheme, in addition to Queensland and its code of practice. So I think there is a lot that we could learn nationally to the benefit and improved outcomes for the workers in this State.

The Hon. MARK BUTTIGIEG: Yes, I think that has come through strongly in other areas.

The CHAIR: I might ask you, Mr Buttigieg, to mute if you would not mind. We are getting a lot of feedback through your system. Mr Shearer, would you mind speaking about your submission to the Committee and provide some insights about, I guess the way that I read it, looking at the elimination hierarchy of the risks around dust diseases through an elimination, engineering and risk assessment type model? Would you expand a little bit on that please and provide the Committee with some insights as to your experience?

MICHAEL SHEARER: So my level of experience is in the mining and tunnel industry for almost 20 years. It has been my observation and learning throughout that time that industry really needs support through regulatory guidelines and codes of practice. But, also one thing, by the lowering the exposure standards does not really take care of the other side of things where you can have all these limits but if you do not support the industry through training, codes or practice or guidelines to help those industries understand their obligations and how they

can get people that are certified—whether that be occupational hygienists or ventilation practitioners who are competently trained—then we are really just leaving a hole in the wall that, as you said, leaves things for interpretation. The industry needs that support from the regulatory bodies for industry to move forward.

The controls that were mentioned in our submission—the first will obviously be elimination or substitution. It means that depending on what industry you are speaking of, specifically for the stonemasonry, some of those materials cannot be modified or substituted. So if controls are in place, and people understand their obligations, and there are competent people out there who can help support the industry then that way I see opportunity to help those industries to lower the exposure limits, or lower exposures to the workforce by understanding and being better educated.

The CHAIR: Thanks for that. Are you aware of any engineering advancements that may have been made in this space between when the Committee held its last hearings and now which might provide some assistance to the Committee around not only monitoring but also filtering or removal of the dust particles in a number of settings. They could be the factory workspace or the job site, the information site. Obviously wet cutting in a factory is easier but it is a much harder thing to do on site.

MICHAEL SHEARER: As I previously mentioned, if that consultation with the employers to understand the task they are undertaking, whether that be on-site, in a factory setting or out in the open and understanding what controls are required for that specific task. It is not a one-size-fits-all, I guess, is the easiest way to say it. So through that consultation process and understanding what the task is, where it is located they could actually engineer to relocate the task to another position. I previously mentioned at another hearing that there are advancements in technology with inbuilt filters on hand-held equipment but it all goes to the magnitude of the actual location and the task. That is putting together not only in the stonemasonry sector but also other sectors, whether that be mining et cetera.

The CHAIR: Thank you for those valuable insights, Mr Shearer. We may have a number of Committee members who might have questions. Do government members seek the call? If not, I know the Hon. Mark Buttigieg has indicated he might have some more questions and perhaps the Hon. Anthony D'Adam.

The Hon. MARK BUTTIGIEG: Mr Shearer I found that point on controls you made interesting. I think it is elimination, substitution, PPE or something of that order. Of course, elimination is not always possible. I guess one example would be in manufacture of stone. I think it is quite easy to run an argument and say if the end product is to make people feel good when they walk into their kitchens and at the manufacturing end we are saving people's lives then we might get to a product that can be substituted. Whereas if you were boring a tunnel under the harbour through sandstone it is a bit harder to eliminate the product. What stage are the things like mine ventilation and that sort of technology up to in getting rid of that hazards that workers are exposed to? Maybe you can give an outline of where this product ends up. Presumably if you were ventilating microscopic dust it has got to go somewhere. Where does it go to keep everyone safe?

MICHAEL SHEARER: That is alright. So I will go back to what I was saying previously in that if you identify what the substance is, the process, and how you intend to eliminate it or manage it, so generally you would have the source, you are aware of the work—I am not being specific here about any industry, but if you are performing a task, that task produces whatever the substance is, or may become liberated during that process, and having the correct controls, whether that be by wet cutting or extraction-type systems where that material is then pulled through a filter system, that might be able to filter 99.99 per cent of those solid materials out of the air and those solid materials are then collected and then removed and processed or delivered to another point where they are then handled, whether that be turned into a type of sludge.

The point that I am making is that those materials are captured through the filter process. They are then processed or managed or handled or contained so that then they are not then liberated into the airspace in that work area. As far as what happens after that, whether those materials may be able to be reused, so you go down the whole recycling pathway, there are a lot of other alternatives. But getting back to the main point, this is where both consultation with ventilation practitioners and also occupational hygienists is followed through that process. I feel that there could be opportunity for some sort of licensing type thing where it goes through levels or layers to get your licence to operate. The entity needs to have others such as occupational hygienists or ventilation professionals in order to sign off to say that these are the controls and this is how we are going to be compliant, otherwise, as I mentioned earlier, it just leaves things open to interpretation and everyone may interpret things in their own way.

The Hon. MARK BUTTIGIEG: Can I just follow up to that, Mr Shearer? Can I just use a sort of analogy framework that I did with Ms Cole before in terms of the way that works with the removal or the cutting of asbestos? Is that regime of industry being consulted, the right ventilation people being brought in, all those controls, much more elaborate in the asbestos space than it is with silica?

MICHAEL SHEARER: In the asbestos space, I will take that question on notice. I cannot give you a straight-up answer at this moment.

The Hon. MARK BUTTIGIEG: I thought you may have been involved in your industry in ventilation for asbestos too, but I totally understand if it is not something you have experienced.

MICHAEL SHEARER: Not personally. [Inaudible]

The CHAIR: Mr Buttigieg, I might pass to Mr D'Adam, if you would not mind. We are getting a little bit more feedback, if that is okay.

The Hon. ANTHONY D'ADAM: I just wanted to come back to some comments that Ms Cole made earlier in response to the questions from Mr Buttigieg. I wonder if on notice you could provide the specific regulatory requirement around asbestos notification that applies. I am just looking at Regulation 50 that you cited. Obviously, as you said, there is nothing there that requires business to provide those results to the regulator. So on notice if you could provide that? I wanted to further ask you about the technology for air monitoring and whether it has a capacity for real-time reporting or whether that is not currently something that is capable of being done.

KATE COLE: Thank you for the question. The first part I am more than happy to—that level of description is contained in our Code and SafeWork NSW would probably be best to answer that—but I am more than happy to provide a very brief overview on behalf of the institute. The second part of your question related to air monitoring and real-time air monitoring. From an occupational hygienist perspective, we welcome the introduction of new methods to test for silica dust in air and we note the great work of the Centre for Work Health and Safety and the development of their real-time silica in air monitor through the company Trollex. But I just wanted to explain the detail of that just for a moment. It is actually not personal exposure monitoring. It is not a device that you put on a worker. That was the original intent, but I understand through development that that device is actually briefcase size—maybe a little bit bigger—and it is something that you would, say, plug into a mains power or a generator and is not overly portable, so it is a fixed, static device.

It is still great, but it is not personal exposure monitoring that goes around with a worker. It is also not, unfortunately, overly affordable, although I will note the great work in terms of rebates that are available for businesses to adopt it. From memory, the unit is being sold at a cost of approximately $20,000. So that is not going to be amenable for all businesses, and I note that 80 per cent of businesses in the engineered stone sector are less than 10 workers, so these are very small micro businesses. Notwithstanding, it is a great step in the right direction. But, to my previous point, engineered stone and, indeed, other sectors where silica dust is a risk have a relatively low level of compliance with the workplace exposure standard or, indeed, regulations more broadly. So real-time monitoring or, in fact, any monitoring is only going to be successful if there is a requirement to use it and if there is a requirement to report that data or there is a requirement to do something when you get a result at a certain level. So whilst we welcome it, we also remain concerned that it is not the be all and end all solution to the problem that we are currently facing.

The Hon. ANTHONY D'ADAM: But there is a requirement, is there not, Ms Cole, in Regulation 50 that you pointed to that is required? If there is a substance that requires to be monitored then they are required to conduct that monitoring if they are using that substance.

KATE COLE: Yes, you are right, but that does not relate to real-time monitoring—actually, it cannot because that regulation only applies to personal exposure monitoring. So that means that the monitor is not fixed within the worker's breathing zone; the worker is carrying that monitor and it is measuring the amount of silica dust that that worker is being exposed to over the period of their shift. That is very different to a box that is sitting in a worksite measuring the ambient concentration of silica dust. Notwithstanding, personal exposure monitoring is not difficult to do when the right professionals such as occupational hygienists are doing it, but in the experience of our members we hear a lot of the time that engineered stone companies call them to ask for a quote to do air monitoring and when they hear how much it is they do not engage, because, as I said before, they are very small businesses, money is tight, and this all costs money. So unless there is a real push to make them, through licensing or a registration scheme, do this, what we have seen in the past two years is that the uptake is relatively low.

The Hon. ANTHONY D'ADAM: But if a business cannot afford to conduct its business in a safe way should it be able to continue to operate?

KATE COLE: No, they should not be allowed to continue to operate, but unfortunately that is not the current situation we have in this State.

The Hon. ANTHONY D'ADAM: In the current practices around air monitoring you are saying that this is conducted on a sort of sporadic basis or over a sampling system? How is it actually conducted now if it is not done in real time?

KATE COLE: An occupational hygienist would attend the worksite in the morning. They would understand what the workers are doing. They would affix pumps onto a series of workers. This may be 10, 12 pumps, for example, which measure or collect silica dust in the air. The pump stays on the worker all day, and the occupational hygienist is observing all the different control measures in place to keep them safe at the same time. The pump is then collected. The filter is taken out of the sample cyclone, the sampling head, and it is sent to a NATA-accredited laboratory, where the analysis is undertaken. The occupational hygienist gets that result, compares it together with the information from the pump—how much volume of air has been collected—and comes out with a number. That number is compared to the workplace exposure standard.

The time between doing the monitoring and getting the result can be, typically, about two to three weeks. In the case of engineered stone, that may not be such a big deal, because it is the same work happening all the time, but it is a real challenge in construction and demolition, where the work activities change all the time. So, when you get a result back, it is representative of work that happened two or three weeks ago and not necessarily the work that happened today, which is why monitoring is done more frequently in construction and demolition than it is in businesses where it is the same process repeated over and over again.

The Hon. ANTHONY D'ADAM: Thank you. That is all I have got, Chair.

The CHAIR: Thank you very much. Just noting the time, I might thank the two witnesses that we have had appearing today and remind them that, for questions that they have taken on notice, the secretariat will be in contact with you very shortly to table your answers within 21 days. We will now take a very brief break, while we transfer witnesses, and we will commence the next session in about four minutes.

(The witnesses withdrew.)

(Short adjournment)

Mr MARTIN JENNINGS, Consultant Occupational Hygienist, before the Committee via videoconference, sworn and examined

The CHAIR: Thank you very much, Mr Jennings. I would like to invite you to make a short opening statement, please.

MARTIN JENNINGS: Thank you very much for allowing me to appear before you and present my evidence. My evidence is largely based on workshop visits and from providing evidence as an expert witness in several compensation claims and, more recently, as an expert assisting the prosecution in WorkSafe Tasmania. This happened in November. It is particularly relevant to my first recommendation. I am pleased that the New South Wales Government is maintaining its strong focus on the artificial stone industry. As I have detailed on page 4 of my submission, there are a number of features about this particular industry that are unique. It is also relevant to note that artificial stone is a substance under the Work Health and Safety Act. This means manufacturers, importers and suppliers all have a duty of care to make sure that the product can be used without risks to health and safety of persons. This has largely been interpreted as meaning providing labels, safety data sheets and, more recently, fabrication manuals. These are basic legal obligations.

But, if you want to look at their effectiveness, I just ask you to consider the chemicals in your own garden shed or at home for example. Before you take a shower in the morning, do you read the label on the shampoo bottle? When you are using pesticides or paints or solvents or adhesives, do you read the product label? Would you think to get a safety data sheet, or would you do a risk assessment? My guess is, probably not. But, if, when you are buying the product from Bunnings, the store assistant said, "Now, you can't use these with ordinary rubber gloves. You're going to need PVC gloves to use this product", you would take a bit more notice then. You would listen, and you would follow their direction. That is the nub of what I mean by "product stewardship". This is going to be a large essence to my submission. That is covered in page 16 of the submission. It is something, I believe, that has been lacking to date.

Also on page 16, you will see a statement from a stonemason who was interviewed on the TV program *The Project*. He said they had been working for 20 years as stonemasons, they started using natural stone and nobody ever told them about artificial stone being so different. You have got to remember natural stone, something like marble, has a silica content of 2 to 3 per cent. Artificial stone has a silica content of 90 to 95 per cent—huge difference. I have also sent you three newspaper translations from Spain, dated around 2010, as a supplementary submission. These report on six cases of silicosis in a workforce of 11 in Guernica. The regulator, the Spanish regulator, took the manufacturers to court for failing to provide adequate information or instruction. I also report, on page 19 of my submission, that Caesarstone reported to the US securities commission that they were aware of silicosis cases in Israel, going back to 2008.

I do not know if you recall seeing this time line in the Golder and Associates report to the New South Wales SafeWork commission. It shows that it was 2010 when usage really took off in Australia. So, had these companies then issued a global alert, said, "Hey, we're getting all these cases of silica associated with our product", then, I believe, stone companies in Australia would have sat up and taken notice, the regulators would have been enforcing the regulations and the health department would have been suitably positioned to look at cases coming forward. We did not know until 2015, until the first case was diagnosed. This was then followed by hundreds of other cases, and all this, I believe, could have been easily avoided in 2010.

Despite this, the information is still inconsistent. It is often patchy, and it is often at odds, depending which company you get the information from. I discuss those issues on page 16 of my submission as well. For this reason, I particularly want to focus on recommendation 4. This is the duty of the manufacturers, importers and suppliers, and I believe that they should have been held accountable for this failure to exercise their duty of care, and I also believe—recommendation 6—that the industry should consider a product stewardship scheme. They tried to implement a fabricator accreditation scheme with the ACCC a couple of years ago and this was rejected. The reason for this being rejected was comment to the effect that they were abrogating their responsibilities as manufacturers. I am happy to leave my statement there and I am happy to take any questions now, thank you.

The CHAIR: Thank you very much, Mr Jennings. In relation to the sheet that you held up earlier, could you identify a little bit more of that sheet for the benefit of Hansard and also the secretariat?

MARTIN JENNINGS: Yes, I am sorry. It is a report that was published by Golder Associates. It is, "Case finding study into respirable crystalline silica exposure in the New South Wales manufactured stone industry" and it was dated 17 May 2021.

The CHAIR: Thank you very much, Mr Jennings.

The Hon. ANTHONY D'ADAM: That document is an attachment to the SafeWork submission.

The CHAIR: Thank you. I did not catch it in time. I wanted to make sure Hansard could reference it in the transcript. Mr Jennings, if that opening statement was pre-prepared, would you mind emailing it to the secretariat so we can provide a copy to Hansard for the transcription?

MARTIN JENNINGS: Happy to do that.

The CHAIR: Thank you very much. Mr D'Adam, would you like to start the questioning?

The Hon. ANTHONY D'ADAM: Thank you, Chair. Thank you, Mr Jennings, for your appearance today and for your submission. I want to go to this idea of the stewardship scheme. You are correct in terms of the account of the arrangement with the ACCC and the manufacturers being unsuccessful in getting that scheme off the ground. We have seen in Victoria, though, the introduction of a licensing scheme that incorporates the importers as well as the fabricators. Do you think that is an adequate alternative, some kind of comprehensive licensing scheme that follows the full supply chain?

MARTIN JENNINGS: I think, yes, that goes some of the way, but one thing I would like to stress is I think this should be done across the whole of industry. What you are seeing now is some material that is being published by some suppliers is quite good but, in other cases, it is very poor. If I am a fabricator and I am looking at two safety data sheets, for example, from two separate suppliers, one tells me I can use a P1 or P2 respirator, the other one tells me I need a supplied air respirator. Well, you know, that is expensive, so I am going to go with the P1 or the P2. There needs to be more consistent information that is being provided.

The Hon. ANTHONY D'ADAM: Is that something that the regulatory bodies could enforce on the suppliers?

MARTIN JENNINGS: I believe so. I believe that, you know, there is a code of practice for the preparation of material safety data sheets and this could address some of the other issues, such as information being provided that is not always relevant to Australia. It is written around EU legislation, in some cases it references American OSHA legislation. In some cases, it needs to be more specific to the Australian work environment.

The Hon. ANTHONY D'ADAM: The importers have, in their submission, suggested that they want a national regulatory scheme in place. Obviously this is a State-based inquiry and we are looking at the regulatory regime that exists in New South Wales. What is your view about whether New South Wales should follow Victoria's lead and step into the space and put in place its own regulatory regime, or should we wait until there is movement or some consensus at a Federal level?

MARTIN JENNINGS: Well, I have made reference to the Commonwealth Product Stewardship Act. It tends to focus on the environmental impacts of the health and safety of a product but I do not see why conditions could not be added to the accreditation of a product under the Product Stewardship Act. The Minister, as I put in my notes, the Commonwealth Environment Minister can add artificial stone to a priority list of product stewardship accreditation.

The Hon. ANTHONY D'ADAM: You are very critical in your submission of SafeWork and its regulatory approach. Would you like to offer some further comments in relation to that?

MARTIN JENNINGS: Yes. But I think this is largely based on comments such as those I put in my submission from the stonemasons who say nobody ever told them that this was such a hazardous product. I worked in the chemical industry when hazardous chemical regulations were introduced in the 1990s. Then the emphasis was on you have got to go to the very start of the information chain. The manufacturer knows what is in his product, he knows how it should be handled, so it is his responsibility to make sure that every stage in the chain is adequately informed and if they are not, then they cannot exercise their own duty of care. I should add that when working as a work safe inspector with WorkSafe in Western Australia, I actually took a prosecution on that basis, of a supplier, in this case of hairdressing products. The manufacturer did not provide any information, which meant that all these salons were incapable of handling the product properly.

The Hon. ANTHONY D'ADAM: Do you believe it is open to SafeWork to prosecute the employers on that basis?

MARTIN JENNINGS: Yes, it is section 23 of the Work Health and Safety Act. The duty is on the manufacturers and there are separate duties on the importers and separate duties on the suppliers. They are fairly similar. The duty of care, it does not actually specify, we are talking about labels, data sheets or manuals. My experience—and if you allow me a couple of minutes to explain this—if you recall going back to the 1980s, the Bhopal incident where Union Carbide killed thousands of people with a leak from their plant with a product called

isocyanate. This was a lethal compound. In the 1990s I visited I.C.I. Americas to look at their product stewardship scheme for handing isocyanates.

The way this worked was when you bought the product from I.C.I., you did not just get the product, you got the services of their product steward as well. He would come in, inspect your premises, tell you what you needed to do to handle it properly. When you purchased it, he would come in through the gate with the product, he would arrange air monitoring, health surveillance, check your ventilation systems were adequate, right to the very end of the product life cycle when you were disposing of it, he made sure it was disposed of in a responsible manner. That was a tremendous asset to the company in America because, as you know, they are so conscious of the impact of litigation there, the users of the product were very happy to have that assistance from I.C.I. That to me was product stewardship in its best form, best practice.

The Hon. TAYLOR MARTIN: Do you mind if I jump in there?

The Hon. ANTHONY D'ADAM: Yes, sure, jump in.

The Hon. TAYLOR MARTIN: Mr Jennings, are you aware of any manufactured stone companies that engage in anything similar to what you just described?

MARTIN JENNINGS: No. I have seen some very good materials that are now being produced but I think the onus is still on the fabricator to apply those and do the testing that is required, the fit testing for respiratory practice and you also notice in my submission I have drawn attention to a picture on, I think page 17, of a respirator being worn on a safety data sheet cover. Now, that is not the right sort of respirator. That is a P2 and it will not give you adequate protection. It will give you a protection factor of 10, perhaps, if it is worn properly. You may not be able to see it, but this particular individual is quite hairy so he is not going to be able to wear his respirator properly. Small companies, and we are talking just a few employees, do not have the resources to do this sort of level of testing, the air testing, the health surveillance. They are required to by law but I think this is where the manufacturers or the suppliers should be stepping in and adding this as a sort of value-added product to their stone.

The CHAIR: Mr Martin, do you have any further follow-up questions?

The Hon. TAYLOR MARTIN: No.

The Hon. MARK BUTTIGIEG: I might jump back in then. I want to ask one further question. Obviously this is a dangerous product. We have heard evidence around the workplace exposure standards, the incapacity to measure at a safe level and, therefore, to be reasonably assured that workers are operating in a safe environment. Should we ban the product?

MARTIN JENNINGS: Look, if you do that then we already know that products like—I cannot remember which firm in particular is already manufacturing in countries like Vietnam and China. All that I think would happen is that the production would simply be shipped offshore if it were to be banned here. If you were to ban the import or control it through the Customs prohibited imports regulations you might be able to control it that way, as we do with asbestos already. It can be handled safely but at the moment we are still a long way from getting to that stage.

The CHAIR: Mr Buttigieg, do you have any questions you would like to ask?

The Hon. MARK BUTTIGIEG: I might ask Mr Jennings a follow-up question to the question my colleague asked. If you have a substance like that—and I will keep using the asbestos analogy because we have learned a lot of lessons, or we should have learned a lot of lessons from that substance—which is embedded in the built environment, at a cafe in Sydney or throughout Australia and in other countries and you then put controls on the import and use of that as a result of 50 or 60 years' experience of people getting respiratory diseases such as mesothelioma and dying, would the logic not transfer across to a substance which has a much quicker time frame in contraction and then potential death? Understanding that there is an opportunity now to cut this off at the mark before it becomes too entrenched—we touched on this before—there would be certain environments where you just could not do that with sandstone and all the rest. In that manufactured stone space, that engineered stone, where the exposure and the risk seem to be much higher, is that something you would consider as being best practice in engineering out the problem?

MARTIN JENNINGS: Yes.

The Hon. MARK BUTTIGIEG: I make the point that it can be safely handled, presumably with the right technology, PPE and all the rest of it. I just want you to try to reconcile those two things for me.

MARTIN JENNINGS: Okay. I might start by making the point that you touched on the sort of time frame and the fact that it has been around in other buildings and in other infrastructure for many years. What

makes engineered stuff, artificial stuff, so different is the time frame between initial exposure and the onset of illness. This means that young people—I think the youngest has been 22—have been contracting silicosis. This means it is easier now to prosecute companies under the Work Health and Safety Act because you can establish the elements to the prosecution: first, that the duty of care was owed; second, that there was a breach to the duty of care; and, third, that because of that breach the illness occurred. Because you can show that Joe was working at this company all his working life before he got this disease; he could not have got it anywhere else. So, that has always been difficult to prove in the past. It can now even fall within the period of the statute of limitations. So that is one thing.

When operating in the workplace it seems to all hinge on using controls like wet machining: grinding, polishing or using CNC—computer numerical controlled equipment—so it can be all housed within an enclosure that is significantly wet and that keeps the dust levels down to an acceptable level. Having said that you have to remember that I have visited workplaces and they think they are best practice but they only wear respirators, for example, for the duration of a job if they are grinding or polishing and then after five or 10 minutes when they have finished they will take it off and move on to the next thing.

I particularly want to show you the diagram on page 5 of my submission. This shows you how long it takes dust particles to settle in still air. The respirable sized particles, the smallest ones, which are less than half a micron in size, can remain airborne for over 40 hours. This means that people can come to work on a Wednesday morning and they are still inhaling dust that was raised on the Monday afternoon. If you have wet processes you can capture most of that dust but otherwise I think people are placing an overreliance on personal protective equipment and this is why you have to look at controls such as engineering systems and machinery wetting rather than relying on respirators.

The CHAIR: We have only a few minutes left. I want to give Mr Martin the opportunity to continue his line of questioning if that is okay. Mr Martin, you have the call.

The Hon. TAYLOR MARTIN: I want to pick up on that last question regarding the comparison to the use of asbestos as it does come up and it is the obvious thing that one thinks of when one first gets one's head around this issue. Is it a fair comparison in your opinion? Is there a safe way of working with this material, knowing that the risk is in the cutting and polishing of the product? It is very obvious where this product is used, whereas with asbestos throughout housing it is used in cladding, in insulation and in a million things, including brake pads on cars. Is it a fair comparison? I say that as the grandson of someone who worked for James Hardie and died with asbestos in his lungs. I genuinely want your opinion here.

MARTIN JENNINGS: There are lots of similarities and people have even referred to this as being the new asbestos. The big difference though is that with asbestos, asbestosis does not manifest until several years after exposure. This time frame is much more compressed. I think I said somewhere in my submission that this is unlike anything I have even seen in 40 years of practice. Once the onset of disease has started it then seems to ramp up very quickly. The other thing, of course, about asbestos is that it is often found in people's homes—old fibro houses. If dad is a handyman and he potters around the house doing odd jobs then often people who lived in that house as children will start to develop the condition when they are adults. So you cannot always sort out the occupational versus the domestic exposure with some of these cases.

The Hon. TAYLOR MARTIN: I guess that is why I drew your attention to whether or not the comparison is fair. There are plenty of stories in my family alone from what you just said there, of people back in the day cutting up asbestos themselves and being exposed decades later second-hand. No-one is really cutting a kitchen benchtop or polishing it at home in a dry environment. My question is: Are there procedures that will almost eliminate this risk such as misting, water availability and PPE of course, and the cutting is done in a factory environment rather than on the work site or something of that sort? Are you able to minimise this to near zero?

MARTIN JENNINGS: Yes. You made a very interesting point there—one which was raised at the last review in 2019—about the factory environment. The point was made, particularly on the Gold Coast, which is where a lot of the cases seem to come from, if you are building a 30-, 40-, 50-storey tower block and someone has to take a sheet of manufactured stone up to a kitchen that has been fitted there and the holes do not quite align with the taps or the sink hole is out of kilter, you are not going to take it all the way back down to the factory, you are going to do it on the work spot. This should not happen but—

The Hon. TAYLOR MARTIN: It does.

MARTIN JENNINGS: It does, and the culture in these small businesses is they do not have the time to take half a day out of their work schedule to do that sort of thing, so they will fix it on the spot and, of course, being in an apartment that has been fitted out they do not have the luxury of using wet processes either. So yes, you have got to the nub of a very important issue there.

The Hon. TAYLOR MARTIN: It works in theory but it does not work in practice. Thank you very much, Mr Jennings.

The CHAIR: That brings us to the end of this session today. Mr Jennings, thank you very much for appearing. Any questions you have taken on notice the secretariat will be in contact with you for you to be able to table those within 21 days.

(The witness withdrew.)

(Luncheon adjournment)

Dr GRAEME EDWARDS, Senior Consulting Physician, Occupational and Environmental Medicine; Representative, Royal Australasian College of Physicians, before the Committee via videoconference, sworn and examined

Associate Professor DEBORAH HELEN YATES, Respiratory Physician, Department of Thoracic Medicine, St Vincent's Hospital Sydney, and Conjoint Associate Professor, University of New South Wales; Representative, Royal Australasian College of Physicians and Thoracic Society of Australia and New Zealand, before the Committee via videoconference, sworn and examined

The CHAIR: Welcome back to the afternoon session for today's hearing. I welcome our next set of witnesses. Associate Professor Yates, while we have got you on the active screen, I might ask you to make a short opening statement if you have got one and then I will pass back to Dr Edwards.

DEBORAH YATES: I would like to thank the standing committee for asking us once more to present our evidence. As you know, the Royal Australasian College of Physicians is very concerned by the prevalence of silicosis and we have all been very much involved in trying to assist with this over the last three years or so. We have a number of issues that we particularly would like to urge the Committee to consider. The first I know you are all aware of is the fact that we would like to commence a comprehensive case management program as a matter of real urgency. We appreciate that the New South Wales Government has actually already been involving icare in this particular strategy but we would like to highlight the fact that we have firsthand experience of certain difficulties with this, including the fact that the current system for individuals involved we do not feel really conforms to the categorisation of a fast-tracked compensation system such as has been implemented in other States.

We also, again firsthand, have found that there is really very limited funding available for retraining, for vocational support for a lot of those workers who have been affected, and this is a real problem. It also has definite psychological effects on them because they are often young and they have a young family to support and they have real financial difficulties, let alone the anxieties that have been generated by the diagnosis of an essentially incurable lung disease. So we thought that that is something that the Committee could perhaps consider to highlight as a priority which is of great importance. A lot of these people are really left, we regard, as totally unsupported and they are also in a situation where they are unable to find other employment, so this is something that they very much require.

A third issue is the fact that we still find that there is a lot of difficulty with regard to obtaining information from the New South Wales Government with regard to the actual data on the number of cases of silicosis that have been occurring and in particular the number of cases that are really exposed within the artificial stone industry. We appreciate the fact that we have been told that SafeWork Australia knows which companies are involved but we do not have any information on exactly which those are, and when a patient comes to see us and says they are employed by some particular person we have no idea whether this is a workplace which has been assessed at all, nor do we have any information about the dust levels, and actually we would like very much to have feedback and be in the loop and make sure that optimal dust control is implemented very early on.

We also do not have the information on the amount of manufactured stone which is actually imported into Australia, whether this is going up or whether it is going down or exactly how the regulation of this is progressing. We also need the return to work data about the number of diagnosed cases and types of retraining that have been provided. All of these issues are hopefully relatively easy to progress but we need maximum transparency, and I have to say that, having presented to this Committee on a couple of occasions in the past, it is a little bit disheartening not to see progress in New South Wales. I think compared to other States, New South Wales is lagging behind and we in the College would very much like to encourage better dissemination of information, better case finding in particular and better control of this really often lethal hazard. Thank you.

The CHAIR: Thank you. Dr Edwards, would you like to make a short opening statement now?

GRAEME EDWARDS: Thank you. To complement what Dr Yates has indicated, we greatly appreciate the work of the standing committee and the recommendations that you have provided the governments of New South Wales in the past. Likewise I express on behalf of the college our deep concern that the overall progress has been less than what we feel is both recommended and needed to protect the health and wellbeing of workers of New South Wales. In looking at the Golder Associates case-finding study from May 2021, it indicates to me that there is a material underestimate of the magnitude of the problem in New South Wales. It is detecting the more severe end of the spectrum of disease, not the minor end of the disease or what is better characterised as the early stages of the spectrum of dust-related disease.

I remind the Committee the dust-related diseases are latent diseases. They are reflecting a cumulative exposure to the hazard over time. As a consequence, we wish to identify these people at the earliest opportunity, not wait till they are actually getting to the point where they are having to present to the hospitals, where they are having to line up for the lung transplants, when they are having to be made disabled and unemployable and no longer able to engage in productive activity in support of the wellbeing of themselves or their family. The earliest detection of these people is fundamental if we are going to maintain the quality of life and engagement and support of the people of New South Wales. The National Dust Disease Taskforce has released its findings in its final report, on July last year, and highlighted that, for any worker, in the engineered stone sector, that was working prior to September 2018, one in four people had evidence of disease. That is significantly greater than the low prevalence being reported to be present in New South Wales.

The data is evident that New South Wales is under-detecting the magnitude of the problem. There is no evidence, from our perspective as clinicians seeing these people, that you are, in the processes and systems of Dust Diseases scheme in New South Wales, picking up those people at the earliest possible point to be able to intervene effectively. One of the other attributes that we were significantly disheartened to read was that the recommendation 8 of the Committee, from your 2017 recommendations, has been not supported by the Government. We have found, through the efforts of the National Dust Diseases Taskforce and our colleagues in both Queensland and Victoria, that, when you are relying on compliance checking and an aftermath of exposure and identifying those people who are breaching safe work practices, it is too late.

The people have already been exposed. Consequently, the Victorian Government has piloted a licensing scheme and the task force has recommended that Safe Work Australia develop a licensing scheme for the model laws, and I would encourage this Committee and your recommendations to the Government of today to reconsider and implement a scheme that enables that only those people who can demonstrate compliance with safe work practices are able to purchase and fabricate with the engineered stone product. There is a significant need for further research in the area to prevent and manage and treat silicosis in particular, but what I also remind the Committee is that it is not just silicosis. The dust diseases extend across a spectrum of diseases, including lung cancer.

The CHAIR: Thank you, Dr Edwards. We will now move to questions. I will start with the Hon. Anthony D'Adam. Then I will move to Mr Greg Donnelly.

The Hon. ANTHONY D'ADAM: Thank you, Chair. Thank you, Dr Edwards and Professor Yates, for your attendance today. Thank you for the college's submission. I want to first come to the issue that Dr Edwards just touched on, the need to introduce a comprehensive licensing scheme. This is an urgent problem. Is this something that we should wait for a national licensing scheme for, or do you think it is appropriate for New South Wales to follow Victoria's lead and introduce a licensing scheme in New South Wales?

GRAEME EDWARDS: Thank you. It is not a matter of New South Wales following; it is a matter of New South Wales taking the action that is necessary for New South Wales. There is absolutely no doubt that, in order to establish a national licensing position, we need guidance in the model laws. But, if New South Wales waits until those model laws are developed by Safe Work Australia, then SafeWork NSW will need to look at the governance and administrative processes of implementing those within the New South Wales jurisdiction. There is a lot of work that can be done now, without waiting. I can also encourage New South Wales agencies to be actively involved in the process of developing the practical guidance. We can learn from what is happening in Victoria at the moment. We can learn from what we are seeing at the pointy end in those dusty environments.

One of my concerns is that, with the major construction companies, who can directly import the product into their onsite fabricating premises, they are not going through the same supply lines as, for instance, Caesarstone or any of the other major manufacturers, who are importing into Australia and then distributing to their customer base. The major construction companies are directly importing to their sites and then fabricating on those construction sites. As a consequence, SafeWork NSW may well be missing the ability to find these locations, and we are seeing the consequences in the noncompliance with safe work practices.

The Hon. ANTHONY D'ADAM: Dr Edwards, do you have a view about whether a licensing scheme should extend to the individual workers so individual workers who are handling manufactured stone would require a licence as well, or do you think that it is sufficient, for the employers, subcontractors and those other entities up the distribution chain, for a licensing scheme just to apply to them?

GRAEME EDWARDS: One of the advantages that we have is that we do not have any manufacturing of the engineered stone in the Australian marketplace. So we have got a point of detection and point of control of the product landing on our shores. So the border control strategies can identify, to SafeWork NSW or the appropriate regulatory agency, the landing of the product on the shores in New South Wales, which then enables you to follow the product through. I suspect that, with adequate licensing and policing of those licences and

ensuring that the PCBUs are complying to the licence requirements, the need to drill down to the level of the individual worker will be not required. At the end of the day, it comes down to a worker doing the best job they can under the circumstances they find themselves in. If they are under the pressure of performance to take the short cuts, to not put on the PPE, to not use the wet processes and not to disassemble a benchtop that needs to be trimmed slightly [audio malfunction].

The CHAIR: Dr Edwards, we just lost your audio then. If you could repeat your last couple of sentences?

GRAEME EDWARDS: Sorry, can you hear me again?

The CHAIR: We have got you now.

GRAEME EDWARDS: What I was saying is that if the individual is having to comply with safe work practices of their employer, then that is what they will do. It is only when the individual is taking a shortcut under performance pressures that we see the material breaches. What we found when we surveyed the workforce at the national taskforce level was that they basically want to do the right thing, but it is the circumstances created by the business environment and by the economics of the moment that dictate whether or not they can.

The Hon. ANTHONY D'ADAM: Could there be some advantages in terms of having a comprehensive screening process, worker education, that a licensing scheme that extends down to the work level would have some benefits though?

GRAEME EDWARDS: [Inaudible.]

The CHAIR: Dr Edwards, I am sorry, we have lost your audio again.

GRAEME EDWARDS: Sorry.

The Hon. ANTHONY D'ADAM: He is still a bit croaky.

The CHAIR: It is cutting in and out. I am not too sure if it is a pick-up issue. It might be a voice activated issue. Are you, perhaps, using Apple AirPods Max? I think the battery might be flat in them. We have lost you again, I am sorry, Dr Edwards.

The Hon. ANTHONY D'ADAM: Perhaps if the transcript does not properly reflect Dr Edward's comments he can take that question on notice and provide some written response if it is not an appropriate reflection of his comments.

The CHAIR: Yes. I will pass to Mr Donnelly and while he is asking his question, doctor if you could perhaps disconnect the headphones and go to your regular audio system on your computer. Mr Donnelly, you have the call.

The Hon. GREG DONNELLY: Thank you, Chair. My question is to both the doctor and associate professor, but in light of the current situation it may be taken on notice by the doctor. When the Committee first started to look at this matter some years ago now, we were primarily concentrating on matters associated with silicosis arising from the manufactured stone industry and that remains our primary focus to this point. We now, though, have become aware through evidence that this matter goes beyond the boundaries of that specific industry and, in fact, is an issue in a number of industries. Without being exclusive of others, the ones that have been mentioned specifically are tunnelling, quarrying, cement work, boring and construction.

My question is this: we now have this before us, these other industries which will naturally draw our attention but I have this great fear that by our attention moving to these other industries when, in fact, we still have not made the progress we want in the initial industry, which drew our attention to this, it almost potentially becomes an excuse for the slowing down of dealing with some of the regulatory arrangements that are being proposed on the basis that this is something that is very broad. I am just wondering your thoughts about how do we keep the pressure right on to deal with the very specifics that we have identified which is, dare I say, at the pointy end of the problem, namely manufactured stone, but while we are dealing with that, raise the boats with the rising tide with the other industries?

DEBORAH YATES: Do you want me to respond to that, or Graeme, do you want to?

The CHAIR: Thank you, Professor Yates, that might be a good start.

The Hon. GREG DONNELLY: Thank you, Professor.

DEBORAH YATES: Thank you. I totally appreciate the problem. I think it is very important to actually obtain transparency on engineered stone and get engineered stone really sorted out properly first.

The Hon. GREG DONNELLY: Yes.

DEBORAH YATES: Because we have not achieved as much as we hoped over the last couple of years. The next step then, logically, would be to extend to all exposures to silica within every environment using the methods which have been documented to work for engineered stone. This would be something which would be relatively easy to do as a regulatory function, and I have to say this is not a new problem. This is something which has been known about for many years and I personally as a physician cannot quite appreciate why it is so difficult to implement these systems which are protective of people's lives. And that includes the licensing system. I think one of the important things is to make sure there's affordability for the individual worker, because people move, they move from one job to the next.

The Hon. GREG DONNELLY: Yes.

DEBORAH YATES: When one has appropriate surveillance for everybody who is exposed to silica, then you will pick up the other silica-related diseases, but actually the appropriate surveillance, if it is done properly, will pick up those diseases and that will give appropriate time for the learning that has been applied to engineered stone to be applied more widely. I agree this is a really, really important point and I think that this is something which we need to move quite fast on. We in the College would be very happy to assist in any way that we can and, similarly we can talk to other jurisdictions, not necessarily only within Australia, but throughout the world, as part of the global silicosis consortium which has been established by respiratory physicians. So, I think this is something which is key which needs to be moved on rapidly.

The Hon. GREG DONNELLY: And I take note you have emphasised the word "rapidly". One final question before I pass on to my colleagues: associate professor, obviously to tackle this money and resources are needed and to tackle it concurrently on a number of fronts. But I would like to actually specifically ask you a question around the importance and prioritisation of testing and what we are doing about that in New South Wales and the arguments about why this is one of the fronts we are tackling, one that needs to be significantly boosted in terms of its deployment of resources, and noting of course that the industry is diverse from the very large manufacturing sites through to boutique individual jobs being done on units or residences and everything in between and of course obviously right across the State. How do we move as rapidly as we can and most effectively enhance the testing element of all of this?

DEBORAH YATES: I think we have to introduce totally free systems, which involve CT scanning and lung function, which is not ordered by the employer but done from the ground – it needs to go from the worker up, because if people are disempowered, they are very keen to get this done but they do not want to have it reported to their employer. They do not want it to potentially mean that they lose their jobs. They want to make sure that they can take care of their family and get early treatment but they are scared at the moment. If, for example, SafeWork were funded appropriately to implement a scheme, such as occurred in Victoria, where they have a very rapid clinic with a fast-track system and dedicated staff who have established procedures, they have an appropriate clinical guideline pathway, and they have free access for all without an up-front cost and without a cost in particular to the worker, that would actually enable these people to come through.

Although that would potentially enable people who have not had much clinical exposure to apply, in general workers are not—they do not want to apply unless they really have an issue and that would be safer in the long-run, to actually enable them to come. I mean, already we struggle to provide free services or Medicare billed services in public hospitals but that is getting much more difficult and it is really a great struggle to do that. This is the way money should be spent in the long run. It is not going to be half as expensive as having many people who are very sick for a very long time cared for through a variety of different ways of doing that. Take a leaf out of those books and go down that pathway.

The Hon. GREG DONNELLY: Thank you, Professor.

The CHAIR: I just want to note that we only have about 15 minutes left. I know I have a number of members who want to ask some questions. Mr Shoebridge will get the call first, then Mr Buttigieg and then I will give government members to ask questions if they like. If we could keep the questions as well as the answers succinct, that would be helpful for everybody.

Mr DAVID SHOEBRIDGE: Thanks Chair, and I thank you both for your ongoing engagement in this space. I am sorry we have not stepped up and managed to get Parliament to go where I note you, particularly Dr Yates have been urging us to get Parliament to go for four or five years. When we want gradual change, when do we want it? But this is now urgent. You say Dr Yates that actually getting this right at the front end is critical to saving the finances of the scheme going forward. Are you aware that the scheme is only 59 per cent funded at the moment and it is facing an $833 million deficit? One of the reasons, apart from mishandling of claims, is that they have got a surge of future claims, partly through silicosis. Were you aware of that?

DEBORAH YATES: Yes.

GRAEME EDWARDS: Mr Shoebridge—

Mr DAVID SHOEBRIDGE: Sorry, Dr Edwards, you go.

GRAEME EDWARDS: I can certainly comment that the same scenario is happening in other jurisdiction, where the insurers are having to assess how they are going to fund their future liability, and that also gives you a key to how to fund the future liability, and through avenues that require industries specifically to contribute to their insurance premiums, but appropriate to their risk profile. I understand that it is being explored in a number of different jurisdictions as to how that might work. But it is to complement the shortfall in funding that has been affecting cash flows.

Mr DAVID SHOEBRIDGE: If the manufactured stone industry, for example, is allowed to continue to function—and I am personally persuaded by the evidence we had from a construction entity this morning, the ban to their solution, but if manufacturer stone is still allowed to continue to operate, that industry should be hit with an insurance premium that covers the costs and the risks. Is that your position?

GRAEME EDWARDS: It is indeed.

Mr DAVID SHOEBRIDGE: Professor Yates?

DEBORAH YATES: Definitely. I just add that Caesarstone has known all about this since at least the early 2000s. These companies are making extremely large amounts of money.

Mr DAVID SHOEBRIDGE: And they are all largely off-shore manufacturers.

DEBORAH YATES: Exactly so they have to import into Australia.

Mr DAVID SHOEBRIDGE: Yes. Are you aware whether or not Caesarstone and those other importers have managed to get insurance cover? They were having difficulty getting insurance cover two years ago. Is there any reporting from them or otherwise about their insurance cover?

GRAEME EDWARDS: I am unable to comment. What I can say, though, that if you drill down to the cost of the product, if you add another six, seven, eight hundred dollars to the cost of the product, it makes very little difference to the market perception to it. It is already in that gap between the high-end natural stone benchtops and the alternatives. So the additional cost per unit of installed product will not make any real difference to the market, but it can fund the needs of the industry.

Mr DAVID SHOEBRIDGE: Yes but the better solution than pay for future damage is to avoid future damage and that is why you put forward licensing and a whole series of more rigorous approaches, including tracking down the stone that has been directly imported by construction companies. That is one of big missing gaps at the moment, is it not?

GRAEME EDWARDS: Mr Shoebridge, I concur that if the industry cannot be made compliant, fundamentally, I do acknowledge that the product can be fabricated safely. It can be. But what we do not have is a system of fabrication that enables that to happen in a reliable and robust and ongoing basis.

Mr DAVID SHOEBRIDGE: Dr Yates?

DEBORAH YATES: Yes.

Mr DAVID SHOEBRIDGE: Sorry, Dr Yates, we are so short of time. Dr Graham, did you complete that? Dr Yates, do you think the industry is able to be safely regulated? Does experience to date suggest that?

DEBORAH YATES: I have my reservations. I am afraid I do not believe that this industry is notorious for its compliance with regulations. I think that workers on the whole are encouraged to do things that are not safe and they are afraid to take precautions as well. So as you know, I think a ban would be better. I think there are other products available which are very nice like Australian wood. I see no reason why people should be dying for a totally unnecessary reason. We in the health sector will be bearing the costs of this, and the cost of long-term care for these patients is very significant, and ideally this would be borne by the industry that has actually caused them.

Mr DAVID SHOEBRIDGE: Can you give an indication of the ongoing treatment costs for, say, a lung transplant and then ongoing treatment costs for the years that follow a lung transplant?

The CHAIR: Mr David Shoebridge, is it possible you could put that question on notice? I just wanted to give some other members the opportunity and I know Mr Buttigieg is waiting plus Government members.

Mr DAVID SHOEBRIDGE: We have already had extensive questioning from Liberal MPs. Is this going to be a third—

DEBORAH YATES: About $1.5 million for a transplant plus $800,000 for ongoing care, every five years.

Mr DAVID SHOEBRIDGE: Thanks, Dr Yates. So that is well over $2 million that is paid for by the health system as a result of the damage caused by manufactured stone when someone needs a lung transplant. I did have another question about the artificial intelligence being used on X-rays and whether that is a good or a bad thing, given, as I understand it, your firm position is CT scans should be used.

The CHAIR: Mr David Shoebridge, are you putting that question on notice?

Mr DAVID SHOEBRIDGE: Yes, I will put that on notice and we might get a clearer answer on notice.

The CHAIR: Thank you, Mr Shoebridge. Mr Buttigieg, you have got a very short window to ask a couple of questions to the witnesses.

The Hon. MARK BUTTIGIEG: Thank you, Chair. Look, this it for either of you or both to respond. I just want to get a feeling for the time frame, I guess, from diagnosis to a terminal result. I mean, with asbestos, of course, there is this view, I think, that it takes such a long time and sometimes that might attenuate people's view of the seriousness, because it only becomes a problem in old age—a sweeping generalisation, obviously. But could you just give us an idea of the contrast with the onset of this sort of disease?

DEBORAH YATES: It depends on the stone. With the artificial stone exposures they have been having in New South Wales, they are high enough to give them severe disease in their mid-thirties. I have a patient in his twenties, one in his thirties, who will need a transplant probably in the next three years or so. Silicosis has always been more rapid and aggressive than asbestosis but it is dependent on the dose. If have a have very low dose you will have a very long waiting period before severe disease will be there. If we can prevent people having the high exposures then in theory what will happen is that people will be affected by silicosis after they are dead. That is what I want. It is dependent on the dose. Silica exposure is much more lethal and much more dangerous than asbestosis because you have a lot of other diseases that it causes as well.

The CHAIR: Mr Buttigieg, have you got one more question?

The Hon. MARK BUTTIGIEG: In the interests of time, yes. If I could just relate back to you an earlier discussion we had about the threshold level of measurements, this debate around 0.05 versus 0.02. Could you give us some commentary on your views about the efficacy of going down to that lower level and how important it is?

DEBORAH YATES: You go, Graeme.

GRAEME EDWARDS: Basically it comes down to breaches of the level. It does not matter what line in the sand you have, if you do not enforce it you are going to get excursions and exigencies and exposure that is going to harm the individual. The reality is that I have not been able to find a case anywhere in the literature or in my discussions with people around the world where people have contracted silicosis because their exposure was at or below the workplace exposure standard of the day. All the cases have been where there have been breaches of and non-compliance with the exposure standards. Exposure standards do not save lives; they drive a process to improve the systems and procedures and practices that save lives. But just having a line in the sand does not do it. You have to comply with it and you need to protect people before they get to those severe exposure settings.

The CHAIR: I need to give the opportunity to the Government to ask a question so I will now pass to the Hon. Taylor Martin to ask a question.

The Hon. TAYLOR MARTIN: Thank you, Chair, but I think Dr Yates wanted to add something there at the end. Is that right?

DEBORAH YATES: Yes, please, I would like to. The point about the levels of exposure is that silicosis is a disease which is produced by cumulative exposure. If you have a small dose for many years and this is added to earlier higher exposures then the likelihood of disease occurring is much higher ie there is a dose dependency for disease development. The individual exposures are additive. So, the issue of the level is actually very important. We all acknowledge that people will not always keep to the level legislated even if they try to, but I personally do not accept the fact that you cannot measure to that level. I think that if we try hard enough and we use appropriate research we will probably get to the measurement where we would be able to legislate and produce a level of 0.02, and that is certainly the level to which the international community is moving. So, in order to prevent these diseases, not just silicosis, we need to move to standards that prevent all such diseases, not just most diseases.

CORRECTED

The Hon. TAYLOR MARTIN: I am glad I asked if you wanted to add more because you have literally just covered the question I was about to ask, which was to elaborate upon the cumulative nature of silicosis and the exposure. Is it fair to say with asbestos and mesothelioma one fibre can kill? I remember hearing that time and time again growing up, but this is a different set of circumstances.

DEBORAH YATES: This is a different set of circumstances. Mesothelioma is actually different also from asbestosis, which is the closest equivalent to silicosis, but with lung cancer and silica exposure, again this is a cumulative exposure: the more you have, the more likely you are to get a lung cancer, whether or not you have smoked. So it is a very important concept which we tend not to sort of think about. So you are quite right. Essentially, if I could wave a magic wand I would stop everything going into the lungs—cigarettes, dope, silica, dust, everything other than pure clean air. I know that is a fantasy but it would stop people from having chronic lung diseases and save us all a huge amount of trouble.

The Hon. TAYLOR MARTIN: Thank you for that and thank you for the work you do.

The Hon. MARK BUTTIGIEG: Just quickly—

The CHAIR: No, sorry, Mr Buttigieg, we have not got time. We have run out of time and we have got Professor Driscoll to come on next. I am sorry. If there are further questions, members can put them on notice. I thank the witnesses very much for appearing today. The Committee will be in contact with you for the questions you have taken on notice and you will have 21 days to table those.

(The witnesses withdrew.)

Professor TIMOTHY ROBERT DRISCOLL, University of Sydney, Cancer Council's Chair of the Occupational and Environmental Cancer Committee, before the Committee via videoconference, affirmed and examined

The CHAIR: We welcome you to this inquiry. I invite you to make a short opening statement please.

TIM DRISCOLL: I would just like to start by making a disclaimer. I did some work for icare last year and the year before on schedule 1 of the Workers Compensation Act looking at dust diseases. It is not directly related to what we are talking about today but it certainly is related. So just so you know about it.

The CHAIR: Thank you very much.

TIM DRISCOLL: I mentioned the Occupational and Environmental Cancer Committee of Cancer Council Australia. That committee focuses on exposures experienced in work and the environment and the increased risk of cancer, and our aim of course is to decrease that risk. We made a submission along with Lung Foundation Australia, which is Australia's peak NGO on lung health, but I am speaking specifically for Cancer Council Australia here. I think you all would have had a chance to look at the submission, but just to go over the key aspect of it, the focus is silica exposure and silicosis arising from exposure working with manufactured stone. Cancer Council Australia is certainly very concerned about that, but from our point of view it is not just silicosis but the fact that people are being exposed to silica, because silica is a known lung carcinogen, so known to increase the risk of lung cancer, which we are particularly concerned about.

But we are also concerned about not just exposure in the manufactured stone environment but also silica exposure more widespread in the workplace because there are literally tens of thousands of people who are exposed to silica on a fairly regular basis. A few points that I wanted to particularly make. We are very pleased that the New South Wales Government has banned the dry processing of manufactured stone, and the notification system and the case finding system, which we are all very supportive of, but there is still quite a bit to do we feel. One is where we are supportive of a ban of manufactured stone, and there are a few reasons for this, but in particular it is very difficult to work safely with that stone no matter what controls you have in place, even in very good factories.

But we need to keep in mind that much of the work in the factories is done in very small factories that do not have good resources and do not have good knowledge, and also there is quite a bit of puttying that takes place in installation, where it is much more difficult to control. Stone is not manufactured in Australia and there are two alternatives; so we think a ban is appropriate and reasonably achieved without harming, from a business point of view, things too much. That is one thing. Second, the exposure standard for silica, which has been changed in New South Wales and most jurisdictions recently from 0.1 to 0.05 milligrams per meter cubed, which we are certainly supportive of. But, to be a health-based standard—that is one designed to stop people getting whatever disease the exposure is causing—it really ought to be lower, and there is very good evidence to say it should be down at 0.02. The reason it was not put down to 0.02, as I understand, was concerns about whether it can be appropriately measured. There is pretty good evidence that it can. But not everybody agrees with that. If it cannot be measured at that level, if it is felt there is problems, then we think that there needs to be good work put in to make sure you can measure it down to that level well, although our feeling is that you can.

The third thing is—I mentioned before that there is tens of thousands of workers in New South Wales who are exposed to silica on a pretty regular basis. So it is very important that they know the risks and are educated in the risks and that the exposures are controlled as well as they can and that the standard that is in place is enforced. Fourthly, we mentioned about low-dose, high-resolution CTs. At the moment, as part of surveillance and screening of people exposed to silica, chest X-rays are used, and there is very good evidence that chest X-rays are not good at picking up silicosis in its early stages. So there is debate as to whether it would be appropriate to have high-res CT for lung cancer. There is some good evidence at the moment to say that that would be appropriate in this situation. But, certainly, if there is going to be scanning done, low-dose, high-res CT is better than chest X-rays. Finally, we are very keen to have a nationally consistent approach, and I know that is not completely within your control. But, to the extent that you can achieve that, we think that that would be best. That is it.

The CHAIR: Thank you very much, Professor Driscoll. I will now pass to the Committee for questions. Mr Shoebridge, would you like to lead the questioning?

Mr DAVID SHOEBRIDGE: Thanks, Chair. Thank you so much, Professor, for your submission and your nice, pithy opening. I might just try to unpack a few of those. In terms of low-resolution—in terms of the CT scans—

TIM DRISCOLL: Low dose, high resolution. I get mixed up with that regularly.

Mr DAVID SHOEBRIDGE: Thank you. We will start again. In terms of the low-dose, high-resolution CT scans—that is not mandatory in New South Wales. It is mandatory in WA. Is it achievable, if the Government had the will, to actually have that as the default diagnosis model across New South Wales?

TIM DRISCOLL: Almost certainly so. There might be some problems in rural areas in terms of access. But, certainly, in metropolitan and, I would think, regional areas it should be achievable. But I have to say I am not sure in rural areas, but there would be thoracic physicians who could give you some good advice on that.

Mr DAVID SHOEBRIDGE: My feeling is, if you can do it in WA, you could probably do it in New South Wales.

TIM DRISCOLL: You would think so. I agree, but I do not know for sure.

Mr DAVID SHOEBRIDGE: The icare submission has said they are engaged in a process of artificial intelligence analysis of lung X-rays as a way of having an enhanced diagnostic capacity. What is your position on that?

TIM DRISCOLL: I think it is useful, but it is not an area that I know a lot about. The advantage is that—chest X-rays and high-res CTs can be difficult to read. That is the argument about it. But I do not know the details of it, so I cannot speak to it.

Mr DAVID SHOEBRIDGE: But that would be no substitution for low-dose, high-resolution CT scans.

TIM DRISCOLL: Sorry. You are saying "artificial intelligence reading of chest X-rays"?

Mr DAVID SHOEBRIDGE: Correct. Chest X-rays.

TIM DRISCOLL: My understanding is that that would not be a good substitute. As I said, I am not an authority on it, but all the things that I have read would suggest low-dose, high-res CTs would be better.

Mr DAVID SHOEBRIDGE: Could I ask you about the exposure standard. As a result of pushes over the last few years, the exposure standard has been reduced to 0.05 milligrams per cubic meter, measured over an eight-hour workday. But that is not actually founded in any health advice. That that is still an unsafe level of exposure is what the balance of the medical evidence suggests.

TIM DRISCOLL: Correct. There is very good evidence to say that 0.05 is still too high. There is good evidence from overseas, showing how the risk decreases with decreasing exposure but that at 0.05 the risk is still much higher than the level that we would normally expect is reasonable for somebody who is working a 40-hour week.

Mr DAVID SHOEBRIDGE: That is why you say 0.02 should be the test.

TIM DRISCOLL: Correct.

Mr DAVID SHOEBRIDGE: Can we test to that? Can we actually detect it at that level? That is often what is thrown back against us when we make that [disorder].

TIM DRISCOLL: Exactly. The understanding we have from talking to occupational hygienists is that, yes, we definitely can test at that level, but it has been questioned. If that is the thing that is stopping getting a standard of 0.02, which is a health-based standard, the appropriate standard, we feel, then work should be done to ensure that we can measure down to that level, but we think you can now.

Mr DAVID SHOEBRIDGE: But, either way, we should not be accepting a demonstrably unsafe level of dust exposure as a national or a State safety standard. That is not sustainable.

TIM DRISCOLL: We believe not, no.

Mr DAVID SHOEBRIDGE: There is plenty more I would like to ask you, professor, but time is short. My final question relates to actual case numbers. If you look at the icare numbers, they show there was a trickle of cases leading up to 2017-2018, then it starts to rise, comes up to a peak of well over a hundred—I think it is in 2019-2020 or 2018-2019—and then it has fallen away again in the last few years. Particularly in the first part of this financial year and in the previous financial year we saw a substantial reduction in silicosis cases being confirmed by icare. Would COVID have had a part in that, or is it because there are just less cases because we are getting all the workplace conditions right?

TIM DRISCOLL: I do not think it would be the last one, because it would be too early for a change in workplace conditions to have resulted in that. I suspect COVID-19 has had a role. But I also suspect that, initially, there were a lot of cases that had been not diagnosed and that had occurred over a number of years, that were identified in a short space of time. Probably, the initial peak that was found was not reflecting how many cases

per year but a build-up of a couple of years but all diagnosed in the one year so it looked artificially high. I suspect now, because of COVID-19, it is now looking artificially low. There is also the problem that not everybody who is potentially at risk—has worked in this industry and so been exposed—had undertaken appropriate surveillance. So we definitely would not have identified all the cases that were out there.

Mr DAVID SHOEBRIDGE: Can you give any indication of what the under-reporting is, or is that one of those Donald Rumsfeld known unknowns?

TIM DRISCOLL: Exactly. I do not know. Victoria has got, actually, a very good surveillance program in place. They are also having issues, identifying all the cases, but they would be able to give a better indication. But I do not have that information in front of me. I am sorry.

Mr DAVID SHOEBRIDGE: Thanks, professor. Thanks, Chair.

The CHAIR: Thank you very much, Mr Shoebridge. I will now pass to Mr D'Adam, and then I will go to Mr Amato.

The Hon. ANTHONY D'ADAM: Thank you. Thank you for your attendance today, Mr Driscoll. I wanted to ask you. You mentioned in your opening statement about the work that you did for SIRA, about extending the definition of "dust diseases". Are you able to tell us the status of that report? Is that a report that is now in the public domain? What is the status of that report?

TIM DRISCOLL: It has been given to icare and, I thought, had been given to the committee that was looking after that legislation, but I do not know for sure. I definitely finished it. It is in its final form, and it was with them many months ago. But I do not know the fate of it.

The Hon. ANTHONY D'ADAM: I see. So you are not in a position, then, to answer questions about that work?

TIM DRISCOLL: I actually do not know whether I am allowed to or not. I guess it is tricky for me to tell you anything specific about it.

The Hon. ANTHONY D'ADAM: Perhaps on notice consider seeking some advice. Obviously, we do not want to put you in a compromising position. But, if possible, if you could tender that report and provide to the Committee some advice on the general status of—

TIM DRISCOLL: Sure. I have no problem talking about it, that is perfectly fine, it is just that I do not feel that I can without checking with them.

Mr DAVID SHOEBRIDGE: Would it be possible to get the professor's view on behalf of the organisations he represents rather than as encapsulated in the report?

TIM DRISCOLL: But if it has not been released publicly it is hard for me to comment.

The CHAIR: I think, Mr Shoebridge, in the first instance—

The Hon. ANTHONY D'ADAM: I do not think we should put the professor in that situation.

The CHAIR: The professor has taken the question on notice, so I am happy that he can seek whatever guidance he wishes to take about how he answers the question and he will have 21 days to provide us with a response. Mr D'Adam, you have the call.

TIM DRISCOLL: Can I just ask a follow-up just to clarify?

The Hon. ANTHONY D'ADAM: Sure.

TIM DRISCOLL: I am thinking about what I give you. So, would you want the report or do you want a summary of the report, or is there a particular aspect of it that you want?

The Hon. ANTHONY D'ADAM: Obviously the whole report would be preferable but if a summary is all that you are able to provide, that would be fine too. We are interested in the thinking behind any recommendations around expanding the definition. We have had a number of submissions that have recommended a change to the definition of dust diseases, given that it was first put in place in 1942. The arguments are that it does not properly encompass the current situation and the current state of knowledge about the impact of occupational hazards, dust hazards, on causing diseases. So, yes, I mean, if you are able to provide some general comments about that question. I think I can phrase it this way: the Maurice Blackburn submission recommends a change to the definition of dust diseases to expand its ambit. What do you think of that submission?

TIM DRISCOLL: Okay. So, from a general point of view, I think that the current legislation—and this is nothing to do with what I have written in the report to icare, I am just telling you with my occupational

environmental physician and Cancer Council hat on—the dust diseases legislation really comes out of historical contexts where there are major problems with dust diseases in New South Wales, and there was a focus on particular diseases within that. It raises an anomaly or a challenge because why would one particular type of lung disease be included and not another type of lung disease be included? And as an example, say something like occupational asthma, which can be caused by dust, but can be caused by other things that are not dust, and so is it appropriate to include occupational asthma caused by dust but not occupational asthma which would affect the same worker in exactly the same way, if it was caused by non-dust exposure? And it is hard to know that.

Does one work-related lung disease have a higher priority than another, the same disease caused by different exposures should have a different priority to another. And there is no easy answer to that. That is really what you as a committee would need to deal with. I think that is the main argument behind thinking about what should be included or not, is to what is the point of the legislation? What are we trying to do in terms of protecting workers or giving appropriate recompense to workers. And you can then extend it to say: well, if you expand it to include all occupational lung disease, let us say, then the argument is why lung disease and why not liver disease or why not some other sort of disease? So there are some difficult decisions to be made there, but certainly I think it would be anomalous to include a disease caused by one exposure and not include that same disease if it happened to be caused by a different exposure, for example.

The Hon. ANTHONY D'ADAM: I will hand over to another Committee member now.

The Hon. LOU AMATO: Thank you, Chair. Thank you, professor, for taking the time out to be with us today. In the opening statement you said you mentioned you did some work for icare.

TIM DRISCOLL: Yes.

The Hon. LOU AMATO: So is it sensible or desirable for icare to continue using the existing network of radiology providers and respiratory physicians alongside their own physicians to take and record CT scans for workers exposed to silicosis, and do you see any risk or benefit for icare in providing essentially the same scheme?

TIM DRISCOLL: I think that is not something I can comment sensibly on, not because of the work I have done for them but it is not really an area I know enough about to sensibly comment on, I do not think.

The Hon. LOU AMATO: Okay.

TIM DRISCOLL: I am not trying to weasel out of it. I do not know enough about it to sensibly advise you.

The Hon. LOU AMATO: I am not sure if I should be asking this question but I will ask you just the same anyhow. Did you know that icare provides CT screening through third-party providers to anyone exposed to silica in the workplace at no charge?

TIM DRISCOLL: I knew that it was provided. I did not know it came through icare, but I knew that it was provided, yes.

The Hon. LOU AMATO: Thank you, professor.

The Hon. MARK BUTTIGIEG: Thanks, Chair. Mr Driscoll, thanks for appearing. I just wanted to tease out something we were pursuing with the previous two witnesses about this level, the whole controversy around the 0.05 vis-a-vis 0.02 and there was conflicting evidence in the sense that, I do not want to make too much of it because I think everyone agrees the lower standard is better, but there is a view that the line in the sand does not matter, it is all about enforceability.

TIM DRISCOLL: Yes.

The Hon. MARK BUTTIGIEG: I think the point that Professor Yates was trying to make was that it does matter in the sense of a cumulative assessment. In other words, she talked about the dose. If I have got this correct, would the example be that if I were exposed to five different sites, for example, at a rate of 0.05, then clearly the dosing is five times 0.05, and therefore the line in the sand of 0.05 could be misleading, and is that why it is important to go down to 0.02? I was a little bit confused about—

TIM DRISCOLL: I will say "no". I would say that is not the reasoning. It basically comes down to the risk of developing whatever disease that the standard is meant to protect from, and in this case it is lung cancer. So that is what the standard is designed to protect, not silicosis, it is lung cancer. The risk increases with increasing dose. The more you are exposed, the higher your risk. If you had five workplaces at 0.05, then your total dose is much higher than if you had five workplaces where the standard was 0.02, provided that was kept to, of course. But if that is the level of exposure that you had, you would have much higher exposure at 0.05 than you would at 0.02 and so your risk will be much higher.

You cannot get to zero risk. We could not function as a society if all our standards were zero. You have to have a cut-off somewhere. The question is: where is the cut-off? And most of the time the stated approach has been if there was a lifetime risk of an increase of one in a thousand of getting that outcome in exposed people, compared to if they were not exposed, and you could argue about whether one in a thousand is the appropriate cut-off mark but that is where it is generally put with standards, to the extent that we can estimate that. And it is very clear that at 0.05 the increased lifetime risk is much higher than one in a thousand than it is when the level is at 0.02, and when you get to 0.02 it is about one in a thousand. So that is the logic behind having it at 0.02, rather than 0.05 or 0.1.

The Hon. MARK BUTTIGIEG: You can air monitor this stuff, right?

TIM DRISCOLL: Correct.

The Hon. MARK BUTTIGIEG: So you can measure 0.05 at X tunnel or whatever the workplace is.

TIM DRISCOLL: Yes.

The Hon. MARK BUTTIGIEG: And employee Y has been exposed to that for a period of one hour, I am assuming that the risk is relatively low because it was at or below 0.05. But the problem I think we have heard here today is that we have no idea of the volume of exposure because he could have been at another 20 sites and we do not know at what level of exposure those sites were at. So, there is no way of knowing the dosage or do you pick that up from the CT scans?

TIM DRISCOLL: No you will not pick it up from CT scans and it is right that you would not know the dosage unless people are wearing monitors all the time which I think is not realistic. But that is showing why it is important to have an appropriate standard and to make sure that standard is enforced because the standards are developed presuming somebody is saying "If somebody is exposed at this level for 40 hours a week for their entire working life, what's their excess risk?" And that we as a society have said, well, "If the excess risk is more than one in 1,000, we think that's too high" and at .05, the risk is much higher than one in 1000; at 0.02 it is close to one in 1,000. That is the argument for a health-based standard of 0.02.

The Hon. MARK BUTTIGIEG: Professor, you are saying that feature of 0.05 is greater than a one in 1,000 chance based on a 40-hour working week in that industry?

TIM DRISCOLL: It is assuming somebody having exposure for a 40-hour working week for a working life of 40 years.

The Hon. MARK BUTTIGIEG: Okay, thanks, it is very helpful. That is all from me, Chair.

The CHAIR: Mr Shoebridge, I am happy to come back to you now if you wanted to ask some follow-up questions.

Mr DAVID SHOEBRIDGE: Yeah, I do. Again, Professor, your pithy and direct responses are appreciated.

TIM DRISCOLL: Nothing is pithy.

Mr DAVID SHOEBRIDGE: Well, we all like short (inaudible). Have you had a look at the scheme, the icare report or the icare submission to this inquiry?

TIM DRISCOLL: No. I have not seen it.

Mr DAVID SHOEBRIDGE: Were you at all aware of the fact that icare is facing an eye-watering deficit for the Dust Diseases scheme in the order of $833 million?

TIM DRISCOLL: I think I heard something on the news about it a few weeks ago, but I know nothing else, no.

Mr DAVID SHOEBRIDGE: Well, there could be one other part of icare, every single part of icare has an eye-watering deficit but the one I am talking to you about is the Dust Diseases scheme which is in front of us.

TIM DRISCOLL: I note specifically, yes.

Mr DAVID SHOEBRIDGE: If you were, from your perspective, work out the best way of reducing the future costs to the scheme, from a health perspective, what do you think would be the best way of reducing those huge costs of the scheme and bringing that deficit under control?

TIM DRISCOLL: Well, even completely separate from the cost of the scheme, just in general, and an appropriate moral approach to society is to prevent people needing compensation in the first place. I presume a lot of those costs are coming from compensation and the best way to avoid the costs is to avoid the compensation

having to be paid by people becoming unwell. So I certainly strongly feel, and the organisation strongly feels, that the best approach is prevention. And to prevent it, there is no doubt that the risk of getting the disease is directly relevant or related to exposure and the higher the exposure the higher the risk, which is bad, but on the other hand, what is good is, the lower the exposure, the lower the risk. So whatever we can do to appropriately lower the exposure and make sure that the exposures are kept low in the working environment, the better off the worker will be, and also, as a result of that, the better off the scheme will be.

Mr DAVID SHOEBRIDGE: But if you are looking at, say, manufactured stone, when you are looking at the hierarchy of how you respond to a risk in a workplace the first option that you should consider is actually removing the risk.

TIM DRISCOLL: Exactly.

Mr DAVID SHOEBRIDGE: Is that what has informed your recommendation to ban about manufactured stone?

TIM DRISCOLL: Exactly. So the standard approach, using this hierarchy, if you eliminate the risk if you can. Now, we cannot actually eliminate the risk of silica in the working environment, because in some places it is very common exposure, but in manufactured stone, there is no doubt you can, and so the question would be: well, is there some way, if for some reason you do not want the ban, if there is there some way you can work safely with it? And there is very good evidence to say that you cannot work safely with it, so then I am thinking, is it necessary, is there any alternative and there are clear alternatives to it. If you cannot work safely with it and there are clear alternatives and it is causing terrible ill health with a condition that is completely preventable, it is hard to argue that it should remain, we feel.

Mr DAVID SHOEBRIDGE: Indeed. Could I ask you about the silicosis as a result of exposure to cut sandstone and, particularly, the very large number of infrastructure projects that have been cutting through Sydney sandstone through tunnelling. Has that caused any kind of spike or surge in silicosis claims because Sydney sandstone has an extremely high silica content?

TIM DRISCOLL: I am not aware if the recent, say, last 10 years of work, has resulted in an increase in claims. But I would not have expected it to, I would have to say, because fortunately, when people are exposed in tunnels, the level of exposure is nowhere near the levels that people get working with the manufactured stone, and silicosis is a disease that can take many years, sometimes several decades, before it becomes apparent. So I would not be monitoring the effectiveness of the controls by looking at the silicosis cases. We should be monitoring that, but that is not going to be a very sensitive monitor. We should be spending a lot of resources monitoring the exposures, making sure they are kept low and having a good system in place to keep them low.

Mr DAVID SHOEBRIDGE: So this is air monitoring and workplace monitoring?

TIM DRISCOLL: Air monitors.

Mr DAVID SHOEBRIDGE: And good workplace regulation, because if we are waiting to see the cases, we are 10 years behind the curve. Is that right?

TIM DRISCOLL: Yes, probably more than 10 years behind the curve. Definitely you should not be monitoring the effectiveness of current controls by looking at the rates of silicosis currently. The reason that we found out about manufactured stone is, unfortunately, the levels were so horrendously high that people were developing silicosis within four, five, six years—and very severe silicosis—but in tunnelling, there may well be people who are being exposed to levels that are too high that will cause them to develop silicosis. But that silicosis probably will not be clinically evident, and perhaps not radiologically evident for 10 or more years.

Mr DAVID SHOEBRIDGE: So, to take that evidence and that analysis back to manufactured stone, through changes that have been put in place, in many workplaces the obscene level of exposure has been reduced. So, that means those rapid onset cases have been reduced in number. Can we say that?

TIM DRISCOLL: Yes, I think you can say that.

Mr DAVID SHOEBRIDGE: But there is still, even applying the current Australian standard, persistent overexposure to silica that heaven knows how many thousand workers are facing. What that may actually mean is we have kicked the problem five or 10 years down the path and that long exposure, gradual onset, may well just, it may be the effect of it, may push the exposure 5 or 10 years down the path?

TIM DRISCOLL: I think it will mean there will be less cases, and the cases that do occur, by and large, will be less severe, presuming that the exposure is much better controlled. But there is still concern that the exposure is much too high.

Mr DAVID SHOEBRIDGE: That is not for all cases. The cases are perhaps less aggressive early onset, but if we are looking at incidents, and following the icare data on incidents, that is not going to show us what will happen in five or 10 years' time?

TIM DRISCOLL: The icare data—yeah, you are probably not going to see the effectiveness of this in terms of controlling lower levels of silicosis—sorry, silicosis from lower levels of exposure. You would not be expected to see that for more than 10 years, I would think.

The CHAIR: Mr Shoebridge, other members are seeking the call. Mr Buttigieg and then Mr Martin and then Mr D'Adam. That will probably take us to time. Mr Buttigieg, you have the call.

The Hon. MARK BUTTIGIEG: Thanks, Chair. I am guessing the logistics out of curiosity on one of those sort of contrasts between the engineered stone industry and, say, the safe tunnelling and the emblematic example of others industries although there are many other situations. The severity in the engineered stone, is it related to the granularity of the by-product? In other words, in tunnelling, I would imagine that the by-product is quartz stone. I may be totally wrong about this and then therefore the exposure to fine granular particles is less, and that is why part of this modelling puts stone at a greater risk. Is there any truth to that or is that not how it works?

TIM DRISCOLL: There is a range of things that contribute to it. Really the biggest problem or the two biggest problems with the edging of manufactured stone is their levels of quartz are incredibly high—they can be in the 90 per cents, whereas that is usually not the case in the tunnelling work. There can be situations where it is very high but with the manufactured stone it can be incredibly high, and the environments in which they work the exposures are not controlled, so the workers are being exposed to a lot of dust and the vast amount of that dust is quartz. In tunnelling, the exposures are much, much better.

That is not to say that they are always well controlled, but even when they are not well controlled, in twenty-first century Australia they are just nothing like we have measured or has been measured to do with manufactured stone. In terms of you were talking about the size of the particles, it is not my area of expertise but the size of the particles certainly is important and there is definitely a problem of small particles in very high amounts with manufactured stone.

The Hon. MARK BUTTIGIEG: Thank you, Professor.

The CHAIR: Mr Martin.

The Hon. TAYLOR MARTIN: Thank you, Chair. Thank you for your time today, Professor. If I could just draw your attention in your submission under the headline "A nationally consistent approach to silica regulation". Are you aware of, in your work with the Cancer Council, any discussions or efforts to bring the different States together to get something nationally and uniform together?

TIM DRISCOLL: You mean that the Cancer Council is working on or just in general?

The Hon. TAYLOR MARTIN: Or involving.

TIM DRISCOLL: Cancer Council has been working with a number of other groups, like Lung Foundation Australia and a number of other groups, writing submissions to the relevant Ministers in each State and Territory about these issues including trying to get standardised regulations.

The Hon. TAYLOR MARTIN: That was all.

The CHAIR: Thank you, Mr Martin. Mr D'Adam.

The Hon. ANTHONY D'ADAM: Thank you. Professor Driscoll, earlier in the day we heard evidence from the CFMMEU that was very critical of the Golder report, the case finding study that had been commissioned by SafeWork, I believe. Do you share their concerns about the quality of that case finding study? I think the suggestion was that it was not actually a genuine case finding study, it was very much a sort of desktop-based analysis of existing data rather than a proper epidemiological exercise.

TIM DRISCOLL: Unfortunately I have not read the report. I did not realise it was accessible. I would be happy to take that on notice as well if you would like. If it is accessible, if I could see the report.

The Hon. ANTHONY D'ADAM: It is actually one of the attachments to the SafeWork submission to this inquiry and should be available on the inquiry website.

TIM DRISCOLL: And the same with the CFMMEU comment?

The Hon. ANTHONY D'ADAM: That will be available in the transcript.

TIM DRISCOLL: Yes, sorry. I have not read it, but I would be happy to have a look and give you a comment if you would like.

The Hon. ANTHONY D'ADAM: That would be appreciated, thank you. That is all I have, Chair.

The CHAIR: I am just going to quickly look around the rest of the Committee to see if anybody else has got some final questions. If not, we are almost out of time. Given that everybody is silent, Professor Driscoll, thank you very much for making yourself available today. It has been most valuable. The questions you have taken on notice, the Committee will be in contact with you to be able to have those tabled within 21 days.

(The witness withdrew.)

(Short adjournment)

Mr DAVID CULLEN, Managing Director, Caesarstone Asia Pacific; Representative, Australian Engineered Stone Advisory Group, before the Committee via videoconference, sworn and examined

Mr GARY ISHERWOOD, General Manager, Stone Ambassador Pty Ltd.; Representative, Australian Engineered Stone Advisory Group, before the Committee via videoconference, affirmed and examined

The CHAIR: Welcome to the final session of today's hearing for the dust diseases inquiry. I now welcome our next witnesses. I would now like to invite both of you to make a short opening statement. I will start with Mr Cullen.

DAVID CULLEN: Firstly, thank you for the opportunity to participate today in front of the Standing Committee on Law and Justice and the 2021 review of the Dust Diseases Scheme. Caesarstone is one of the leading suppliers of engineered stone in Australia and commenced operations in Australia in 2000. Engineered stone is fundamentally a safe product and safe to fabricate provided the correct safety practices are employed. SafeWork NSW has noted that silicosis is "a disease which is entirely preventable if the correct safety measures are in place". We have taken many measures over the years to educate fabricators, keep up to date with the latest research and protective measures, and ensure our products are handled in a safe manner as part of an industry-wide effort to raise awareness and encourage change. These measures have been comprehensive and not limited to but including updating and regular distributing material safety data sheets; introducing fabrication manuals; providing health and safety information and guidance and training to fabricators; warning labels in multiple languages.

Since the previous inquiry in 2019, Caesarstone has continued to invest in the education of the industry. In 2020 we appointed a full-time environmental health and safety person to work closely with industry. In April 2021 we launched our online program called Master of Stone, which is a series of eight online modules directed at employees and management of fabrication businesses. To date we have had 158 businesses register, we have had 398 individuals register and we have had 1,157 modules complete. In August 2021 we launched a new health and safety program including a Good Practice Guide for fabricators, an enhanced registration process for our Master of Stone training program, we are requiring compulsory information on workers compensation by fabricators and we are asking for environmental health and safety compliance agreement forms from fabricators.

In 2022 we have commenced manufacturing of low-silica product, which will be distributed to the market throughout 2022. We have also been working with icare for onsite screening and we have had a number of conversations in relation to real-time silica testers, which is currently being tested in the New South Wales market and looks very positive in terms of implication and application longer term. We have supported many changes in practices such as the ban on dry cutting stone over the years. We have also, however, recognised the need for greater nationwide regulation to improve safety for workers across the industries that handle materials containing silica.

We agree with the National Dust Diseases Taskforce final report that said that systematic change is required to improve protection for all people who work in dust-generating industries. We have been and continue to be a strong advocate for mandatory nationwide licensing and fabricators having rigorous auditing and enforcement structure to support it. Caesarstone individually and through our industry body, AESAG, has been an active participant in the National Dust Disease Taskforce process and other Federal and State forums related to silicosis and dust disease. We prepared a distribution and distributed a policy paper, *Tackling Occupational Lung Disease – the pathway forward*, which sets a proposed national reform package, implementation plan and a process to measure the reform's effectiveness. We will continue to work with Federal and State governments, workplace safety regulators and the industry. We believe systematic change can occur if there is a national, consistent and unified approach by governments, as envisaged by the national dust task force. Implementation, however, we believe, must commence without delay.

We are encouraged by feedback from SafeWork NSW, who have found an industry willing to change, dramatic changes in the last few years from audits, and awareness escalation. With respect, our view is it should be recommended to the New South Wales Government that they support and collaborate with the Federal Government to coordinate a nationally coordinated reform package. We are encouraged by Victoria's commencement of licensing, which started in November 2021 and will be compulsory in November 2022. We also have great empathy for workers and their families who have been impacted by silicosis, but we believe, with the changes occurring in the industry, longer-term silicosis in engineered stone will be a historical disease. Thank you.

The CHAIR: Thank you very much for that, Mr Cullen. I will now invite Mr Isherwood to make a short opening statement as well.

GARY ISHERWOOD: Thank you. I appreciate the opportunity to address here. My employment with Stone Ambassador began in January 2019. During my time with Stone Ambassador, I have seen some very dramatic and much-needed changes within the stone sector within the Australian marketplace. Although the best working practices and the great manufacturing techniques have always been highlighted and pressed onto clients by different suppliers within the marketplace, it is obvious that those recommendations have never been treated with the respect or significance and importance that they deserve by the entire industry. As a responsible supplier, I think we can all say that parts of the industry needed to make vast changes and improvements with respect to overall OH&S needs. From what we have experienced within the various States of Australia during the last three years, the changes are occurring and the sector is improving each day that passes.

The movement made by WorkSafe Victoria within the engineered stone licensing scheme has been very well received by almost everybody associated within the industry inside of Victoria and within the other States of Australia. We feel this positive move will really help push the sector into a new phase of development and improvement. At Stone Ambassador, we are 100 per cent committed to improving the industry which we work within and, as a member of the AESA group, helping to create a safer working sector for everybody involved. Thank you.

The CHAIR: Thank you very much for that opening statement. I will pass to the Committee members for questions. I will start with Mr Buttigieg. You have the call.

The Hon. MARK BUTTIGIEG: Thanks, Chair. I just wanted to canvass with you, I guess. I am assuming from the other side of the ledger, although I will not make assumptions, given it is why we have got you in as witnesses. We heard evidence this morning from the CFMMEU and the AWU and, I might add, some other witnesses, from the medical profession and various other quarters, that, particularly in that engineered stone industry, which you people are in, elimination is achievable, based on the idea that it is very, very hard to minimise the risk to an acceptable level and the fact there is possibly substitute materials, which would come in and take the place of the current composites that we are using in that industry now. I just want to get your reaction to that and where you sit on those propositions.

DAVID CULLEN: I think a couple of points in response. The feedback that we have had from SafeWork NSW, which, obviously, we would consider independent, is that they are seeing an industry that is changing and the audits that they have completed have been satisfactory, which would to us indicate that the changes are taking place and they are effective. Secondly, from a substitute perspective, as I mentioned in my opening statements, we are introducing low-silica product, and that product will change from 50 per cent down to, potentially, less than 10 per cent this year. We believe that that will help improve the environment as well. Generally, there are substitutes available in the market. The average consumer has an affiliation with engineered stone because of its attributes, because of its look. We have to make sure it is handled safely, and I think everything we have seen indicates that—and most State governments would agree—the product can be handled safety. It just has to be handled safely.

GARY ISHERWOOD: In the same, David, of what you have just said. Alternative products are available. We have introduced new products ourselves to offer as an alternative. Also, we are in the final stages of development with low-silica products to introduce into the marketplace. A number of suppliers are doing the same, and we will follow suit. So I think everybody involved in the sector is working very hard to reduce the impact and, obviously, bring alternatives to the marketplace. But, as David said, if manufactured in the right way and, obviously, covered in the right way, we can get it to a level where it does not cause that impact.

The Hon. MARK BUTTIGIEG: That is interesting and encouraging. In terms of the market price, is there any good reason as to why that substitute could not eventually take over? In an ideal world—we cannot remove the hazard across the board. Obviously, there is situations where it occurs naturally. Tunnels have got to be tunnelled, and things have got to happen. But in this particular segment of the industry—we heard, on evidence this morning, there is very, very high density of quartz in that material, there is resins. I do not profess to know the details, but the point is that the exposure levels are a lot higher because of the nature of the product, notwithstanding the fact that you can put controls in with PPE and all the rest. My point is this. If there is a feasible, substitutable alternative, which minimises the risk dramatically and that is within sight, why would we not be concentrating on going down that path? If so, is there any economic reason that you would not want to go down that path? In other words, is the substitute twice as expensive, three times as expensive? Or is it feasibly a similar price?

DAVID CULLEN: As of today, there is no substitute that matches the full attributes of engineered stone. You have laminated material, which is not same. It is a softer material. It is not the same look. It is not the same ease of maintenance. You have marble, granite and porcelain as, probably, the three other main alternative products. However, those three products generally also contain silica. Our product contains up to 93 per cent

silica, depending on the manufacturer, but it is in that vicinity. Our aim is, over the next three years, the majority of our product will be less than 50 per cent silica. In conversations I have had—and Gary mentioned it with Stone Ambassador, with the other manufacturers. They are all headed in the same direction. We have fully understood that there is a need to reduce the silica level. We believe we can reduce it and maintain the same attributes of the product and make it a viable substitute as such. It answers your question in terms of substitution. Similar product, just different ingredients, without the high content of silica.

The CHAIR: Mr Buttigieg, I am going to pass the questioning over to some other members, but I will come back to you. Mr Shoebridge, you have the call.

Mr DAVID SHOEBRIDGE: Thank you, Chair. Thanks to both of you for your attendance. Mr Cullen, you would be aware, would you not, that Caesarstone has told the United States Securities and Exchange Commission that they have been unable to get insurance cover to protect them from claims for people who have been injured from exposure to silicosis from your products in Australia? You would be aware of that?

DAVID CULLEN: I am not specifically aware of that report, or that notation; however, we have insurance in Australia, and have had insurance since day one.

Mr DAVID SHOEBRIDGE: Well, why don't I read to you from your company's own disclosure to the United States Securities and Exchange Commission—it is page 108 of the report for assistance to you. Speaking to the global product liability insurance, which is the only insurance coverage you have in relation to silicosis product liability in Australia, it says in part:

> The policy covers only illnesses diagnosed after February 2010. Although we seek to renew our product liability insurance to cover silicosis-related claims, there is no assurance it will be successful in its renewal, specifically as currently Israeli and Australian policies do not cover newly diagnosed silicosis-related claims.

That is what your company has told the United States Securities and Exchange Commission. Can we assume that you have not misled the United States Securities and Exchange Commission?

DAVID CULLEN: No, we have not. Just to clarify, we have insurance up until, I think it is 2019 it is in place. So, any instances prior to that is fully insured. Post that, is not.

Mr DAVID SHOEBRIDGE: So, you have no insurance cover that a future injured worker could rely upon to protect them if they have a damages claim from exposure after 2019 from silicosis? That is right, is it not?

DAVID CULLEN: From the insurance perspective, it is correct. But we are a sizeable business with strong cash flow, both in Australia and also internationally and we make sure that we meet our liabilities, whether insured or uninsured.

Mr DAVID SHOEBRIDGE: Well, also from your disclosure to the United States Securities and Exchange Commission, you made it clear that your collective insurance likely recovery for silicosis claims is in the order of $8 million, and you already have a global exposure valued at at least $42 million. So, you are already tens and tens of millions of dollars in the red for silicosis. What protection is there for future injured workers that there will be assets to meet the claims?

DAVID CULLEN: We have never walked away from a liability as a business, either in Australia or internationally and we would stand by any liability that we may have. Many of those cases there is legal argument as to whether we do or do not have the liability. In most cases the majority of the legal recognition as to who has liability sits with workers' compensation. So, we potentially have a percentage, but it is a relatively small percentage and, as I say, we are a strong, viable business.

Mr DAVID SHOEBRIDGE: You see, Mr Cullen, if no insurer will touch you for silicosis exposure, they just simply will not write a policy here for you for silicosis exposure for damage for Australian workers, should that not be a huge, red flag for this Committee, that your product is so dangerous you cannot get insurance coverage for it?

DAVID CULLEN: No, I think—firstly, I think we believe it relates back to historical cases in terms of the majority of the cases. We think with the changes in the industry moving forward there are going to be less and less issues. There are obviously going to be historical cases that are going to move forward. However, as I say, we have a strong, viable business with strong cash flow and we meet our liabilities.

Mr DAVID SHOEBRIDGE: Mr Cullen, it is plainly untrue that this is about historical matters. Insurers are refusing to cover you for damages from silicosis exposure in Australia and Israel for current and future claims, in fact any claim, from 2019 onwards. It is not about historical claims that insurers are walking away from. They are not willing to go near you with a barge pole for claims from 2019 onwards, because they know the level of damage likely to happen, do they not?

The CHAIR: Mr Cullen, before you answer that, I will indicate that after you have had the opportunity to respond to that I will pass the questioning over to Mr D'Adam, but I will come back to Mr Shoebridge at a later time.

Mr DAVID SHOEBRIDGE: Mr Cullen, it is not about historical cases. They are refusing to cover claims from 2019 onwards, including exposure that is happening today in workplaces across New South Wales. That is what they are refusing to cover.

DAVID CULLEN: The facts are any case that we have had has been generally, and when I say "generally", in excess of 95 per cent has been covered by insurance. Anything that is not covered by insurance moving forward we will cover as a company.

Mr DAVID SHOEBRIDGE: Mr Cullen, what you say about 95 per cent covered by insurance is directly contradicted by your company's own disclosure. In relation to silicosis claims you say you have insurance cover to cover only $8 million, yet you estimate the claims to date globally at $42 million. What you say to this Committee is contradicted by your company's own disclosures.

DAVID CULLEN: No, I am clearly saying the cases that we have in front of us, any case that has been settled has been covered by insurance up to around 95 per cent. That is fact.

The CHAIR: I will now pass the questioning to Mr D'Adam.

The Hon. ANTHONY D'ADAM: Mr Cullen, we have heard throughout the course of the day stakeholder after stakeholder contradict the statement that you made in your opening statement that this product is safe. Perhaps focus firstly on the question of the workplace exposure standard. We are advised that the product is not safe when there is a workplace exposure of 0.05, which is the current workplace exposure standard in New South Wales. It cannot be that the technology is not available to measure at 0.02 where that would be a safe level or relatively safe level of exposure. You product cannot be safely handled under the current technology to assure workers are kept safe. What do you say to that?

DAVID CULLEN: The majority of State governments have said that the product can be handled safely if it is handled safely with the right PPE, with the right ventilation. With the right process and procedures it can be handled safely, and that include s SafeWork NSW, who have said exactly the same thing.

The Hon. ANTHONY D'ADAM: The evidence is that 0.02 is the safe level in terms of workplace exposure and that cannot be measured. How can you say that the product can be handled safely if we cannot measure at a safe level of exposure?

DAVID CULLEN: Because the experts are telling us it can be handled safely.

The Hon. ANTHONY D'ADAM: Obviously there is a history in terms of non-compliance within the industry. That has clearly led to the number of cases of silicosis that we have seen. There is a particular concern about the installation side of the industry and we have had a number of stakeholders put in evidence today that they do not see how it is feasible for the installation side to be monitored and enforcement to be adequately undertaken in relation to that element of the industry. What do you say to that?

DAVID CULLEN: I think most of the evidence that I have seen indicates that the major risk is in fabrication not installation. Is there risk in installation? There is some risk, but the major risk is in the factory side of fabrication. The majority of installers are employed directly or indirectly by fabricators. As the fabricators have become more educated and as they have understood more that the safe work practices have to be in place, both at the factory level and also at the install level, practices have been changing. I think we will continue to see those changes. It is more difficult on site, but we as an industry are educating our fabricators to make sure that the practices that they need to put in place happen both at an install level and also at the fabrication level.

The Hon. ANTHONY D'ADAM: Obviously it will be a risk, given that we have heard evidence that the compliant measures required to ensure that the installation side of the industry is complying beyond the capacity of SafeWork, that they cannot be at the point of installation to ensure that installers are not dry-cutting or that other practices that are being undertaken are not safe. Why should we be taking a risk with a product that is clearly not essential that can be substituted? Why should we be taking that risk with workers' lives?

DAVID CULLEN: I think because of all of the initiatives that the industry is putting in place, including introduction of lower silica into the market end, the substitutes that I mentioned earlier—porcelain, marble and granite—all contain silicone. So those products, even if they were substituted, still have to be handled safely. I think, secondly, with education programs that we have been putting in place, the conversations that we have been having be builders and kitchen companies, and consumers as well, are very aware of the silicosis issue because of the publicity and, in the builders and kitchen companies 'cases, because of the information that we have given

them the discussions we have had with them. So they are also enforcing. If a builder or a kitchen company, particularly the builders on site see activity by fabricators that should not be happening then will be jump on it. Consumers are doing the same. We hear from consumers if there are issues. Everyone is more educated it is the consumer, the fabricator, kitchen company or builder.

The CHAIR: I will pass the questioning now to Mr Amato and then Mr Martin and then we will come back to you for a second round. Mr Amato, you have the call.

The Hon. LOU AMATO: Thank you, Chair. Thank you gentlemen for coming this afternoon. Mr Cullen, in your submission you state:

> Engineered stone is a safe product and safe to fabricate provided the correct safety practices are employed. SafeWork NSW has noted that silicosis is 'a disease which is entirely preventable if the correct safety measures are in place".

Would you perhaps give the Committee a bit more of a run-down on how that is achievable?

DAVID CULLEN: I think generally with the right practices and procedures in place—I mentioned having the right PPE equipment, having the ventilation equipment, having monitoring, having workplace practices, having education on the floor with fabricators—I think we have put out many health guides and fabrication guides indicating exactly what needs to happen, which I am happy to share with the Committee in terms of what needs to take place to create that safe work environment. The majority of fabricators that we see today are operating with those controls in place. There is always a small percentage of every industry that does not always comply. We are trying to educate that industry so it becomes 100 per cent. We believe that with the introduction Victoria is doing with the national licensing scheme it will take it to the next stage.

The Hon. LOU AMATO: I have another question. You also mentioned about your fabrication manual and providing health and safety information guidelines and training and so forth. Is that distribution in English or is that distributed in other languages as well?

DAVID CULLEN: No, it is multiple languages and if it is required in a language we do not have then we are happy to translate.

The Hon. LOU AMATO: That is here in Australia?

DAVID CULLEN: Yes, it is from Chinese to Vietnamese and we have five languages currently I think plus English.

The Hon. LOU AMATO: That is good to know. Thank you very much.

DAVID CULLEN: You are welcome.

The Hon. TAYLOR MARTIN: Mr Cullen, in your submission, you talk about the Victorian licensing scheme which I think has only recently implemented. Are you able to elaborate a bit more on Caeserstone's experience with that scheme given that it is early days?

DAVID CULLEN: It is early days. It was announced being effective November 2021. There were fabricators who had up until November 2022 to be licensed. There will be a licensing scheme put in place for reach fabricator. We are very supportive of it. We would like to see some modifications. We would like to see certification being third-party certification, rather than just the fabricators certifying with fine engineered stone at 40 per cent. We think any product that had silica to fall under that licencing banner, and also we believe that kitchen companies and builders should be compelled to only purchase from licensed fabricator. They are the three main changes and the reason for the third one is that a fabricator could import product from overseas and bypass the licensing process.

We believe that those three changes to what Victoria is putting in place, if that happened at a national level, we would have a move very much in the right direction.

The Hon. TAYLOR MARTIN: Can you elaborate a bit more at the end of your answer, just before I interrupted? You said that products could be imported directly or even the builders could somehow purchase products from fabricators without a licence. That does not really make sense to me. What is the point of the licence if it is not required?

DAVID CULLEN: The way the licence works in Victoria, at the moment, is that I can only supply a fabricator who is licensed.

The Hon. TAYLOR MARTIN: Okay.

DAVID CULLEN: Someone from overseas is not going to be in that position, supplying that fabricator. It is a small part of the industry so it might be three or four per cent, however, we believe if you cut that loophole off, it just closes any potential.

The Hon. TAYLOR MARTIN: So I take it, similarly, if someone was handling second-hand, recycled engineered stone, they would not need a licence either?

DAVID CULLEN: Correct. But that again is very rare.

The Hon. TAYLOR MARTIN: Okay. What kind of burden has that scheme brought on the industry in Victoria?

DAVID CULLEN: I do not think it is going to be significant. I think fabricators will be required to put in place control plans. They will then be audited over time against those control plans to make sure that what they have said is actually what is happening. There is no fee for the licence. So the five-year licence, there is no charge for it. The obligation for the fabricator is to make sure that his equipment is up to speed and it is able to provide a safe work environment which we do not think is exceptionally onerous. There are capital investments that need to be made but we believe that any fabricator who wants to be in our industry should make those investments or they should not be in the industry.

The Hon. TAYLOR MARTIN: Right, that is very good to hear. Mr Isherwood, do you have anything more to add on that?

GARY ISHERWOOD: Very similar to David. Our headquarters are based in Victoria. What we have seen since the announcement of the licensing scheme from fabricators in Victoria has been nothing but positivity. There has been a huge shift in the last two years with respect to the procurement of capital machinery which is more sophisticated than what was being used previously. Elements of water pressure, dust extraction—all elements involved in fabrication of engineered stone to improve and to limit obviously the risk associated to the processing of the material. As I say, we also travel interstate and the news of the licensing scheme has carried through to other States of Australia. The industry as a whole is very buoyant and hopeful that that will continue through the various States because, you know, they believe that it Is the right way to control this and also to, I suppose, in effect, clean up the industry and remove some of those guys who are not conforming, not keeping to the fabrication guides or playing by the same book.

The Hon. TAYLOR MARTIN: That is all very good to hear. Thank you for your time this afternoon.

The CHAIR: Thank you, Mr Martin. I will Mr Buttigieg and Mr Shoebridge.

The Hon. MARK BUTTIGIEG: Thank you, Chair. In your submission, you back in, you support the view that has come through strongly all day really, that the Victorian regime is the gold standard and you support that regime? I notice you have got a few little riders towards the end of the submission but they are all extras, if you like. It is a fully licensed regime which is, by all accounts, deemed to be fairly effective. I just wondered, what is your experience in any other international jurisdictions in terms of are they doing anything more robust overseas than the Victorian model?

DAVID CULLEN: I do not think so, from my experience. I think if you look at the US and you look at Canada, the markets there they adopted engineered stone well after Australia adopted it, so the issues are not as prevalent in the US or Canada today, but the conversations we have had is we are trying to share our experience obviously with our subsidiaries in the US and Canada so that they move earlier rather than later. So for the last 10 years we have been putting a lot of things in place in those markets as well, albeit that they started five, six, seven years after Australia; so there is that latency period generally with silicosis that takes some time. So not a lot of evidence overseas.

From everything we looked at, and two years ago I talked about an accreditation system that we were looking at from an industry perspective driven by industry because we felt it was necessary but that can be difficult for a number of legal reasons, so again we are quite positive about what we have seen out of Victoria and we think that with some slight modification it is the way to go nationally. And we would add to it that we have many fabricators who work across multiple States having to comply with multiple laws, so it gets very confusing for those operators of businesses across borders, and if we had a national consistent approach with the licensing system incorporated we think it would make a huge difference moving forward, and then combining that with all the initiatives that we are putting in place including the interaction of low-silica product.

The Hon. MARK BUTTIGIEG: Just a couple of quick follow-ups. In terms of the per capita usage, are you saying that Australia—that we are probably the highest per capita users of this product, are we?

DAVID CULLEN: Outside of Israel, yes.

The Hon. MARK BUTTIGIEG: The other thing I wanted to ask you is that outside of this submission have you been lobbying the Government to go down the Victorian path, in the Victorian sense?

DAVID CULLEN: Every State level and Federal and SafeWork and WorkSafe, everywhere we could go we have produced a number of papers which we have distributed indicating our view and indicating how things could be put in place. We have indicated support for the Victorian scheme with some modification. We are now just waiting for the response to the National Dust Diseases Taskforce, which I gather is going to be led by the Attorney General offices around Australia to see what the recommendations are to come out along with the work that SafeWork Australia is doing.

The Hon. MARK BUTTIGIEG: One of your major competitors I think is Smartstone. I do not expect you to speak for them but can you tell me what their position is on this?

DAVID CULLEN: I think I would be safe in saying that their position is along the same lines as Gary and I. They were and are members of the AESAG, the Australian Engineered Stone Advisory Group, and we are all generally of a similar opinion. Not everyone in the industry but generally most of the major players are of a similar opinion.

The CHAIR: Mr Buttigieg, could you wrap up your question?

The Hon. MARK BUTTIGIEG: We have got a situation where we have had two or three reviews, you have got the industry on board with the licensing system, you have got all the experts saying there needs to be a licensing system, and you have got the Victorian gold standard as an example and yet the Government is dragging its heels. Do you know why that is the case?

DAVID CULLEN: I think probably for a number of different reasons. They received the reports towards the end of June; COVID has obviously been a major distraction for the Government; I think the recent announcements with Greg Hunt's change; and the Federal election coming along as well, it is probably a combination of all of them slowed the process down. But we have been told that towards the end of the first quarter this year we will get some response that will come from that joint effort with the Attorney Generals and Safe Work Australia.

The CHAIR: Thank you, Mr Buttigieg.

DAVID CULLEN: I think as well, as I mentioned in my submission, I think the more, again with respect, that the States give feedbacks to the Federal Government that this is the right approach would put us in a good position.

The CHAIR: Thank you for that, Mr Cullen. I will pass now to Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Thanks very much. I assume that both of you recognise that the manufactured stone product that you and all your members sell, which contains acknowledged levels of 85 per cent or greater, is inherently dangerous if misused. Do you agree with that starting premise?

DAVID CULLEN: I would agree but I would also say that is the same as many, many industries: if you misuse a product or chemical it is dangerous.

Mr DAVID SHOEBRIDGE: Mr Isherwood?

GARY ISHERWOOD: Yes, the same. Obviously it is the same as anything: if it is mistreated and it is not controlled in the correct manner, then for sure.

Mr DAVID SHOEBRIDGE: It is not just like anything; your product if it is cut like other similar benchtop products, it is used in a way that other benchtop products are used, those products, whether it is steel or natural stone or some kind of laminate, they do not kill people but your product does. So it is not the same, is it, because using the same manufacturing processes for natural stone does not kill people whereas with your product it does kill people? So it is not the same, is it?

DAVID CULLEN: I would disagree. I think over a period of time the silica in some marble products, some granite products and some porcelain products, if you have unsafe work practices and you are inhaling silica dust from those products eventually it has to do some harm.

Mr DAVID SHOEBRIDGE: Yes, but of course a short high level of exposure over a couple of years in the cutting of your products kills people, whereas natural stone and laminates do not kill people. That is what the doctors tell us, that is what all the studies show. That is why it is wrong, I put to you, to say that your product is just like other products, because there is a bunch of other products in the same bucket that do not kill people in the same circumstances. Do you accept that?

DAVID CULLEN: I suppose what we are saying is that I agree our product is not the same as some of the other products in the marketplace but any inhalation of silica is not good.

Mr DAVID SHOEBRIDGE: Yes, but the inhalation of silica dust produced by your products with 85 per cent or more silica content is especially lethal and I cannot understand why you do not acknowledge that, and if you do not acknowledge that I wonder if you have got a commitment to dealing with the hazard.

DAVID CULLEN: We have never stood back from acknowledging the fact that the inhalation of silica is dangerous. So obviously 93 or 90 per cent or 85 per cent inhalation of silica is dangerous, but the product can be handled safely; it just needs to be handled safely. But the inhalation of silica is not going to end up in a good result.

Mr DAVID SHOEBRIDGE: So we come back to this oranges and oranges argument you have between your product, which has been proven to rapidly kill workers who inhale the dust, and other products which have not been proven and you say it is an oranges and oranges case, is that your evidence: it is just the same, it is fine, carry on?

DAVID CULLEN: No, I am not saying that at all. The question that I ask and I get all the time is can the product be handled safely?

Mr DAVID SHOEBRIDGE: How many deaths do you accept are acceptable for your product to continue to be in the market? Is there an acceptable number of deaths in the industry?

The CHAIR: I raise the point that if we speak over each other it makes it very difficult for Hansard to be able to record this. I will ask that witnesses be allowed to finish their answers before the follow-up questions are asked. Mr Cullen, you can address that point if you like.

Mr DAVID SHOEBRIDGE: Mr Cullen and Mr Isherwood, I will ask you again: what is an acceptable number of deaths per year of the workers who install your products?

DAVID CULLEN: There is no acceptable number of deaths. One death is a tragedy and we accept that and we do not want to see any deaths or any injuries in this industry and it is why we have invested and educated and changed over many years to help make this industry a safe industry, and we are continuing to do that with the investment in further education, low silica, with process, with procedures, with working together with fabricators and State governments and Federal governments to take the industry to a place where it can and will be handled safely, which we firmly believe is possible.

Mr DAVID SHOEBRIDGE: None of your products in the Australian market at the moment is low silica. Mr Cullen, that is true, is it not?

DAVID CULLEN: As of today, no. As I mentioned, we are in the final stages of manufacturing and we will be releasing low-silica product this year.

Mr DAVID SHOEBRIDGE: Mr Isherwood, we heard from occupational physicians and others that a significant amount of the imported manufactured stone is going direct to construction companies, direct to developers and builders. You would be aware of that, would you not?

GARY ISHERWOOD: Yes. Obviously, in some instances budget independent builders do bypass the relevant channels that they should be respecting to control obviously the import of the material and the safe working practices needed around the material. That is something very difficult which we cannot control, but obviously we fight against that in all of the various States of Australia on a monthly basis and it continues.

Mr DAVID SHOEBRIDGE: Mr Cullen, you would be aware of the practice?

DAVID CULLEN: It is a very, very small part of the market. It does happen, but it is a very small part of the industry. The challenge is, by the time you bring the product in from overseas, particularly products and builders if they are going to look at doing it, they will generally do a cut-to-size and the cut-to-size if you are dealing with apartments, which is generally where this product that is brought in directly would happen, has a lot of practical issues relating to it and it is why this very rarely happens. It does happen but it is a very, very small part of the market.

Mr DAVID SHOEBRIDGE: But what evidence do you have that it is a small part of the market? How much of your products sold goes to those sales directly to construction companies?

DAVID CULLEN: None that I am aware of because we are distributing only to fabricators. Unless there are imports indirectly from overseas, which I greatly doubt, it does not happen.

Mr DAVID SHOEBRIDGE: Is there a ban on the direct provision of manufactured stone to construction firms, avoiding all of those, I think questionable is my point, but nonetheless checks and balances in the balance of the industry?

DAVID CULLEN: There is no ban that is in place. However, if you look at the product, the product comes in three by 1.4 metre slabs generally. There are some other versions, but that is probably the majority of the marketplace. It has to be cut, it has to have sink cut-outs, it has to have tap cut-outs, it has to be polished, it has to be installed. So there is a whole process. So it is very, very rare that it is going to avoid the fabrication process. If it were to avoid the fabrication process, qualified installers would have to install the product.

The CHAIR: Mr Shoebridge, your final question, thank you.

The Hon. TAYLOR MARTIN: I do not think Mr Cullen has finished.

The CHAIR: Sorry, Mr Martin?

Mr DAVID SHOEBRIDGE: Mr Cullen?

DAVID CULLEN: I was just concluding on the installation side. Generally the installers are going to be part of a licensed—if they are licensed, such as Victoria, they will be part of a licensed fabrication business and they may perhaps be installing.

Mr DAVID SHOEBRIDGE: Mr Isherwood, you would accept that that direct importation, which goes directly to construction sites, avoids 99 per cent of the risk avoidance measures that have been put in place at least in New South Wales, do they not? None of those, that has not been oversighted by SafeWork, it is not part of those small manufacturers that SafeWork say they have been looking at. It just avoids them, does it not? It is a major, major safety risk, your products.

GARY ISHERWOOD: I think we have two instances. We have instances where a construction company can procure material in slab form from overseas, but they designate a fabricator within Australia where the material will be delivered to and fabricated and therefore bypass a handling fee with said fabricator and they are dealing with a supplier overseas and buying the material direct, which then ultimately the controls and obviously the risk is still here in Australia. The other side where a construction company can buy direct is purely on the basis that David mentioned, which actually, in all fairness, is a very low percentage of the marketplace here in Australia, which is pre-fabrication, which is manufactured overseas to specific sizes required for the commercial project, for instance, delivered into Australia and then purely installed. So there are two areas: the first area does not really resolve anything; it is just bringing a problem in, but it is a possible chance to bypass any measures that we have in place or any licensing scheme, which is what we really need to look at, how we control that moving forward. The second, it does occur that a small percentage of the marketplace is based around pre-fabrication benchtops.

The CHAIR: Thank you for those responses. I am going to pass now to Mr D'Adam to continue his line of questioning.

The Hon. ANTHONY D'ADAM: Thank you. Mr Cullen, you said that any death is a tragedy. Obviously, you want to avoid deaths and injuries to workers. There is some urgency here. Should not New South Wales just move now, rather than waiting potentially two, three years before a national scheme can be put in place?

DAVID CULLEN: I think I suppose given that we are in February, we expect and we hope that there are going to some announcements towards the end of the first quarter at a Federal level. We are hoping there will be a recommendation at the end of the first quarter for a Federal approach to licensing. If that was not the case or if it was going to be too difficult for that to be, given we are a Federation, to get that across State by State, then we definitely endorse New South Wales running with something similar to Victoria with the modifications that we propose.

The Hon. ANTHONY D'ADAM: Just on that, I mean obviously if New South Wales goes with models similar to Victoria, that is the vast majority of the national market, that is going to shave the parameters of any national scheme that ultimately gets adopted, is it not?

DAVID CULLEN: I would think so. It is going to be approximately 70 per cent of the market.

The Hon. ANTHONY D'ADAM: Do you see any merit in extending the licensing to workers? At the moment, the Victorian model only licenses the PCBUs. If you have a licensing system that extended to the workers who are handling the material, that obviously has benefits in terms of ensuring the workers are properly screened, that they are properly trained, that safe practices are really extended to those areas where perhaps the fabricators do not have a direct line of sight, like installing. What do you say to that proposition?

The CHAIR: Mr D'Adam, before we go to Mr Cullen I wanted to give you the opportunity to—and you can probably guess where I am going to go with this: PCBU.

The Hon. ANTHONY D'ADAM: Sorry. A person controlling the business unit.

The CHAIR: Thank you.

Mr DAVID SHOEBRIDGE: A person conducting, is it not, and undertaking a business. A person conducting and undertaking your business.

The CHAIR: Mr Cullen, you have the call.

DAVID CULLEN: Sure. Yes, subject to what the licence requirements were, as of today we are reliant on the owner of the business or the business itself to be licensed and then for the requirements of the licence, which would include, I think, the majority of those requirements on the individuals employed by the fabricator. So it is an extension of it. If it was feasible and subject to what the requirements were, then it would be something that we should consider. However, there are a lot of discussions around the installation side of it. The majority of installers are employed directly or indirectly by the fabricator. The fabricator has control over the installers, so that just needs to be an extension within the licence of that control.

The Hon. ANTHONY D'ADAM: What evidence do you have that the installers are direct employees of the fabricators? My understanding is that it is a highly casualised industry and that most of those installers are likely to be subcontractors.

DAVID CULLEN: They are either—I have not got exact numbers, but my understanding from the evidence that I see from conversations is they are either an employee or they are a subcontractor but they are controlled by the fabricator. As far as we are concerned, the conversations we have with fabricators it does not matter whether they are a subcontractor or whether they are an employee, they are controlled by the fabricator.

The Hon. ANTHONY D'ADAM: Having an employee-based licensing system as well as an overlay surely would overcome any of those control issues that might come from not having direct employees subject to specific control by an employer.

DAVID CULLEN: As long as the subcontractors were also under that scheme as an extension of the fabricator's requirement to be licensed.

The Hon. ANTHONY D'ADAM: I am happy to pass the baton over, Chair.

The CHAIR: Thank you, Mr D'Adam. We have only got a few minutes left. I am going to give Mr Martin the opportunity to ask any final questions and then we will probably draw the hearing to a close.

The Hon. TAYLOR MARTIN: At the risk of getting too technical, how do you actually create a low-silica product? What is used in place?

DAVID CULLEN: There are different ingredients used. We are using a five-core feldspar, which is quite an abundant product, and so far we have started all our testing and we are in the final stages. It does not change the nature of the product. We have used it historically, so we are used to using it. We understand the issues associated with it so we have adjusted for those and we are more than quietly confident. We are in the final stages of production.

The Hon. TAYLOR MARTIN: Thank you.

The CHAIR: Thank you. Mr Amato, did you have any final questions?

The Hon. LOU AMATO: No, I am fine, thank you, Chair. The Hon. Taylor Martin has just asked some great questions.

The CHAIR: I am sure he will be very pleased with your commentary about his quality of questions. Mr Buttigieg, I can see you are indicating, so I will allow you to ask one more question and then I would say we will be drawing everything to a close.

The Hon. MARK BUTTIGIEG: Thank you, Chair. Just to tie up the conversation, I guess, can you understand that people looking at this problem and making an analogy with asbestos and the trials and tribulations we have been through over that product, 10, 20, 30 years down the track people saying why did we not take this out of the input to the economy when we had the chance? I ask that question in the context that are you confident that this licensing regime, training, PPE, preventative measures will reduce the risk to a point where we will not be asking ourselves those questions in 10, 20 years' time because Mr Shoebridge's questioning was quite pertinent, I think, in respect of the insurance industry not being prepared to cover you for those sorts of things and people

put their money where their mouth is? So that is a significant, as he put it, red flag to me to say that the market has priced this in and does not think there is an acceptable risk. What do you say to that?

DAVID CULLEN: I would just say a couple of things. I think, reflecting on the insurance side, the average claim is around $2 million to $2.5 million. So I think reality would be, I am fairly confident we could get insurance, but the excesses would be non-commercial; it just would not make sense. So I think insurance companies look at it and say there is a likelihood of saying that sort of excess is not going to happen. As such, it is probably not viable to have insurance for this issue because of the cost. However, we are fairly confident, based on everything we have seen in the industry, particularly in the last three, four years and more so the last two years, of the changes that we have seen with fabricators. We are seeing consistent change. We are seeing recognition. We are seeing awareness.

From an asbestos point of view, this is not a consumer issue. The product is safe in my warehouse, it is safe in your home. It is just what happens in between with the cutting and the polishing and the installation. We have to make sure that that is handled the way it needs to be, and our evidence is and our belief is the product can be handled safely. So there should not be a consideration for banning a product that could be handled safely; there should be consideration to enforcing the requirements, which we believe makes sense, through a national licensing scheme.

The CHAIR: Thank you for that answer, Mr Cullen. I thank both gentlemen for joining us this afternoon. For answers that have been taken on notice, the Committee secretariat will be in contact with you to liaise and ensure that they are tabled within 21 days. That brings this afternoon's hearing to a close. I thank all participants for their attendance and candour. Thank you.

(The witnesses withdrew.)

The Committee adjourned at 16:29