

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 Friday 18 March 2022

The Committee met at 10:15.

PRESENT

The Hon. Wes Fang (Chair)

The Hon. Lou Amato
The Hon. Anthony D'Adam
The Hon. Greg Donnelly (Deputy Chair)
The Hon. Taylor Martin
The Hon. Rod Roberts
Mr David Shoebridge

* 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

CORRECTED

The CHAIR: Welcome to the second hearing of the Standing Committee on Law and Justice's 2021 Review of the Dust Diseases scheme. The inquiry is a follow-up of the 2019 review, which focused on silicosis in the manufactured stone industry. We are seeking to understand what progress is being made to address the issues identified in that review. Before I commence, I acknowledge the Gadigal people, who are the traditional custodians of this land. I also pay respects to Elders past, present and emerging of the Eora nation, and extend that respect to other Aboriginals present. Today we will be hearing from a number of stakeholders, including former stonemasons who are living with silicosis, representatives of dust diseases research and advocacy organisations, and the government agencies responsible for work health and safety and workers compensation. I thank everyone for making the time to give evidence to this important inquiry.

Before we commence I will 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 broadcasting guidelines, media representatives must take responsibility for what they publish about the Committee's proceedings. While parliamentary privilege applies to what witnesses say giving evidence today, it does not apply to what witnesses may say outside of their evidence at the hearing. Therefore, I urge witnesses to be careful about comments they may make to the media or to others after they complete their 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 a question on notice. Written answers to questions on notice are to be provided within 21 days. If witnesses wish to hand up documents they should do so through the Committee staff. In terms of audibility for today's hearing, I remind both Committee members and witnesses to speak into the microphones. For those with hearing difficulties who are present in the room today, please note that the room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing.

CORRECTED

MR KENNETH PARKER, Former stonemason and silicosis sufferer, sworn and examined

MR ANDREW KLOHK, Former stonemason and silicosis sufferer, affirmed and examined

The CHAIR: I now welcome our first witnesses. I invite both you to make a short opening statement. Mr Klohk, you might want to start first.

ANDREW KLOHK: My name is Andrew Klohk, former stonemason of 32 years in the industry, now sufferer of silicosis. I am stage three. I have been ostracised, demeaned and basically told that my working life is over. As a father of five kids, four of which are special needs, that is a hard thing to swallow. If this disease that I have decides to become aggressive to the point where I should be hospitalised, I am wondering who is going to look after my kids, who is going to be around for them in the future and who is going to be held accountable for what is going on in the industry at the moment and has been going on for quite some time. My first real exposure to silica dust was in a New South Wales TAFE room at Miller TAFE in 1988. They had no courses for stonemasons when I first started. They put us in a room next to the bricklayers' section—one fan, one roller door and 14 kids all chipping away at blocks of sandstone with no masks.

It starts from the bottom and it goes all the way to the top. Someone has to be held accountable for this. The engineered stone products that are being brought into this country now—nobody is really looking into what is contained in them. A lot of the product comes from various countries that have been known to hide different materials in their products and export them. We import them. We are not made aware of what is in the products and we use them. The dust created by engineered stone is nothing short of poison. It starts at 90 per cent silica. It is embedded in polymer resins, and who knows what is involved in that. It is on the same page as asbestos and should be treated the same way. The waste management should be treated the same way. They recycle stone out of the stone bins. They crush it and they send it to job sites to use as temporary paths for trucks to run over. I have seen this material in schoolyards. The waste from the slurry, from the pits, most companies that I know of—straight in the general waste bin, straight to the tips. It gets broken up by machinery and is generally then sent back up into the atmosphere. It is poison. We are sharing it with everyone. There is no excuse for that. There is no excuse for not handling it the same way as asbestos is.

I had a job about a year ago, driving a truck for a company, after my retraining. I had to take a load of asbestos to a tip. This tip was a miniature version of an open-cut mine—driving down, driving down, driving down, driving down. As soon as this stuff came out of the back of the truck, there was a water truck there, hosing it off. Straightaway they buried it. Why is engineered stone not treated the same? There is no excuse. There should be no holding back. It has to be dealt with in the same manner. Again, my kids are at school now. One day I might not come home. What questions are they going to ask? Who do they ask those questions to? Thank you.

The CHAIR: Thank you, Mr Klohk. Mr Parker, can I invite you to make an opening statement as well.

KENNETH PARKER: Yes. Interesting. I agree with most of what Mr Klohk has said. I believe that engineered stone is a serious problem. In Europe it has been regulated since 2010. We are way behind them. It is that much more toxic than natural stones. I think we should be stuck to be only using natural stones. I agree that the companies should be licensed. They should be heavily regulated. Most stone companies are absolute cowboys. It is just a mess. They just push it all the time. I have spoken to a 26-year-old guy who is hoping to get married before he dies. Out of 15 people I worked with, six of them have come back with silicosis. I have got a 12-year-old daughter. I am hoping to see her turn 18.

My personal set-up is—I was tested in 2019 through the mandatory screening by SafeWork. I have got 50 per cent of my lungs left. I have got silicosis, which has progressed into progressive massive fibrosis, which then continues, and you slowly suffocate and die, which is always fun. Currently I am on a medication that may stop it or at least slow it down. I would prefer something gets done so it does not continue like that. There are people I know that are still working in the industry because they have no choice as to what they are going to do if they leave it. So, instead of taking insurance or anything like that, they just keep working. It is just a mess. Any questions—I am happy to answer them.

Mr DAVID SHOEBRIDGE: Can I say to both of you thank you for your evidence and your courage in speaking out today. We need to hear this from the people working with this stuff. It is actually critical. How long have each of you worked with engineered stone?

ANDREW KLOHK: Since it was released.

Mr DAVID SHOEBRIDGE: How long is that, Andrew?

ANDREW KLOHK: Roughly about 25 years ago it started to show up.

CORRECTED

Mr DAVID SHOEBRIDGE: Has it become more dominant in the work you did over time?

ANDREW KLOHK: It has overtaken just about everything. Natural stone has made a comeback, yes, but there was one stage that engineered stone was 90 per cent of our work.

KENNETH PARKER: Yes. Probably about 2006, it really kicked off in the commercial stuff. The last big job I did before I was diagnosed was 4,000 units at Meadowbank. They were all engineered stone.

Mr DAVID SHOEBRIDGE: That was 2019?

KENNETH PARKER: Yes. That was 2016 to 2019, roughly, just that one job.

Mr DAVID SHOEBRIDGE: How much dust was there around?

KENNETH PARKER: In what I was doing, because they were laminated, so they were 40-mil benchtops—it is just ridiculous. It is impossible to explain the amount of dust you get off the grinding of it. Where I was working, we had one room with an open door and they stuck a few fans on the wall and they were just blowing it straight out to a block of units across from them.

Mr DAVID SHOEBRIDGE: Even when it is cut to size—I assume a bunch of this was cut to size—you are still grinding and shaping it.

KENNETH PARKER: Yes. What they were doing with it—they cut to size or a little bit over size. Then the surface is ground underneath. Then you stick it together. Then they recut it and repolish it after that. It is in that bit that it was just insane.

Mr DAVID SHOEBRIDGE: Dust everywhere.

KENNETH PARKER: Yes.

The Hon. GREG DONNELLY: Gentlemen, can I commence by sincerely thanking both you for coming along today. I speak for myself, not on behalf of the Committee, but I am sure there is a general sense of this, that we perhaps will not get more important witnesses to this inquiry to hear evidence from. I genuinely mean that. We are actually going to hear from a lot of witnesses. We have heard from witnesses. We have got more today. But in terms of the significance and the impact of evidence to this inquiry, I think it can be said that you both bring that most significant evidence to the inquiry.

Obviously, we are all deeply saddened to hear about what the impact of this has been on your lives individually and, of course, all the people around you, most closely your family and relatives and friends. You are aware of what we are trying to do with this inquiry in terms of trying to progress this issue to protect workers who have been affected and, in terms of looking to the future, workers who are not exposed but will be working in the industry will be protected. So we are looking back and looking forward. With respect to the exposure you both had, was it in the settings of a factory where there was the cutting of benchtops and other configurations for buildings? Or was it also work done at a more boutique level, at sites, for example, cutting benchtops that may be placed into a unit or in fact a kitchen?

ANDREW KLOHK: It was both. If you had to trim on site to fit a benchtop in because it is out of square, there is an end panel that is out of square or something like that, a power point, something does not fit correctly, it has got to be done there. The bosses will not let you take it back to a factory and cut it.

The Hon. GREG DONNELLY: No. Sir, your example?

KENNETH PARKER: Pretty much the same.

The Hon. GREG DONNELLY: We are aware of the mass cutting, the bulk cutting done in what we would call the manufacturing or the cutting sites. They are standalone sites. But that then runs through to still a lot of cutting that is done at the site level with respect to making alterations or changes to the cut to ensure that it fits properly into the actual part of the room, the kitchen or whatever the case may be. Is that right? It is across that spectrum?

KENNETH PARKER: Yes. A lot of them—it is not as much now, but they were doing the sink and cooktop cut-outs. With the guys I was working with, they were mostly doing that on site. They are doing the full cut-outs inside the units. Basically, you turn that into one seriously toxic box full of dust. With the cowboy direction of a lot of the companies, masks, dust extractors, fans and things like that do not exist. They just get in there and do it. The guys that—half of them are working for cash and all kinds of things. Basically, if they do not do it, their jobs are gone. It gets rough.

The Hon. GREG DONNELLY: So both of you have had the long-term exposure which tragically has led to the most difficult circumstances you find yourselves in. The position of the regulator and the Government

CORRECTED

is that satisfactory progress is being made to attend to this issue. In other words, it is now identified as a problem and it is being spoken about openly and positive steps are being made to address it and deal with it. I invite both of you to comment on it from your own respective experiences and perhaps even speaking to others that are still involved in the industry. Is there change going on that is being claimed?

ANDREW KLOHK: There has been some change where I was working last. They have stopped dry cutting in the factory. Everything is being done wet as much as can possibly be done. Beyond that, there is supposed to be a ban of dry cutting on sites. But I had a house across the road for me that has just had a renovation done and they did all the cut outs out the front.

The Hon. GREG DONNELLY: Dry?

ANDREW KLOHK: Yes. That is as much change as I have seen.

The Hon. GREG DONNELLY: Have you got any observations that you would like to make, Mr Parker?

KENNETH PARKER: I have been fairly much completely out of it. From what I have heard, there have been a lot of companies shut down, like the smaller ones that were pretty wild. There has definitely been a lot of push for everything to be wet, like wet cutting and wet polishing. As far as the engineered stone with the silica levels in it, I do not think it is going to change that much. A lot of my damage is from—I was a wet polisher for a long time. From what I have been told, it just means that you are breathing in finer dust particles in the water. That is why it has done so much damage inside.

The Hon. LOU AMATO: Thank you, gentlemen, for appearing today. I would like to echo the words of my colleagues. We are all here to support you all and resolve this critical issue we have. I came from an industry where asbestos was a problem; I came from the automotive industry. I remember when that first came out we used to blow things out with the air and then we were told you had to hose it down and so forth. There were other issues that they did not raise, like when it goes on the floor and dries up and obviously it goes everywhere. When did you first become aware of silicosis? When did it first come to your attention and you started hearing about it?

ANDREW KLOHK: We found out about it at TAFE. We were told at TAFE that for a long time the stonemasons that built the city—that there was not a stonemason alive over the age of 60 and they had all died from sandstone dust.

The Hon. LOU AMATO: That was back in 1988 at Miller TAFE, you said?

ANDREW KLOHK: Yes.

The Hon. LOU AMATO: But in the industry itself, when you went to your place of employment, what did they tell you? What sort of precautions did they ask you to take?

ANDREW KLOHK: They did not ask us to take any precautions. There were paper masks provided and it was "If you want to wear one, they're in the storeroom. If you don't want to wear one, you don't have to wear one."

The Hon. LOU AMATO: When were you first diagnosed?

ANDREW KLOHK: In 2019.

The Hon. LOU AMATO: That is after you became aware of it and they started asking everyone to go and get tested.

ANDREW KLOHK: That is after SafeWork had a knee-jerk reaction to the rising cases and the deaths in Queensland and they decided to basically raid every factory in New South Wales. They told us that we had to go for mandatory testing. Only after I was diagnosed is when I was—which was that day.

The Hon. LOU AMATO: And you are stage three now.

ANDREW KLOHK: Yes.

The Hon. LOU AMATO: Can you tell the Committee a bit more about stage three?

ANDREW KLOHK: I am in the middle. I am on the same medication as Kenneth. Hopefully it is going to help maybe prolong my life. It is a balancing act. I am walking on a tightrope.

The Hon. LOU AMATO: And now you have been retrained.

ANDREW KLOHK: They retrained me to go back into the construction industry. My professor was gobsmacked. There is cement and all different kinds of dust that floats around a job site.

CORRECTED

The Hon. LOU AMATO: Did you have a choice about what sort of retraining you were offered?

ANDREW KLOHK: As much as you are able to do [audio malfunction]. However, the building industry is what I was used to being around.

The Hon. LOU AMATO: No, I understand.

ANDREW KLOHK: So for me to move into something else—I am not computer savvy, so that is pretty much out of the question. I did do a stint a few years back working at nights in a club. But, again, with the cigarette smoke in clubs—

The Hon. LOU AMATO: It aggravates the problem.

ANDREW KLOHK: Correct. So it is either that or drive a truck.

The Hon. LOU AMATO: Were there any out-of-pocket expenses for you to do that training?

ANDREW KLOHK: No.

The Hon. LOU AMATO: That is good.

The Hon. ROD ROBERTS: Thank you, gentlemen, for giving up your time this morning. I too echo the comments that have already been passed in terms of your bravery for coming along and giving evidence. I will pose a question to both of you that either of you can answer. You are both very experienced in this industry; you have been in it for a long time. Over that period of time, how many times do you reckon you ever saw SafeWork—or the regulator, as it was, because it goes through a number of names—attend the sites that you have been at either in the factory or on the actual job site itself? I will start with you, Mr Klohk.

ANDREW KLOHK: Once.

The Hon. ROD ROBERTS: Once in how many years?

ANDREW KLOHK: Once in 32 years.

The Hon. ROD ROBERTS: Mr Parker, how many times do you reckon you have ever seen the regulator turn up to inspect safety issues?

KENNETH PARKER: Twice, I believe.

The Hon. ROD ROBERTS: In how many years?

KENNETH PARKER: I started in 1998.

The Hon. ROD ROBERTS: So you have seen the regulator twice, Mr Parker, and you have seen the regulator once, Mr Klohk.

ANDREW KLOHK: I did see a lung bus once. I was doing a job on the chief secretary's building when they were refitting that; however, that was a government job.

The Hon. ROD ROBERTS: But the lung bus is unfortunately not preventative, is it?

ANDREW KLOHK: They were only there for the painters anyway.

The Hon. ROD ROBERTS: Exactly. So in terms of prevention of this disease, like regulating the industry, you have seen very little regulation at all.

ANDREW KLOHK: The only time I saw SafeWork was when they came in and told us we had to go for lung examinations.

The Hon. TAYLOR MARTIN: If you do not mind, just for a bit of context, can I ask when each of you finished up working on job sites?

ANDREW KLOHK: I finished up in March 2020.

The Hon. TAYLOR MARTIN: Mr Parker?

KENNETH PARKER: I was tested at the end of September 2019 and I worked for another week and that was it. I have been out since.

The Hon. ROD ROBERTS: I have no further questions. My questions have been answered.

The Hon. TAYLOR MARTIN: Thank you both for making the time and for coming and sharing your experience. I just want to quickly note that personally this is a big issue for me. Both of my grandfathers died

CORRECTED

from workplace-acquired lung diseases. One worked on the factory floor at James Hardie and he died with asbestos in his lungs, and the other was a Caterpillar D9 operator and he died from lung cancer from all the unfiltered diesel exhaust. Going through this process for me, I would really like to find a solution that works. Do either of you have any comment to make on the changes made in Victoria, if you are aware, of the licensing scheme that they have brought in only at the end of last year? It is something that is being looked at.

KENNETH PARKER: I have not personally heard of that, but it does not sound like a bad idea. To be honest, I think it is about outlawing the engineered stone completely, as America and a lot of States and a lot of other places have done. That and just straight up licensing and full control over everything would be really good because it cuts out on the smaller, sort of, full cowboy operations where there is no safety and no nothing. They are just in and it makes them cash.

The Hon. TAYLOR MARTIN: My understanding is that that is the point of the Victoria scheme, to get rid of the cowboys and the fly-by-night operators.

KENNETH PARKER: That is a really good idea.

The Hon. TAYLOR MARTIN: Mr Klohk, do you have anything to add?

ANDREW KLOHK: Again, I mimic what Kenneth has just said. There needs to be really stringent rules. They should not be allowed to buy the material unless they have been licensed to do so. But even then there are a lot of people out there that will not bother to go and do that. They will go to a company that is and say, "Please go get me a couple of slabs. There's some cash. Thank you very much."

The Hon. TAYLOR MARTIN: For my next question I apologise in advance, but given you are so brave to be here it is important to make the point to people who are engaging with this subject who do not really have an idea of what it means to have an acquired lung disease, are you able to give us an idea as to your symptoms and your experience with managing this disease?

ANDREW KLOHK: I rarely go through a night without coughing my throat out. Fortunately, since I have been on this medication, that has decreased quite dramatically. As far as being able to do day-to-day things, yes, I can still mow the lawn, I can still go for a walk, but being stonemasons we are generally fit guys. It is heavy work, you are pushed to be as quick as you can, especially in Kenneth's situation where they have got thousands of units to do, it is, "Push, push, push! Let's go, boys." In that sense we can still do certain things. I get tightness in my chest still. For me now, my symptoms seem to be under control but at the moment for me the worst thing about it is the mental state that I am in at the moment. You heard me before when I spoke about my kids.

The Hon. TAYLOR MARTIN: Yes.

ANDREW KLOHK: I sleep two to three hours a night with the worry of what is going to happen.

The Hon. LOU AMATO: The unknown.

The Hon. TAYLOR MARTIN: Thank you. Mr Parker, anything to add?

KENNETH PARKER: I think for me personally I am lucky in that I have got family behind me and that financially I have been alright that way. I struggle with the whole insurance thing at the moment. They are constantly getting me retested for the same thing. Physically, I struggle to walk and talk at the same time. Basically anything that is virtually uphill, so if you walk a hundred metres uphill I have to stop four or five times. The rest of the time, before all of that, I used to be able to run five kilometres happily, no dramas. Then now it is that, which with the kids gets quite difficult. They are the biggest issues I am having with it at the moment. I try and ignore most of it the rest of the time. I grew up on a farm out past Bathurst, so my working life was on the farm, heavy lifting, then into stone. But basically at the moment I am like a lump. It is hard to explain the—

The Hon. TAYLOR MARTIN: That is alright. Thank you.

The Hon. ANTHONY D'ADAM: I also echo the comments of the other Committee members. Thank you very much for coming along and telling your story, it is essential for this inquiry to hear from the people who are directly affected by this horrible disease. We get a story that this is a problem of education, that employers just do not know about the hazards and that if we educate employers this will be a major step forward in terms of improving health and safety in the industry. Do you think employers are aware of the hazards and know what they are doing?

ANDREW KLOHK: A hundred per cent they are aware.

The Hon. ANTHONY D'ADAM: Mr Parker, do you also—

CORRECTED

KENNETH PARKER: I agree with it. They just do not care. They are making too much money out of it.

The Hon. ANTHONY D'ADAM: In terms of workers understanding the risks, do you think that workers are properly alerted to the hazards? Were you aware of the dangers with engineered stone before you were tested, Mr Parker?

KENNETH PARKER: Not to the extent what they are, no. We—most of the guys I knew—were basically led to believe that engineered stone was probably 90 per cent resin and 10 per cent stone. And it is not. It is like 90 per cent silica and a little bit of resin, and it is the silica that does it.

The Hon. ANTHONY D'ADAM: Perhaps I will start with asking both of you about whether you stayed with just one employer or did you move around the industry working for various employers?

ANDREW KLOHK: I moved around. I have worked over the time for probably about six or seven different employers, depending on how much work they had, what my personal situation was. One employer I have worked for on and off for over 15 years, became friends, went to the weddings, helped with the houses, went to the christenings. Now they do not even speak to me for fear of being sued.

The Hon. ANTHONY D'ADAM: When you started with those employers, what kind of safety induction was there?

ANDREW KLOHK: No, none.

The Hon. ANTHONY D'ADAM: Was there any safety induction, Mr Parker?

KENNETH PARKER: No.

The Hon. ANTHONY D'ADAM: Nothing?

KENNETH PARKER: The company I originally started with were reasonable. They no longer exist, but they were only high-end marble and granite. They did sort of like 5 per cent of the work volume of these other ones. Then the rest of them, there is nothing like that. There is no safety, no nothing. Their opinion is they can just replace the worker.

The Hon. ANTHONY D'ADAM: Terrible. Mr Parker, you talked about that job at Meadowbank. I think either in this inquiry or in a previous inquiry the Master Builders gave evidence that on jobs like that it is feasible to set up a discrete wet room and to have all the extraction equipment available for a job like that. Firstly, do you agree that that would be feasible? Secondly, have you ever had that experience, where a wet room has been set up on site?

KENNETH PARKER: I have not had that experience. It is probably feasible, but it would definitely need to be regulated to make sure that it was actually used and it would have to actually exist and function.

The Hon. ANTHONY D'ADAM: And that was not the case at that Meadowbank site, was it?

KENNETH PARKER: No. Meadowbank was just standard.

The Hon. ANTHONY D'ADAM: I have one more question and then I will hand to my colleague. I want to ask about the support that you have received from icare. Perhaps if you could tell us a bit about your experience with icare and whether you think they are appropriately supporting workers who have silicosis.

ANDREW KLOHK: No, they are not. Obviously, by the retraining that they had me do, there was no thought invested into it at all, to send somebody with silicosis back into the building industry. It beggars belief.

The Hon. ANTHONY D'ADAM: And the financial support? Perhaps Mr Parker can comment.

KENNETH PARKER: The financial support? Because of the position I am in, I do not think retraining is really an option for me. Basically I am considered finished. I got the first six months, which is what they consider their retraining payment, and they did that for me just to make sure it got done—that I was getting paid. Once that six—that is on your normal work rate that you were getting. Since then I have been on \$520 a fortnight from them, and that is since 2019, so that is mid-2020. Since then, they have been reviewing it or whatever, trying to increase that to give me a normal payment and it is still ongoing. I have done the same tests repeatedly. I did a stress test, which was failed dismally and they still just continue. Nothing has been said. I have not heard from them since June last year. That was the last contact I have had from them.

The Hon. MARK BUTTIGIEG: Gentlemen, I just want to try to cut to the chase with what I think is one of the key problems that is emerging from this hearing. If you read the submissions from the government authorities, particularly SafeWork, icare and SIRA, and I think one of my colleagues mentioned it before, it is all

CORRECTED

about, "Look, we get there is a problem now. We are going to educate people. We are going to stop wet cutting. We are going to institute fines." In other words, a reactive approach. I think this is the third inquiry we have had in as many years. The inquiry in 2018 made a recommendation, which I will read out for the Committee and yourselves:

That the NSW Government introduce a legislative amendment to ensure all manufactured stone fabrication sites and employers are registered with SafeWork NSW and will maintain such registration every 12 months, and are conducting regular air monitoring and regularly providing the results to SafeWork NSW.

And, further, "that a licensing scheme be set up in New South Wales that would mean the Government would be able to regulate the industry adequately and properly screen workers as well". The Government did not support that recommendation. Do you think that the reactive approach, in other words education, instituting dry cutting, issuing fines—basically trying to regulate and police the product without stopping it at its source—is going to be an adequate fix going forward? Is it feasible that that could be the way forward?

ANDREW KLOHK: No, because 90 per cent of the companies that are out there just will not do it. They will not do it. They would rather just close up, go somewhere else and start up again. They will do that. Then they will move on, and they will just leave the people in their wake.

The Hon. MARK BUTTIGIEG: Mr Parker?

KENNETH PARKER: I agree with that. Hypothetically, it would be a good idea but, as far as engineered stone, it would not be enough. They tend to always find a way around it, and they will always find a way around it.

The Hon. MARK BUTTIGIEG: I just want to explore with you, given your practical experience, the advent, if you like, of the remediation method of wet cutting. Let's assume in an ideal world that everyone is cutting wet and doing all the proper procedures and everything. Is that in and of itself enough to stop the contraction of silicosis?

ANDREW KLOHK: No, it is not, because it is still in the water vapour.

KENNETH PARKER: Theoretically, it is best to wear a mask while wet cutting but you cannot because once your mask is wet you cannot breathe, so you have to take it off.

ANDREW KLOHK: If you wear glasses while you are wet polishing—I have never seen a pair of glasses with windscreen-wipers on.

The Hon. MARK BUTTIGIEG: I see, yes. It is that small practical problem of you cannot see what you are doing.

ANDREW KLOHK: I have seen guys dressed like fishermen on trawlers.

KENNETH PARKER: The other part with that too, because it was brought up, is that you take the dust home with you. So one of the ideas was that you should be showering and getting changed at work at the end of each shift and all that kind of thing. You would have to have that kind of set-up in any factory that was operating. It would need that.

ANDREW KLOHK: My former employer was told to do that. It never happened. We were supposed to get changed at work. They were supposed to either put a washing machine in so we would have to do our own washing at work or the clothes would have to be sent away to be laundered. It is not just that; it is the dust that you drag into your vehicles. When you take it home, you get undressed at home. There is dust on your clothes. It is going to be another case of the asbestos wives.

The Hon. MARK BUTTIGIEG: In terms of that wet cutting, to the extent that it is effective or not, did any of you experience any training associated with how to do that from the companies you are employed by? You are both relatively recent industry participants—2020 and 2019, I think, were the years. What is your experience of training in that sort of procedure?

ANDREW KLOHK: We never had wet cutting when we were at TAFE. The only thing that was ever done wet was when they initially cut the slabs on the source. Apart from that, everything else was done dry. But, again, if you can use your hands and if you can use power tools, you can use a wet cutting machine. It is not that difficult. You just have to get used to being able to be working blind because as soon as that blade touches the material, it mixes with the water and you cannot see what you are doing.

The Hon. MARK BUTTIGIEG: By virtue of that wet cutting, you are actually introducing another hazard into the work process.

ANDREW KLOHK: Pretty much, yes.

CORRECTED

The CHAIR: I am sorry, Mr Buttigieg. I know we have all got many more questions for both of you gentlemen. Do you mind, gentlemen, if we continue a couple of minutes past? Are we imposing on you at all?

ANDREW KLOHK: Not at all.

KENNETH PARKER: No, I am fine.

The Hon. GREG DONNELLY: Can I just ask the question to you both, respectfully, about the cost of your medication, current and going into the future, whatever that might be. So you both are medicated to deal with this, to hopefully slow down and to retard this terrible disease. The current cost of your medication now and going into the future and with respect to other medical costs and care that you may need now and into the future, can you explain to us, are these covered? In other words, are you going to have these respective costs that are going to be borne covered so that you, in fact, do not have to bear the expense?

ANDREW KLOHK: At the moment we are not paying for it. I am not sure if it is actually Holdsworth House, which are the people conducting this drug trial, or if it is the actual drug company, but I have been told that we will never have to pay for it.

The Hon. GREG DONNELLY: Just in your circumstances, you are actually currently taking what is, in effect, a medication that is a trial.

ANDREW KLOHK: Correct.

The Hon. GREG DONNELLY: To deal with your condition.

ANDREW KLOHK: Correct.

KENNETH PARKER: Yes, currently it is a trial. Apparently it is three years, but I think it will continue. I think the standard cost of it is approximately \$20,000 a month.

The Hon. GREG DONNELLY: It is \$20,000 a month?

KENNETH PARKER: I believe so. I believe that is what I was told.

The Hon. LOU AMATO: Are you guys suffering any side effects from these trials?

KENNETH PARKER: From the medication, it makes you nauseous. It can give you diarrhoea and all kinds of things. Basically, when you go on the trial, you get that and a whole heap of anti-nausea tablets. I have not had too much trouble with it, but I have heard of other people having struggles with it.

The Hon. LOU AMATO: Mr Klohk, yourself?

ANDREW KLOHK: The diarrhoea, and you have to make sure that you eat and you eat enough. For me, as well, it is more of a psychological thing that I have to remember to take this tablet every day, twice a day. I have got to get up, I have got to eat by a certain time, I have got to take it. That is just another thing that you think about that is on your mind all the time. And whether it works or not, long term, we don't know.

The Hon. LOU AMATO: At this stage, are you feeling that there is a positive effect? You were saying something earlier on that you seemed to be settled down. What about yourself, Mr Parker? Is it helping you?

KENNETH PARKER: From the testing, apparently I am basically stable at the moment. So, for me, my other alternative is a double lung transplant. That is still only hoping that works, if that does work. They are my options.

The Hon. LOU AMATO: All it does is that it just keeps the disease at bay, then?

KENNETH PARKER: Yes.

The Hon. LOU AMATO: So it does not progress any further.

KENNETH PARKER: It is supposed to slow it down, anyway, yes.

The Hon. LOU AMATO: I am just trying to get an understanding for the Committee's sake, that is all.

The CHAIR: I am just looking around the Committee. I know we are over time. With that, gentlemen, I pass my heartfelt thanks to both of you for coming to this Committee and sharing your experiences. I know I speak on behalf of all my colleagues here that we wish you the very best for the future. Again, your testimony is valuable for providing insight to us and the people who will read the report that we generate of the experiences you have had, and hopefully we can look to prevent it from happening to other people in the future. Thank you very much.

(The witnesses withdrew.)

CORRECTED

Mr BARRY ROBSON, President, Asbestos Diseases Research Foundation of Australia, affirmed and examined

Mr PETER TIGHE, Independent Chair, Asbestos Diseases Research Foundation, sworn and examined

The CHAIR: Welcome back to the second session of today's hearing into the 2021 Review of the Dust Diseases scheme. I welcome our second set of witnesses. I invite each of you to make a short opening statement. I will start with you, Mr Robson.

BARRY ROBSON: Thank you, Mr Chairman. I am here to give evidence to this Committee of inquiry into dust diseases, with silicosis once again coming back to haunt workers, mainly in the State we are in. The Dust Diseases Board was set up just under 100 years ago because of silicosis amongst workers, mainly in Sydney, when the train tunnels were being built—the City Circle and all that—and the sewerage; workers were dying from silicosis then. The government at the time set up the dust board strictly on that. Then came along farmer's lung—workers being exposed to wheat dust, oats, barley and all that. So farm workers were being exposed. Then, of course, later on—and the one that I am more interested in—asbestos.

With silicosis, there is a *deja vu*. Here we are, nearly 100 years later, discussing it again. The Dust Diseases Board was disbanded and icare was formed. I think in the changeover from the old Dust Diseases Board—it was not perfect—to what it is now with icare, it is chalk and cheese. In my opinion, they have gone from being sympathetic or empathetic to workers—or victims, as I like to call them—to now what is more like the old insurance model of get them on the books and get them off the books as quick as possible. You have heard from those two workers, or two victims now, that have been exposed, about their trials and tribulations dealing with the mindset of icare these days.

They did not elaborate on everything that has happened to them since they have been diagnosed, unfortunately. As you can see with Mr Klohk, it has really affected him mentally. Over the short period that I have known Andrew as one of our members, I have seen him gradually go downhill. I cannot put it any other way. He is a very young man with a death sentence, and he has five kids to look after. It upsets me to see a person like Andrew in that situation.

To re-emphasise my take on icare and their attitude towards victims, it is the retraining. They retrained Andrew as a truck driver, but the industry they put him into or got him a job in was the demolition industry, which is full of dust. I mean, it is crazy. The last one that he did not go to, they offered him a job sweeping out at a chicken farm—sweeping it out. It is all dust and dried chicken poo. To me, they are not on the side of the victim anymore. To me, it is, "Let's retrain them as quickly as possible. It doesn't matter what it is, as long as we get them off the books." That is my take on it.

The CHAIR: Thank you very much, Mr Robson. Mr Tighe, I invite you to make an opening statement.

PETER TIGHE: Thank you, Chair. My history and background has been to some extent the same as Barry's. It has been in the asbestos area, but the Asbestos Diseases Research Foundation also has a responsibility for all types of dust, including silicosis and dust, which causes black lung. These are all forms of pulmonary fibrosis, as I am sure the Committee is aware. The major issue is that silica, like asbestos, is a naturally occurring product, but the diseases caused by utilising those products can be avoided. They are man-made products—asbestos. The use of asbestos and, of course, engineered or compound stone, whatever you want to call it, the prevalence of that in today's building construction industry has caused something that we have known about for decades and decades. Silica is inhaled, and if the inhalation is not controlled, it leads to the outcomes that we are seeing today. Worst-case scenario obviously is death. There is no reversal. There is medication to ease it, but there is no reversal.

The clear thing in my mind is this is a preventative disease but to prevent a disease, quite frankly, you have to look at a form of mandation. It is the same thing we have seen in the asbestos areas where we have licensed removalists where we have provisions in place, and you have to police those provisions. Yes, there is a wonderful code of practice that has been released by Safe Work Australia—and I say it as being a member on SafeWork for a number of years—but it is a code. It is advisory. It is guidelines. It is not mandated. My view is that unless you look, as they have done in Victoria, and mandate and control the industry, then you will not see a decline in the numbers of people presenting with silicosis and eventually dying from exposure to silica.

Mr DAVID SHOEBRIDGE: Thank you both for your work and your ongoing advocacy. I have always found it critical. Mr Robson, in particular, I have always appreciated your advocacy in this space.

BARRY ROBSON: Thanks, David.

Mr DAVID SHOEBRIDGE: One of the potential responses is that we put in more regulation, we have higher dust standards, we try to enforce a ban on dry cutting and we try to get out there and regulate the industry

CORRECTED

to make it as safe as possible. The other option is we realise that we live in the real world and that, no matter how much regulation you put in place, workers will probably still be exposed. Do you have a view about which pathway we should be going down?

BARRY ROBSON: I think it should be regulated. I know we cannot ban it, like we have asbestos, into the country. Even that is a total ban here in Australia and asbestos still manages to get through. It does not matter what regulations you put into place, they will get around it. Even two days ago, what have they found? They had been importing beekeepers' smoking units. They are full of asbestos. You can put as many regulations in place but at the moment—and I have got to be critical of SafeWork NSW—the policemen are not doing their job.

Mr DAVID SHOEBRIDGE: If there was an option to ban it though, assuming there was political will to ban it at a State level or at a national level, would that be a superior option to regulating?

BARRY ROBSON: I do not think a ban would work. As I say, it has not really worked with asbestos imports. They get around it. There was the Sydney ferry debacle. Ferries that were made in Malaysia came here and they had a certificate that said "no asbestos". They can still get around it.

Mr DAVID SHOEBRIDGE: I know your organisation campaigned for a ban on asbestos and maintains support for a ban on asbestos because that keeps 99 per cent out of it, doesn't it?

BARRY ROBSON: Yes.

Mr DAVID SHOEBRIDGE: If that is what we could achieve with a ban on engineered stone, that would be a better starting point to then police it, would it not?

BARRY ROBSON: I agree with that. If we could ban it, it would be great. But as I say, they will still find a way around it.

Mr DAVID SHOEBRIDGE: The problem is not solved, but it is minimised.

BARRY ROBSON: It would minimise it, yes. As I say, if that ban goes into place, you still have to have the policemen there to enforce that ban.

Mr DAVID SHOEBRIDGE: We have had a ban on dry cutting. There are a whole lot of work health and safety regulations in place. Workplaces are meant to be safe.

BARRY ROBSON: Yes.

Mr DAVID SHOEBRIDGE: What is your view about whether or not that is happening? I might start with you, Mr Tighe, and then you, Mr Robson.

PETER TIGHE: When you look at the mitigation aspects in place with silica, I think the issue is that the use of engineered stone is very widespread. You would find great difficulty in putting a ban in place. If you go to a block of units, every bathroom and every kitchen is going to have a bench with engineered stone. They are going to have penetrations cut into that. The vanity in the bathroom is going to have that. There is a variety of different uses of engineered stone for tiling and for decorative features right throughout the building. The use of it is widespread. However, when you look at the production of it in a factory area, you can in fact mitigate against the generation of dust. You can ensure that you have wet rooms where cutting takes place. Yes, there are some issues in relation to visual aspects in relation to that. There is also the capacity, when these products hit the site, that they have got to be engineered to fit certain circumstances. When you see multiple high-rises of units and you have contractors and subcontractors, at a lower level, in there, that is where it starts to fall apart because you are getting a situation where stone cutting is taking place and there are not the appropriate procedures in place.

One of the first things that you find when you talk to people in the industry is that the operatives in the industry do not understand. It is not until we have had the publicity in the past two years about silicosis—we have had silica around for 100-odd years in different forms, with stonemason cutting and the work that Barry described, but the prevalence of engineered stone has exacerbated that problem. It is the management of that. There are extraction vacuum tools that allow you to mitigate against that dust. There are all sorts of things you can do, but the level of education for workers in the industry and for what I would describe as cowboys in the industry—some of the majors in the industry understand that but others do not. The only way you can do that is to have a criteria they have to meet and regularly police it. It is like having road rules without any policemen on the beat to ensure those road rules are adhered to.

Mr DAVID SHOEBRIDGE: We have got that pyramid of how you respond to hazards. The very first thing you do is remove the hazard. I hear what you say about the ubiquity of manufactured stone but, 25 years ago, you would build apartments, you would build kitchens and you would build commercial properties without

CORRECTED

manufactured stone. Taking into account that pyramid and how you respond to hazards in the workplace, it may take a few years, but surely the best response is to remove the hazard.

PETER TIGHE: If, at the end of the day, you cannot control it to the stage where you can minimise the risk, that is an issue you might have to look at. The problem we have with asbestos is that, yes, we have banned the importation and manufacture, but we have got legacy asbestos that we still have to manage. That is not managed well, I have got to say. Legacy asbestos is not managed well. The issue with engineered stone is there is an industry out there and there are contractors out there whose income and their businesses are focused on that. My view is that, in the event that you say, "You know, and this is what you should do"—we train people now.

We are not talking about retraining the tradespeople. We are talking about what we do with asbestos awareness and other awareness things, where they can do a day's course and you say, "You know that, at the end of the day, self-interest is involved in this. If you don't change the way you do it and your employer doesn't change the way you do it, at the end of the day, this is likely to be a death sentence for you." There is nothing like that to focus an individual. From the employer's perspective, if you do not do what you are supposed to do to ensure there is a mitigation of this—and not an advising mitigation with guidelines and codes; I am talking about a criteria that you must adhere to. If you do not do that, then your capacity to run your business will be removed from you. You need to have those drivers to make sure that there is in fact a change in the industry. I accept what you are saying. If you wanted to ban it, problem solved. I think that is a bridge too far.

The Hon. MARK BUTTIGIEG: Can I just ask a very quick follow-up to that? I think it is an important point that my colleague is making. You mentioned the legacy issues with asbestos. The reason it got to that point is because it was not banned for so long. In a sense, in an ideal world, if we were to have the dual response of banning the product and, for example, licensing, that would almost cut it off at its mark, would it not? If you allow it not to be banned, you will have those legacy issues, and then it will be all reactive for years into the future or forever.

PETER TIGHE: Certainly. But I would see the stick that you wave in the air there is to say, "If you don't adhere to this and if you don't ensure that people are not contaminated with this, what you've got is a situation where you won't actually have a business that operates under engineered stone." I am sure the Committee is aware of it, but the diversity of stone—we have got paving, we have got tiles, we have got benchtops and the rest of it. I just wonder how you could effectively do that if you put a uniform ban in place. I agree with you that the legacy issue would then be removed into the future, but it is the management of our legacy of asbestos that is critical. I make the parallel there that, if you do not manage that legacy asbestos and how it is removed—and that is a whole new question—then you have got an ongoing problem. Who is going to pay for the cost of that problem? I will tell you. At the end of the day, it will be icare, through an employer subsidy, or government, as these cases increase and you find that these people cannot work. It is an investment, in my view, in solving a greater cost to you in the longer term.

The CHAIR: That actually feeds into something that I have been wondering about and that I think you are both experienced enough to help me with, which is actually understanding the product itself. We have heard that it is the next asbestos. Throughout the inquiries that we have held, that has been the view put forward by a number of people. In my mind, there are two issues. One is that we know that asbestos in fibre cement-type sheets is fragile and when it is damaged the asbestos becomes friable and can be inhaled. In its inert state, manufactured stone is, in effect, a solid, hard product and seems to be a lot more stable and less of a risk to people. That is, if somebody has a house with asbestos, they must be careful to make sure it does not become friable and scattering, but I think there is less risk with a manufactured benchtop for example.

The previous witnesses said that the offcuts of that product are sometimes recycled, whether it be for road base or other matters. It is still broken down but perhaps in a larger form, and I noticed one of them said they have potentially seen that product used in schools. In its inert form or in a more broken down form, is it safe for the public to be around it unlike the broken down form of asbestos? Is it only the fine dust that is really the risk? The reason I am asking is that people will have stone benchtops and the like in their houses and hearing that potentially this product causes silicosis may create some anxiety for people. I am curious as to what your experience is with the product and what states it actually creates a risk to people versus what states it is safe in.

PETER TIGHE: In relation to that, the key to both asbestos sheeting and engineered stone is the bonding agent. Once something is bonded, it is solid. In the case of asbestos sheeting, if it is in good condition and it is encapsulated with a PVC paint, provided you do not disturb it—mechanical damage—there are no fibres generated. Cutting and mechanical damage is the thing that is the issue in both of those cases. Demolition of engineered stone and the breaking down of that needs to be controlled. The benefit of engineered stone versus asbestos is you can water quench it, but when it dries out, it gets crushed up and dust residue in relation to silica sits in there, dries out and then it is disturbed and it is just as dangerous as the cutting process. It is a question of

CORRECTED

how you manage it from the process of installation to complete demolition and where it might be taken at the end of the day for disposal. Asbestos fibres are so fine you can only see them under an electron microscope. If there are fibres in the air of this room, it can take three days for an asbestos fibre to settle.

Yes, even though you can get right down to a millionth micron in relation to stone—I do not want to go into too much technical detail about it—there is a slightly different issue in it. The problem with manufactured stone, though, is that the product is done for purposes of decorative finishes—someone decides that they do not want their marble benchtop in the colour it is. I am sure a lot of you have partners and someone decides that the kitchen needs a revamp. We need to come in there—the kitchen benchtop, the bathroom needs to do it. The two major areas in a domestic household, and the same in units, are basically the bathroom and the kitchen. That is where the major work takes place. In the instance that that comes in there, someone says, "I'm going to remove your old benchtop. You're going to go from a brownish colour to whatever colour."

In a set of units you might have an overall design where there is duplication in each of the units and they are done in situ in a factory, they are brought in and installed, they are pre-drilled, the tops are cut out all ready to go and there is likely to be limited dry cutting but there will be some and you need to do that in a safe way with vacuums, appropriate masks and time-weighted air monitoring if there is lots of work in there. The continued use of this in a domestic situation is going to be ongoing. Like asbestos, there has to be some form of control of the substance once it is basically a demolition product and where it is going to be disposed of.

BARRY ROBSON: I will just add, with that, in part of your question, is the home renovation people—the DIY, the weekend warrior. There is no control over them. That could be already in place, as Peter has just described in a unit or something. That unit is sold and a new tenant takes over. The better half says, "I don't like that, remove it", so they get stuck into it, cut it up and smash it up. There is that part of the industry also where people can be exposed to this manufactured stone.

The Hon. MARK BUTTIGIEG: There are a couple of things I want to explore, given your subject matter expertise. I might go to you in particular, Mr Robson, but also I am sure Mr Tighe is well across these issues. You mentioned the Dust Diseases Board and how that was fundamentally changed from a more sort of personalised case-by-case analysis—

BARRY ROBSON: Yes.

The Hon. MARK BUTTIGIEG: —to, if I could put it crudely, a numbers game.

BARRY ROBSON: Yes.

The Hon. MARK BUTTIGIEG: Do you want to elaborate on that? I think that is an important point. I know it has been raised in forums before but I think it is important we get this on the record.

BARRY ROBSON: Okay. I have been involved with the foundation since 1995. Our members under the old dust board, if I could use that terminology, were treated a lot different to what is happening now, and that is the best way I can describe it. The old dust board, it was not perfect by any means but it was more victim-oriented, and because 90 per cent of the victims are widows, the caseworkers were more empathetic and sympathetic to the widows. Since the dust board was disbanded and icare was set up, the attitude of the caseworkers has completely changed in my opinion and in some of my members' opinions. That is how it comes across. Get them on the books, get them recognised as a victim, do it all but do it quickly, get them off the books—as simple as that.

The Hon. MARK BUTTIGIEG: Barry, in terms of the mechanics of icare, is icare the instrument in approving a subsequent workers compensation claim?

BARRY ROBSON: Yes, all of that. It is all involved.

The Hon. MARK BUTTIGIEG: Did that have direct implications on the amount of people able to make a claim?

BARRY ROBSON: You are starting to get into the legal stuff now. There is a principle in law that not all victims can get the full compensation. That is something we have been trying to get rid of for many years. Currently, our current secretary is in that position. She only got some of the compensation as a widow because her husband passed away on the Sunday before his case could be registered on the Monday, so she is not entitled to the full compensation. That is one of the anomalies in this. That is not icare's fault; that is a legal matter.

The Hon. MARK BUTTIGIEG: Did the Government give you any justification why they switched away from that more case-by-case personalised approach to the more desktop analysis, if you like, if I could again put it crudely? Was it because of just efficiency, presumably?

CORRECTED

BARRY ROBSON: I can tell you honestly, the day that it was announced, we came into this House and spoke with the then Treasurer who is now the Premier, Perrottet. We sat in his office and we were objecting to the disbandment of the old board and he told us that the reason why they did it was that it would be like a new dawn, that victims would be looked after a lot better, more efficiently and all the rest of it. And that was straight from the now Premier's mouth, not only to me but three widows that were there to witness what he told us—how good icare would be in the future. But I am afraid—I am not trying to be political, but that is how it was put to us directly and it has not lived up to that expectation of what he told us that day.

The CHAIR: It is okay, Mr Robson, this Committee is being more critical of icare probably than anybody.

BARRY ROBSON: Okay, sorry. I just did not want to come across as attacking the—

The CHAIR: I appreciate that.

The Hon. MARK BUTTIGIEG: Just before I move on to Mr Tighe in relation to research and funding, there was no toing and froing in terms of consultation, it was just a decision was made and this is how it is going to be?

BARRY ROBSON: Correct. And just on the research, the old board had an active research department. Now there is none of that. It has all gone.

The Hon. MARK BUTTIGIEG: I just want to quote to both of you from the SafeWork submission to this inquiry. The title of the submission, it is there in the tabled document, is "Supporting dust diseases research and not-for-profit organisations". It says, "The Dust Diseases Board has implemented a 2020 to 2024 strategy to guide its vision to make a positive difference to those impacted by hazardous dust exposure and dust diseases. Innovation, impact, collaboration and building capacity are the key strategic priorities that underpin their strategy and the total grant funding is \$2.5 million per annum." Then they go on to say the various breakdowns of that funding focus—fellowships, scholarships, support organisations. Then they say how the total overall funding envelope for the Dust Diseases Board portfolio is \$5,645,649. So SafeWork are putting a proposition here that this part of the Dust Diseases Board research is significantly funded. I just want to know at the coalface, where you two are involved, how is that funding, if at all, flowing through to what you see?

BARRY ROBSON: Can I answer that because I do sit on the icare grants committee? Ninety-nine point nine per cent of that money goes out of New South Wales. I constantly raise on that committee—so I am on the record—over the last five years about the amount of research money that goes out to every other State in this country and the miniscule amount that gets granted to research here in New South Wales, where we have our very own research institute that Peter is the chairman of. Yet the money just does not flow, and I constantly—

The Hon. MARK BUTTIGIEG: I am sorry, under what criteria does 99 per cent of the money flow out of the State?

BARRY ROBSON: Because the grants are voted on on this committee that I am on. We get to vote on each one, you know, that comes up. That is how it works. So if you don't get the numbers, you don't get the money.

The Hon. MARK BUTTIGIEG: So there is no statutory or regulatory criteria that says—

BARRY ROBSON: The objectives are that the research should be done.

The Hon. MARK BUTTIGIEG: In New South Wales?

BARRY ROBSON: In New South Wales, surely. That has been my—

The Hon. MARK BUTTIGIEG: And yet 99 per cent goes interstate.

BARRY ROBSON: Have a look at the figures. Don't take my word for it; have a look. As I say, I constantly and I am on the record at the grants committee meeting every three months when we meet and I go through the 20 or 30 grants. You will see one or two from New South Wales researchers; the rest are all Western Australia, Queensland, where they get the bulk of the money. My question has always been—and I might be a bit dumb here—it is New South Wales employers' money, workers comp money goes into that. Shouldn't it be spent here in New South Wales—

The Hon. MARK BUTTIGIEG: Absolutely.

BARRY ROBSON: —where we have a world-leading research centre at Concord Hospital at Concord that is struggling for funding in research? I will leave it there.

The CHAIR: Mr Buttigieg, I will come back to you. Mr Amato indicated he has some questions. I will allow Mr Amato and then any other members.

CORRECTED

The Hon. LOU AMATO: Mr Robson, how many people are on your committee?

BARRY ROBSON: I think there are about 13.

The Hon. LOU AMATO: And the grants come up to you and then the 13 of you decide whether to approve them, accept them and where it goes.

BARRY ROBSON: Yes, that is how it works.

The Hon. LOU AMATO: So those grants, anybody in Australia can—

BARRY ROBSON: Anyone in Australia can apply for a research grant and then it comes before the committee and we vote on it.

The Hon. LOU AMATO: You usually vote against it going to other States, is that what you are saying?

BARRY ROBSON: I try to. I must confess that I have got a bit of skin in the game with the research institute. I was one of the founding people that got it up and running and I was on the board there for 12 years, so I have got a bit of skin in that game. But that is what surprises me when I see that we do not seem to vote that we get grants given to research here in New South Wales. I just shake my head. I will leave it at that.

The Hon. LOU AMATO: You were on the old board as well. You were on the board when the James Hardie issues arose many years ago?

BARRY ROBSON: I have been a campaigner from day one. It was a 10-year campaign. I became president of the foundation in 2002, nearly at the start—it had been going a couple of years by then. We were not making much headway in them days against Hardies because they had a massive PR machine and, as you know, along came Bernie Banton, who was our vice-president, and we pushed Bernie as the front man for the campaign and the rest is history. That took another five years to bring Hardies to the table and we got the 40-year agreement, which we are 13 years into it now of that agreement, for Hardies to pay for victims. And as Peter sort of indicated in what he said, maybe the same thing might have to happen with this silicosis issue, that there is a levy on employers and companies to pay for victims. It is just something that Andrew said, and I think you asked the question about the medication they are on.

The Hon. LOU AMATO: Yes.

BARRY ROBSON: We have got the same thing in asbestos areas; there are trial drugs that the big pharma companies will come along to victims, and they are professors or people, and say, "Look, we have got this experimental drug. We will supply it for free", but if it was on the market it would be \$20,000, \$50,000 a week or a month or whatever. So Andrew and Ken—I only met Ken for the first time today, but I have known Andrew for a while—that is how they can afford their medication; they are probably guinea pigs basically for the drug companies. But that is how expensive the drugs are, even in the asbestos area.

The CHAIR: Gentlemen—

BARRY ROBSON: Sorry, I know I have been long-winded.

The CHAIR: No, not at all. We are almost out of time, but Mr Shoebridge, Mr D'Adam and Mr Buttigieg each have follow-up questions they would like to ask. I was going to impose on you and ask if you might be able to stay for just a couple more minutes after our scheduled finish so that they can address their issues.

BARRY ROBSON: Yes.

Mr DAVID SHOEBRIDGE: Mr Robson, you remember the very real concern when James Hardie was leaving the country, taking its assets off?

BARRY ROBSON: Yes.

Mr DAVID SHOEBRIDGE: The fear was that the survivors and the victims of James Hardie asbestos would have nowhere to go because, if you recall, James Hardie did not have adequate insurance. Do you remember that?

BARRY ROBSON: The \$2 companies.

Mr DAVID SHOEBRIDGE: Yes, \$2 companies. As a result, the agreement was they had to leave billions of dollars here to meet their liabilities going forward. Do you remember that?

BARRY ROBSON: I do. My word, I do.

Mr DAVID SHOEBRIDGE: When we are talking about manufactured stone, the largest manufacturer on the globe is Caesarstone, based in Israel. Do you think we should be particularly wary, given the evidence is

CORRECTED

Caesarstone cannot get product liability insurance for its product—so there is no insurance policy for victims to call upon in Australia going forward and Caesarstone has zero assets in the country? Given your experience with James Hardie, what should we do with that information?

BARRY ROBSON: I think Andrew mentioned in his evidence that these companies, if they get caught doing the wrong thing, they just close down, start up again under another name—as simple as that. The same, basically, as Hardie did. Hardie set up three shelf companies—Amaca, Amaba and I cannot remember the other one—and they were only \$2 companies. That is all they had, and they moved offshore. These companies will do exactly the same, in my experience.

Mr DAVID SHOEBRIDGE: It is not that they will do exactly the same. The current protections for any worker who wants to sue the manufacturer are almost non-existent in Australia.

BARRY ROBSON: Exactly.

Mr DAVID SHOEBRIDGE: They have no assets in the country and they have no insurance.

BARRY ROBSON: That is right.

Mr DAVID SHOEBRIDGE: So what should we do with a product that cannot get insurance?

BARRY ROBSON: I think you are going back to supporting a ban. I mean, I would like to see a ban, but I just do not think it would be practical, really.

Mr DAVID SHOEBRIDGE: Mr Tighe, if insurers will not touch it, if insurers will not insure the product because they can see the damage and the cost going forward, do you not think that should be an indication to policymakers that this thing is toxic and we should not be touching it?

PETER TIGHE: Well, absolutely. If you cannot control and prevent the injury then what you have got to do is, as you say, remove the danger, which is the first step in occupational health and safety. I know Caesarstone is a major product in areas, but we also have quite a bit of engineered stone that is prefabricated in Asia and imported here, and then used by smaller contractors—cut and sized and the rest of it. I would be concerned about the capacity for someone to sue. As we find with asbestos, you have to identify—even to get funding under the AICF, the James Hardie fund—it was James Hardie that were the purveyors of the product that you, in fact, were exposed to. We are seeing that problem emerging now in Australia with legacy asbestos. So, yes, maybe that is what you would have to do. If you cannot control it, then you have to stop it.

Mr DAVID SHOEBRIDGE: You cannot control it. You cannot insure it.

PETER TIGHE: Insurance is something—

Mr DAVID SHOEBRIDGE: If you add those two together, at the end of the day, the people who are going to pay the cost and get nothing in return, other than what we extract from all other employers through the dust diseases scheme, are the workers. Should they be paying for a slightly shinier, better coloured benchtop? That is the question, Mr Tighe.

The Hon. ANTHONY D'ADAM: There is a licensing scheme in Victoria. We have a licensing scheme for asbestos in New South Wales. What lessons can we learn from the licensing scheme for asbestos in New South Wales that might inform policymakers around the introduction of a licensing scheme in New South Wales?

BARRY ROBSON: Can I jump in first? If you bring in what they have got in Victoria, fine, but it is the policemen on the job—SafeWork NSW is very, very slack in this area. We get phone calls at our office about a demolition going on. We tell the people that ring, "Get in touch with SafeWork NSW", and 99 per cent of the time they do not turn up or they will tell the people, "It's a council responsibility." So the people ring the council, the council says, "No, SafeWork NSW." So by the time—if—they do get there, the job's done. It is finished; the cowboys are gone. That will happen with this. As I think both Andrew and Ken said, these companies, they do not care. They do not care.

PETER TIGHE: I think what you have got to do is—the two schemes of licensing, you cannot compare. The licensing for asbestos product removal is for friable and non-friable asbestos, so it is about removal of legacy asbestos and how it is to be removed. But there are provisions in the Work Health and Safety Act that allow a person in charge of a business or undertaking, because of an exemption that exists in all jurisdictions except for the ACT, to remove up to 10 square metres of non-friable asbestos. You have got a requirement for the asbestos contractors, when they are going to remove quite large amounts of asbestos, to notify SafeWork NSW five days before they commence that work.

BARRY ROBSON: Yes.

CORRECTED

PETER TIGHE: Now, one of the issues I think that Barry has raised is the number of policemen on the job that go out and make sure that that is done properly. But you have also got a situation where, whilst they are waiting for that five-day period to come in place, a company that wants the building work to move ahead and a company that is prepared to remove that asbestos outside regulation will come in and do that.

BARRY ROBSON: Yes.

PETER TIGHE: If you talk to the industry, you will find out that is right. That is because there is no policing. That is removal of a product. What we are talking about here is a licensing system about the installation of a product and the management of people that are involved in it. So that is the education of people who are working in that sector, the education of the person who runs the business, then a criteria—a mandated criteria—that states you must do X, Y and Z. On the overarching part of that is a body that is a police force, really, if you want to describe it—Safe Work Australia—to ensure that they, in fact, adhere to the mandated requirements.

BARRY ROBSON: Yes.

PETER TIGHE: That is only for the protections. It does not take us to where Mr Shoebridge has talked about because that means no installation of it. But if you cannot get the best in the world then you have to try to get the second best, in my view. A licensing system in Victoria—okay, the Victorians made that decision, but you would need to look at something akin to that if you are going to manage the product in New South Wales.

BARRY ROBSON: Yes.

PETER TIGHE: We already know in Queensland we have got nearly 300 people that have been exposed. They are victims of silica. Can I just say one thing, harking back to the issue of research in New South Wales? That is what my body does. It does research, but it has a broad breadth of all dust diseases. We do not get any funding directly from any form of government. It is all done by philanthropic donation and we have to find at least \$2 million a year—and, yes, we apply for grants to the Dust Diseases Board and we are successful, based on merit, on occasions, in getting that. But that is a long way away from what we need to run the institute, and it is the only institute that is focused on purely asbestos and other dust diseases.

The CHAIR: We have gone quite a bit over time. Mr Buttigieg has a follow-up question. I will ask him to be extremely brief and I ask for some brief responses, if that is okay.

The Hon. MARK BUTTIGIEG: It is an appropriate juncture for me to ask a wrap-up question. Are you aware of the McDougall inquiry from April 2021 into SafeWork? Because a lot of what has come out of here is SafeWork's ability, resources or will to be able to enforce this. One of the recommendations of that inquiry was that there be an inquiry into the regulatory and educational functions of SafeWork. Recently in budget estimates hearings the better regulation Minister would not say whether or not the Government intends to carry through that recommendation. SafeWork, in general, in terms of enforcement and policing, has been an issue not just in silicosis, but right across the board. I want to get your quick views on what appears to be a lack of will to appropriately give SafeWork those powers.

BARRY ROBSON: First of all, as I say, I am very critical of it because I think they are underfunded, and there are just not enough of the inspectors on the ground. It is as simple as that. They used to have an education committee, and that has sort of gone by the board. Especially in the manufactured stone area, a lot of the workers are migrants. They are skilled stonemasons. They have been brought in from overseas. So they will not complain about the working conditions or anything like that because they are worried about their working visa and so on. I just think that SafeWork is very, very underfunded and there are not enough policemen on the ground.

The CHAIR: Gentlemen, thank you very much for your appearance today. I am not sure whether any questions were taken on notice. If they were, answers are to be returned within 21 days.

(The witnesses withdrew.)

(Luncheon adjournment)

CORRECTED

Mr ANTHONY WILLIAMS, Executive Director, Compliance and Dispute Resolution, Better Regulation Division, NSW Department of Customer Service, affirmed and examined

Ms MEAGAN McCOOL, Director, Construction Services Group Metropolitan, SafeWork NSW, Department of Customer Service, affirmed and examined

The CHAIR: I welcome our next set of witnesses to the afternoon session of the dust diseases hearing. I invite you both to make a short opening statement if you would like to do so.

ANTHONY WILLIAMS: I do have an opening statement, which I have already tabled with the secretariat. Thank you for the opportunity to appear before the Committee today. It is very much appreciated. SafeWork NSW—that is, the regulator—provided a submission to this inquiry, which contains an overview of the progress it has made regarding regulatory reforms, research, compliance, education and the monitoring of dust disease. As you are aware, silicosis is a preventable occupational dust disease caused by the inhalation of very fine silica dust—respirable crystalline silica, or RCS. When exposure is not controlled, however, silica dust is a major hazard to workers in New South Wales. I would like to direct my opening comments on the key achievements and inroads SafeWork NSW has made since the first review of the dust diseases scheme in 2017.

Our work is guided by the *Work Health and Safety Roadmap for NSW 2022*. Sitting underneath this is the hazardous chemicals strategy and the NSW Dust Strategy, which provide a coordinated approach to protect workers from illness, injury and death resulting from the priority dusts— asbestos, silica, wood and other dusts. The hazardous chemicals strategy contains four components, which include awareness; interactions, which include securing compliance and workplace visits; research and legislative review. I can report that all four components of the hazardous chemicals strategy are on track for successful completion later this year, when the strategy will then be reviewed for reset, as required. SafeWork NSW has also accepted and implemented recommendation 1 from this Committee's first review of the dust diseases scheme in 2017 by forming the Manufactured Stone Industry Taskforce 2018-19 comprising industry, regulatory and workforce representatives, with the majority of its findings—capturing trade education, work health and safety and NSW Health—now in place.

We have also implemented recommendations 3 and 4 from this Committee's second review of the dust diseases scheme in 2018 by delivering targeted educational awareness and education activities, including a major symposium event, regional roadshow, media campaign and video safety alert utilising Dr Karl as a spokesman; and the development of a national unit of competency by the industry skills council and a local version of the national "Clean Air. Clear Lungs." campaign in 2021. Silicosis is now a notifiable scheduled medical condition, with a New South Wales register maintained to link medical practitioners to the work health and safety regime, and an annual report is produced. We have also implemented recommendations 9, 10 and 11 from this Committee's third review of the dust diseases scheme in 2019 by introducing a ban on the uncontrolled dry cutting of manufactured stone through an on-the-spot fine in the Work Health and Safety Regulation in addition to prohibition—that is, stop-work—notices that can also be applied.

Additional SafeWork NSW inspectors have also been on board, with 40 new positions created across Sydney metropolitan and regional New South Wales, and the completion of a silicosis case-finding study. SafeWork NSW has also been working closely with icare; SIRA; NSW Health, and its work health and safety co-regulators, being the NSW Resources Regulator and Comcare; as well as doctors, health and industry associations, employers and workers to reduce dust-related harm and keep workers safe, and will continue to do so. The Government also maintains a silica dashboard on the New South Wales Government website. The dashboard is regularly updated with new figures each quarter on silicosis cases and SafeWork NSW compliance activities. Advice and guidance for businesses working with silica is also published on the SafeWork NSW website, including translated resources, webinars, safety videos and fact sheets, with more than 120,000 views across the silica webpages and resources to date.

New South Wales has adopted the model code of practice *Managing the risks of respirable crystalline silica from engineered stone in the workplace*, which came into effect in New South Wales on 25 February this year, and is rolling this out to industry through an education webinar, easy-to-follow checklists and translated resources. Ongoing efforts are being made worldwide and in Australia to further improve the ability to test for silica dust at lower levels, such as 0.02 milligrams per cubic metre. Safe Work Australia is coordinating this work in consultation with its members. In addition to this, the New South Wales TestSafe lab routinely reports down to 0.05 milligram silica levels for eight-hour shift samples. TestSafe has noted in its research that further lowering of the level to below this, although possible, currently presents both technical and commercial challenges due to measurability issues, which is echoed by the Australian Institute of Occupational Hygienists and the National

CORRECTED

Association of Testing Authorities. However, TestSafe has expressed confidence that further research offers potential pathways for increased sensitivity and further lowering of the exposure standard in time.

The Centre for Work Health and Safety has engaged Trolex Nome Australia to develop a respirable crystalline silica sensor which can provide real-time feedback to workers at risk of exposure. This technology has been independently tested in both laboratory and workplace environments to measure the workplace exposure standard of 0.05. The device is planned to be commercially available in June this year, with rebates from Trolex to support their purchases and a wearable device anticipated to be market ready by 2023. SafeWork NSW continues to conduct educational, compliance and enforcement activities to ensure that PCBU's at engineered stone fabrication sites are fulfilling their WHS duties, including air monitoring where appropriate. In total, more than 6,704 silica-related business interactions have been completed in New South Wales, with 957 of these being manufactured stone inspector visits—and 718 inspector visits in other industries, including construction and tunnelling, since the start of the hazardous chemicals strategy in 2017.

SafeWork NSW has also reviewed the 214 silicosis cases across all industries from 2017 to 2021, with 16 accepted for full investigation where the exposure could be linked or attributed to a workplace, seven of which have since been discontinued and closed. Seven are still open, with further evidence being gathered, and two have been filed in court for charges to be considered. Over this period, 135 of the 214 cases relate to the manufactured stone industry. SafeWork has overseen the delivery of an industry-specific engineered stone rebate worth \$1,000 for businesses to purchase safety items to protect against silica exposure. An additional \$1,000 is also available under our small business rebate. This addresses issues such as improving ventilation, exhaust and extraction systems, water-fed and dust-capture tools, and powered air-purifying masks or mask-testing kits. As of December 2021, 208 rebates have been granted, resulting in over \$279,807 invested by businesses on dust controls.

In June 2021 the National Dust Disease Taskforce's final report was released. The Department of Premier and Cabinet is coordinating New South Wales's contribution to the Australian all-of-government response. SafeWork NSW has provided its contribution to DPC. It is important that there is a national approach, guiding the relevant agencies to continue working together and ensuring consistency among jurisdictions. In conclusion, our work is ongoing. It remains a key priority both now and into the future. It is a joint effort, however, that relies on the New South Wales whole-of-government approach between the relevant agencies, such as SafeWork NSW, icare, SIRA and NSW Health, to ensure workers are protected from dust diseases such as silicosis. Once again, thank you for providing me with the opportunity to present to the Committee today.

The CHAIR: Thank you very much, Mr Williams. Ms McCool, could I invite you to make an opening statement?

MEAGAN McCOOL: Tony's was on behalf of both of us.

The CHAIR: Thank you. In that case, I will turn to the Committee for questions. I will start with Mr D'Adam.

The Hon. ANTHONY D'ADAM: Welcome to this inquiry. Thank you for your attendance today. Earlier in the proceedings today, one of the witnesses was quite frank. In reference to SafeWork, they said that the policeman is not doing their job. We also heard evidence from two individuals who were directly affected by exposure. One had 30 years in the industry and had seen SafeWork once at a work site. The other had 20-odd years of experience and twice in their working life had seen a SafeWork inspector. How can we have confidence that you are able to keep on top of the compliance obligations that SafeWork has in relation to this industry, given that type of evidence?

MEAGAN McCOOL: Firstly, as I said, anyone that is sick, injured or killed as a result of their work is important to us. It is why this strategy has a number of aspects that we have been closing the gap on for a number of years now. But in terms of what we have done in terms of compliance and just that aspect, we have visited the manufactured stone sites multiple times. We call it round one and round two, but within those rounds follow-ups are done any time a notice is issued, so it would trigger a second visit. When you are looking at round two, as at 31 December, with 255 sites, the notices have gone down from the first round from 699 to 274, and most of those notices relate to things that are considered minor in nature. We have only had two instances of dry cutting.

We are seeing significant investment in CNC machines, where essentially the workers are removed from the cutting. It is digitised and cut, more or less, in a booth with water. The sites are significantly cleaner. Workers and PCBU's have significantly better knowledge. We are seeing hazardous chemical registers, safety data sheets, RPE—not only worn, but there is training on it and it is fit-tested. We are seeing workers in a regular program of having their health screened. That represents in round two, after looking at these sites for a number of years now, an 84 per cent reduction in the number of notices and a 61 per cent overall improvement in the industry in heading in the direction that we intend to continue with.

CORRECTED

The Hon. ANTHONY D'ADAM: Ms McCool, on the evidence that you have just given, those are the 274 sites that have received notices on a second visit. These are sites that have already been visited. They are well aware of their obligations. They are repeat offenders. What did you do? How were those incidents treated by SafeWork? Was there more stringent enforcement or was it just a repeat of the improvement notices that you had already issued?

MEAGAN McCOOL: No. There is very, very little repeat of the same behaviour. Even when we did the first round, only 60 sites did not get a notice at all. Typically we will find something. It could be a forklift, it could be not having a safety data sheet. In terms of the core issue around dry cutting and not wearing protection, that is significantly lower—or we are finding, as I said, that we are not issuing any notices in that space. It could be that the mask has been provided, but it has not been fit-tested. So you are looking at things that are in place but still need to be fit-tested or you are looking at new workers in the workplace who have not been screened yet. So we are issuing notices for those workers to be screened as well. Things like even general housekeeping—if we do see things around, notices could be issued around that nature. But in terms of prohibition notices, we have only issued six in the second round, showing that, as I said, we are not prohibiting practices. The issues that we are finding are generally what we call maintenance issues.

The Hon. ANTHONY D'ADAM: Obviously you have had a concerted effort over the last couple of years in terms of site visits. That is not sustainable in the long term, given the resourcing of SafeWork. You are not going to be able to do that level of intensive site visitation going forward. How are you going to sustain the compliance culture that needs to be embedded in this industry, given its volatility? It is made up of a lot of small businesses. I expect that there is quite a bit of churn in terms of the industry. How are you going to sustain it in the long term?

MEAGAN McCOOL: I think it has been demonstrated by round one and then round two seeing the significant improvement. By round three we should see even further improvement, where it is just a spot check. The industry has responded. The industry is improving. We are held together by doing an annual report, which, as you know, is now within the Work Health and Safety Act—that we must produce an annual report. So we are tied to this issue in continuing on in this space, to keep us accountable. But, in terms of the industry improvement and the inspectors we have, it is proportionate. We are starting to see, as I said, the checks are not taking as long. We can do more within the time period. As I said, we have already got that 61 per cent improvement and we are closing the gap.

ANTHONY WILLIAMS: If I can also add, we are seeing a lot of business investing heavily in technology that isolates workers from the risk. Once that happens, we will see a reduced need to undertake compliance in those workplaces. We will still do compliance, but the regularity and ongoing need within those workplaces will be reduced. We try to do our work on a risk-based approach. So if we are confident that visit after visit in a workplace that identifies that they have invested in the technology, the risk is removed from the worker and we are not seeing any issues in terms of exposures, we would have a lesser—our response would be proportionate to the risk we are seeing in those workplaces. We do expect—you are right—we would not want to maintain the levels we are maintaining now forever. But the technology we are seeing being applied in workplaces will mean that that can be less.

The Hon. ANTHONY D'ADAM: Your emphasis in terms of compliance is very much focused on the factory environment, the fabricators. We have heard evidence today, and I asked a question about this at budget estimates hearings, about an incident of uncontrolled dry cutting occurring in a suburban context. You do not have the capacity to be able to enforce the ban in those kind of circumstances, do you?

MEAGAN McCOOL: Our strategy covers all industries, whether it is tunnelling, construction or cutting bricks, concrete and manufactured stone. When we are checking the fabrication workshops, we look at what we call SOPs—standard operating procedures—or their safe work method statements, including right through to the installation. Wherever we issue notices or compliance, it applies to the whole end-to-end chain. In terms of being anywhere at any time and being able to see it actually happening on site, that is, as I said, a bit more of a challenge in that there is not a fixed premises. But that is the same with all natures of work. We have the ability to respond. We have looked up that incident that you raised at budget estimates. There was an inspector's visit at both the home owner's place of residence as well as the workshop. We do respond to those. We do encourage people to report anything. Both us doing our spot checks plus anyone informing us are the two areas, as I said, which is the nature of any work done where it is not a fixed premises.

ANTHONY WILLIAMS: That is right. The Committee may be interested to know that, of the 1,675 workplace visit we have done to date, 957 have been in the actual manufactured stone workshops, in the workplaces, but we have got 720 that were done in other workplaces—on construction sites, tunnels, quarries. You name it. We have done 720 in those workplaces as well. The way we make that sustainable, Mr D'Adam, is

CORRECTED

we incorporate that into our business as usual. If our inspectors are out on a construction site, in a tunnel or in an infrastructure workplace, not only will they do what they are there to do, they will, as a matter of process, do the verifications to check for silica dust exposure, plus other programs we might have on foot at that time. We try to use our inspectorate economically and maximise the bang for buck whilst they are on site.

The Hon. ANTHONY D'ADAM: I suppose there is a very strong emphasis in your compliance strategy on educating employers. But we heard evidence today that actually education is not the problem; the employers know the dangers of this substance and there are cowboys in the industry that are going to continue to flout safety regulations. How are you going to drive those cowboys out of the industry?

MEAGAN McCOOL: We do agree. Education is just one element. But our strategy has included four. It is education, it is compliance, it is legislation and the changes that Mr Williams spoke about in the opening statement, as well as research—that real-time detector, where an alarm goes off if the exposure standard is being exceeded. We are looking at not only innovation and protecting workers through that way—and that has been research that we have commissioned as a regulator—but also the compliance approach and, as I said, the improvements that we are seeing with those visits. But you cannot have compliance without education. Those two generally work hand in hand. But we agree that education is not the trick. There are four elements, and our strategy is continue to deliver on those four components of the strategy.

The Hon. ANTHONY D'ADAM: I asked in budget estimates hearings about HSRs. You have returned data in relation to your visits, updated data, I think, a couple of days ago. The number of HSRs in these sites is paltry. Why is your compliance strategy not placing more reliance on having effective consultative and monitoring strategies in place, embedded in the workplace, through the system that is available under the Act, the HSRs? Why are you not driving businesses or encouraging businesses to put HSRs in place so that there are those ongoing eyes and ears able to keep an eye on the safety culture in a business and to provide that direct enforcement that might be necessary in terms of improving safety culture?

MEAGAN McCOOL: Consultation is a core part or the fundamentals of the Work Health and Safety legislation. It is always encouraged. However, we cannot enforce to have a HSR. Most of these businesses are zero to five workers. A worker within the workplace has to request to become one and then be sent for training to receive their powers, which include all the things that a HSR can do. But in doing that, a workplace may have other agreed arrangements. That is equally allowable under the laws. Or, as I said, if it is only the person running the business and the worker, consultation, obviously, would be happening day in, day out. What we would do, though, if we saw that new practices were being introduced or there was not any evidence of conversations going on—we can easily tell the culture of a workplace when we enter. As I said, we can issue notices around that if the consultation is not sufficient in relation to the workplace, and issue notices for improvement in that space. The one thing we cannot do, though, is insist or mandate it has to be an HSR. That is a process where the worker nominates.

The Hon. ANTHONY D'ADAM: Is that a limitation? Perhaps it would be of assistance if the legislation was amended. As a result of issuing an improvement notice, would it be advantageous to say, "You have got to put a HSR structure in place"?

MEAGAN McCOOL: Obviously the laws are reviewed at any time. This is a national law. Around the country, that is how consultation operates. We could put it into a review of the national laws but unless—we are not seeing any evidence that there is no consultation for us in this particular industry. Obviously a desire to have an HSR in every workplace in the manufactured stone industry is important, but we are not seeing, as I said, massive amounts of notices or issues in relation to the workers not being consulted. If there was, then obviously we could certainly look at that. But in any review of laws it is certainly something that we could consider.

The Hon. ANTHONY D'ADAM: If you had ubiquitous HSRs, you would have be able to have targeted training, would you not? You would be able to get them in or deliver specific training packages to the HSRs to assist them in identifying the kinds of risks that are associated with poor practices in handling manufactured stone. Is that correct?

MEAGAN McCOOL: We can do that now with any worker. We ran a symposium event, we do trade information nights, we have various—if you look at our catalogue of the stakeholder engagement, we do education with the suppliers. So education is happening all the time and we do that in multiple different ways. We also have rebates to incentivise purchasing better products. So we use a number of tools to lift education. HSRs are one aspect that could be used. There are plenty of others that we capitalise on in terms of lifting education in that sector.

The Hon. ANTHONY D'ADAM: I want to ask about the code of practice that has been recently released. Can you advise what consultation was undertaken via SafeWork in terms of the development of this

CORRECTED

code of practice? I know it is a model code of practice that you have picked up from Safe Work Australia, but this is still something that you have done on a New South Wales level. Isn't there an onus on you to engage in some form of consultation about whether this is appropriate for a New South Wales context?

MEAGAN McCOOL: Safe Work Australia issued a national consultation process and we obviously alerted all our stakeholders and businesses that that would be relevant to. But in terms of the process that was managed by Safe Work Australia, any comments—particularly around its practicalities and the detail in it—went back into a national review process. Any New South Wales stakeholder, including ourselves, were encouraged to make comment on the content of that document. The content of that document, now that it is a code of practice, is enforceable. Sites need to be at the same or equal value of that code. Where that is not demonstrated, we can issue notices. If anything, as I said, that has become an enforcement code in general terms.

The Hon. ROD ROBERTS: I will direct my question to Ms McCool. Mr Williams, feel free to answer too. I want to direct your attention specifically to the manufactured stone industry. We are aware that silicosis happens in quarrying and tunnelling and I want to direct your attention specifically to that. We are aware that wet cutting and ventilation is in place in factory sites where fabrication takes place, and that is a good thing. Notwithstanding that, though, I want to know how many penalty notices or prohibition notices you may have issued for dry cutting on actual worksites. Remove yourself from the factory setting and take yourself to a job site. Over the years, how many notices have you issued for dry cutting?

MEAGAN McCOOL: The information I have is that since the dry cutting ban or the on-the-spot fines came through on 1 July 2020, we have issued two of those prohibitions or on-the-spot fines.

The Hon. ROD ROBERTS: How much were they for?

MEAGAN McCOOL: The fine is \$3,600.

The Hon. ROD ROBERTS: Is that the full fine?

MEAGAN McCOOL: Yes, as prescribed in the legislation. I would need to take on notice whether they were on stone sites or installation sites.

The Hon. ROD ROBERTS: I would like to know that. Can you take that on notice for us?

MEAGAN McCOOL: Yes. Certainly.

The Hon. ROD ROBERTS: So there have only been two.

MEAGAN McCOOL: There is evidence of two that have been detected where we evidenced that. Including, as I said—

The Hon. ROD ROBERTS: How do you detect it?

MEAGAN McCOOL: There are a number of ways. We will start with a worksite. If we see a broom or we see dust or floor—

The Hon. ROD ROBERTS: No, we are not talking about brooms. We are talking about at the actual worksite, not in the factory but at an actual construction site.

The CHAIR: Mr Roberts, apologies. I note that it makes it difficult for Hansard if members and witnesses are talking over the top of each other. Allow Ms McCool to finish her answer before you ask a supplementary question.

The Hon. ROD ROBERTS: I accept your ruling, Chair.

MEAGAN McCOOL: We would look at the practice, like how the bench is set up, if there are water-fed tools, if there are vacuum-related tools or if there is dust accumulation. We know very clearly if dry cutting is happening when we enter the site. Whether that is on site or in an installation, it is very obvious. So if there is only a grinder and there is no water-fed tool or vacuum-related tool, straightaway, that is dry cutting. It is very clear to us.

The Hon. ROD ROBERTS: How do you find these sites to inspect?

ANTHONY WILLIAMS: I was just going to go to that point. That unfolds in a number of ways. We have a dedicated construction team for our metropolitan area and we have a dedicated construction directorate for our regional areas. A lot of these matters are identified just through our routine day-to-day work visits to construction sites, of which we do thousands each year. At those sites often they will have specific tasks to do, whether it is a program verification project we might have on foot at the time. When they enter that site not only do they do that but they may also make observations about other issues. Some of them can just be drive-bys. It

CORRECTED

could be what we call a high-risk work observation. They are literally driving by in their vehicle between sites and they will see something, pull over and stop. It could be someone on a roof or cutting, whatever the case may be.

From time to time we have people actually—members of the public report those matters to us. As you would appreciate, we now have our speak up app, which we heavily promote to the community. If they see somebody dry cutting a manufactured stone bench, we would love nothing more than for a member of the public—without putting themselves at risk—to take an image of that, send that to us and we can give that a very high priority and respond to that. The nature of the work, as I think we are all aware, is quite transient. Often the people doing the work with the benches can be there for a very short time. They might literally be on the site for half an hour or an hour to do the installation and then they are gone. So it can be difficult to identify. We do heavily rely on other members of the industry, on our inspectors just getting around and on the general public. We identify them in a myriad of ways. I hope that answers the question that you posed.

The Hon. ROD ROBERTS: That is all I have for the moment.

The Hon. LOU AMATO: Thank you for both being here today. It is nice seeing you both again. Earlier on, Ms McCool, you mentioned that a lot of companies are starting to install CNC machines and they are obviously in an isolated room. Is it a wet room?

MEAGAN McCOOL: It is generally motorised where, I guess, all the figures are put into the computer. That is the best way to describe it.

The Hon. LOU AMATO: And the person is outside usually away from—

MEAGAN McCOOL: It could be in the workshop, but it is in an enclosed space away from the workers. It is cut under water and it is obviously more accurate as well in the cutting because it is to the measurements put into the machine. We are seeing a big uptake of those machines in particular. But also in general when we are attending these workplaces, they are quite clean worksites. Safety data sheets are visible, there are hazardous chemical registers, RPE has been fitted and tested and training has been provided. In addition to the machinery, the other practices are coming 61 per cent towards standard and continuing to go that way. But it is a significantly different environment to the first round.

The Hon. LOU AMATO: How is the clean-up process operated?

MEAGAN McCOOL: There are two parts to that. I am not trying to avoid the second part of the question. It is bagged and the slurry is collected and includes any sort of dry material, which is vacuumed. I heard the questioning earlier today about what happens when it gets to, say, the tip or things like that and that actually falls under the responsibility of the EPA.

The Hon. LOU AMATO: I understand that.

MEAGAN McCOOL: I cannot answer those questions for you.

The Hon. LOU AMATO: When it comes to installation, how has that been regulated? The worker comes in, the installer comes in, does the job and off they go. Obviously there will be dust particles and so forth. I can see that is very difficult to regulate. What is in place? What sort of guidelines are there for the actual installer?

MEAGAN McCOOL: When we are inspecting the fabrication site, knowing that 85 per cent of the industry is controlled by that fabrication site, the people doing the installation, 85 per cent are connected to those sites—but at the end of the day they have to come to those sites to get the stone, so there is I guess a connection that we are very familiar with. When we are inspecting those workshops we are looking at all procedures right from end to end, so what are their controls in place for their installations. And at any time, as I said, we can say we need to see some installations occurring. It does not matter where in the life cycle of it being cut to size through to installation, with 85 per cent-plus being controlled by those workshops we can review everything and any notice issues applies to all steps of the process.

The Hon. LOU AMATO: That also includes any subcontractors they may have?

MEAGAN McCOOL: That is correct. The way the laws are written, it is a person conducting a business or undertaking. It does not matter if they are a subbie, it does not matter if they are subcontracting out a big proportion, it does not matter if they are a full-time employee, it does not matter if they are a visitor or work experience. Everything is controlled under the laws by that person undertaking the business. It does not matter where an issue happens in the chain, that principal person is responsible for the matter.

The Hon. LOU AMATO: An earlier witness mentioned there have been regulations in Europe for this industry since 2010. Why has it taken us so long to do something about it?

CORRECTED

MEAGAN McCOOL: There are regulations in place. You heard about the code of practice which is an enforced code or called up in the legislation. There is now in the legislation a ban on uncontrolled dry cutting. The exposure standard has been halved from 1.0 to 0.05. There are actually fines for failure to report a silicosis case and it is now compulsory for all diagnoses to be reported to NSW Health and then handed over to SafeWork to investigate. In terms of a regulatory landscape, they are the things that are in place just in relation to manufactured stone. As I said, that code of practice describing everything from the way you start the job to finishing the job is now enforceable in that document in terms of you need to meet that by equal or same value. That completely describes what is right and wrong in terms of operating in this industry.

The Hon. LOU AMATO: Would Fair Work have known about regulations that were used in Europe beforehand?

MEAGAN McCOOL: I could not specifically comment on—you did mention a country.

The Hon. LOU AMATO: If European countries already had regulations in place, and they were aware that there were serious issues with a particular product and obviously diseases caused to the workers, how come it took so long for us to realise that we have a problem? Is there a way that our departments in New South Wales can have overview of what is happening in other countries, like in the United States, the United Kingdom and Europe, to keep up to date with what is happening over there?

MEAGAN McCOOL: Of course we do look at that. I can comment from 2015 when I commenced in the role that they are the things that led us to developing this strategy, also way ahead of most of the other jurisdictions in Australia as well, including the four components, which was legislation, research and education. From that point in time, the cases were not coming through the data in that people might have been presenting to—particularly in the health system and we did not know about it, it was not looped in. That has now changed. We get diagnoses from—anywhere a person or any health related to silicosis comes to us in any industry, not just manufactured stone. From that 2015-16 we did a research project which did include what is happening overseas. From that point on that is when the strategy, which we have been continuing with since then. That is where I can comment on, from about 2015.

The Hon. GREG DONNELLY: Mr Williams, referring to a couple of aspects in your opening statement, I take you to page 4 and specifically under the heading "National Dust Diseases Taskforce". It states there:

In June 2021, the National Dust Diseases Taskforce Final Report was released. The Department of Premier and Cabinet (DPC) is coordinating NSW's contribution to the Australian all-of-government response. SafeWork NSW has provided its contribution to DPC. It is important that there is a national approach, guiding the relevant agencies to continue working together and ensuring consistency among jurisdictions.

In terms of "SafeWork NSW has provided its contribution to DPC", have you been involved in the development of that contribution?

ANTHONY WILLIAMS: Mr Donnelly, I might refer that to Ms McCool, who has been more involved with that process.

MEAGAN McCOOL: In terms of the comments, we went through all the recommendations and provided comment on the various things. Some of the things that probably stand out is that some of the recommendations recommend regulatory impact assessment to be done on some of those areas, so obviously the recommendation is not complete. It is that something will be considered as a result of, say, a regulatory impact statement. Those things there are welcome to make sure that decisions when they are made are the right decisions and are actually what will solve the problem.

The Hon. GREG DONNELLY: I particularly want to get to the point of licensing with respect to those entities that are in the industry of manufactured stone. We are aware of the history of the production of a report by this Committee and its recommendation number 8 which was not endorsed by the Government in terms of the establishment of that. What I am finding a bit challenging is that it seems that New South Wales, which is one-third of the Commonwealth in terms of its size and the economy of the Commonwealth, has its position on this matter of licensing hitched to the national process and the national outcome and is essentially moving with what happens nationally. That is what I understand is said there. Is it correct that New South Wales has in effect hitched its wagon to the national process and the national timetable?

MEAGAN McCOOL: To do any kind of licensing, as you know with the IPART processes, licensing is considered a last resort option that has to have a RIS, or a regulatory impact assessment. That assessment will determine across the country if it is the right solution. Things that will be assessed are regulatory and non-regulatory options, everything that is in the marketplace at the moment, including codes of practice.

CORRECTED

The Hon. GREG DONNELLY: Sorry, I do not wish to cut you off, but it was a very clear question. In a sense, the New South Wales position in terms of a licensing regime has hitched its wagon to what is the development of a position at the national level. Is that correct?

The CHAIR: Ms McCool, can I just confirm, you were providing some context before coming to an answer. Is that correct?

MEAGAN McCOOL: Yes.

The CHAIR: That is the way that I interpreted it.

MEAGAN McCOOL: Yes. For us to consider licensing as an option, we have to do a regulatory impact statement or a regulatory impact assessment. It is not necessarily attached to the national, in that being completed, but it is going to inform nationally. As Mr Williams talked about earlier, this is a national problem that needs to be resolved nationally so that there is not any deviation, particularly with workers that move around the States. For us, having the right decision made, the right solution—so if licensing is the right solution that comes out in that assessment, that will be considered by, obviously, the Government.

The Hon. GREG DONNELLY: Let me put it in another way then. We have a situation whereby you are aware that at least one other jurisdiction has got a licensing system in place, perhaps two. Does Queensland have one? Certainly Victoria has.

The Hon. MARK BUTTIGIEG: Yes, Victoria definitely.

The Hon. GREG DONNELLY: Let us take Victoria, which is the second largest State in the Commonwealth in terms of size, population and its contribution to the economy. The second largest State has a licensing system. You are aware of that, are you not?

MEAGAN McCOOL: Yes. So, it commenced in—

The Hon. GREG DONNELLY: Yes. Sorry, I am just moving through some questions. You are aware of that. It is not the case, is it, that in fact a State has to wait for a national position to be established on an occupational health and safety matter before it moves on it. That is the case, is it not? It does not have to wait, does it?

MEAGAN McCOOL: No. Victoria is not under the national legislation. For us under national legislation, we have to first take the issue to the national table and then if unsuccessful we can more or less go it alone. That process is in place, that it is on the national table being considered. In terms of Victoria that started in November, that was the beginning of the start in that there is a 12-month transitional arrangement, which is November this year. Hopefully, that impact assessment is there to either confirm or not confirm whether that is the way to go. If it is the way to go, then the systems will follow suit in licensing. But when you look at the licensing regime for Victoria, and you look at the requirements of what they need to do, they are things that we are already doing—checking operating procedures. And more or less what is defined in the code of practice is what essentially is their regime. So you have got a code of practice, you have got the requirements that are outlined in terms of enforceability and then you have got the assessment going on, from a national approach, about whether licensing is the option that should be delivered.

The Hon. ANTHONY D'ADAM: Isn't the difference there that, with a licensing regime, the manufacturers and those who are handling manufactured stone have to be proactive, whereas, with the regime that is in New South Wales, they just wait for the regulator?

ANTHONY WILLIAMS: No, they still need to be proactive. The legislation places obligations on all of those PCBU's to control their risks.

The Hon. ANTHONY D'ADAM: If they wait, what is going to happen to them? You are going to turn up and you are going to issue them with an improvement notice, aren't you?

The CHAIR: Mr D'Adam, I am just going to make the same point I did to Mr Roberts earlier, which is, when the witnesses are providing an answer, I would ask you to just wait until they have completed their answer. That way it is better for Hansard and also those viewing, and it allows procedural fairness for everybody involved. Mr Williams, you have the call.

ANTHONY WILLIAMS: Thank you. I would say that New South Wales as such is not opposed to any licensing scheme. That will be a decision for the Government. But there is a process, as Ms McCool has identified, that needs to be processed. I would make the point that, in terms of industry size, this industry—that is, the manufactured stone manufacturing industry—is fairly niche. That is, 255-odd sites is, in the scheme of things, when you compare it to other industry sectors, fairly small. We do know fairly accurately where they are and what

CORRECTED

they are doing, and we have a high compliance focus now on these workplaces. And the turnover in that industry is fairly slow, as we have seen in the last few years. So it is not a huge industry to necessarily require such a scheme, or the case that it would deliver great benefits as compared to much larger industry sectors where it is more problematic to regulate.

The Hon. MARK BUTTIGIEG: We might just tease our way back into that question of licensing through another route, if it is okay. I will just pick up on one of Mr Williams' statements about 255 sites. Just to be clear, this is sites where it is purely manufacturing of engineered stone, correct?

ANTHONY WILLIAMS: Correct.

The Hon. MARK BUTTIGIEG: My colleague Rod Roberts' point earlier is that potentially if we are talking about the incidence of exposure, including kitchens, people's houses and whatnot, do we have any handle on the sort of flux of those sites over time? Has there been any investigation or studies into what that might be at any one time? Because the actual problem properly defined is in globo, isn't it?

ANTHONY WILLIAMS: Yes, I am happy for Ms McCool to correct me on this but I understand something around 85 per cent of the people installing are actually linked to those workplaces. I do not know if you want to expand on that.

MEAGAN McCOOL: Yes, that is correct. Whether or not they are a direct employee or subcontracted, 85 per cent are connected to those workshops. But also, as a result of our site visits over the first and second round, 19 have since closed. So we are very clear who is in the market and who is not, and obviously those that have closed have not been able to meet our requirements.

The Hon. MARK BUTTIGIEG: But with the 85 per cent ratio you are suggesting, that superficially implies that you might have 300 sites in globo. But that is not the case, is it? Because you could have manufacturer doing 100 kitchens in a week. You can see the exponential nature of this, can't you? Isn't the problem to try and get a handle on those sites in globo. My question was quite specific. Do you have any study or research into what that might be at any one point in time?

MEAGAN McCOOL: I will just slightly change to a different angle to try and clarify, and if I have not answered it please ask me to explain again. We follow the stone. We know that there are only a certain number of importers and then that goes to a factory and then it has to be cut to size. We have got all of that information, with 85 per cent from that point still being connected to that site. Yes, there is a gap of 15 per cent but that 15 per cent is where we are talking to the sites, saying, "Where is the rest of the stone going?"

The Hon. MARK BUTTIGIEG: Thank you for that answer. Let us just focus on the 85 per cent that we know. You can actually go to the manufacturer and say, "Can you tell me where your blokes are working today because we want to go out and have a look?"

MEAGAN McCOOL: We can serve a section 155 notice, and we have done so, if we feel that it is within our powers and that we need to do that. We can issue a notice to anyone in that life cycle for information that we need, particularly if we believe there is a contravention of work health and safety or if it is for the purposes of protecting workers.

The Hon. MARK BUTTIGIEG: How many times that particular section has been utilised in the last couple of years?

MEAGAN McCOOL: I would need to take that on notice, but it has been utilised, particularly with all the suppliers.

The Hon. ANTHONY D'ADAM: In your answer you said you can issue the notice if you believe that there is a contravention occurring. So there has to be some prior information provided to SafeWork, does there not, in order for that to occur?

MEAGAN McCOOL: Not necessarily. If it is for the reason of protecting workers, we can serve a section 155, which is about information, any time or for the purposes of our inspection programs. If it is lawful and it is information we need to be a regulator and to enforce compliance, we can issue a section 155. Obviously, that can be appealed if they believe that information is not lawful. But we can issue a notice if we believe there is information that we need to—

The Hon. ANTHONY D'ADAM: Is that now a routine process for this industry? Are you routinely issuing those notices?

CORRECTED

MEAGAN McCOOL: No. Probably more so in terms of establishing a lot of the industry trends. They were issued in the early stages. But generally the industry has been very forthcoming with information and very cooperative in our visits, and we are securing compliance through those channels.

The Hon. ANTHONY D'ADAM: Would it not be better if the onus rested with the industry just to supply the information rather than forcing the regulator to constantly be proactively trying to extract the information?

MEAGAN McCOOL: Of course. If industry are willing to provide us information, of course. But where we need it and it has not been—

The Hon. ANTHONY D'ADAM: But you would get that information if you had a licensing system in place, would you not? Because then they would be required to provide it.

The CHAIR: Mr D'Adam, apologies. I just ask again that we allow one answer to finish before we talk over the top.

The Hon. ANTHONY D'ADAM: Wouldn't a licensing regime then provide you with that information in a routine way?

MEAGAN McCOOL: I think we have explained the number of regulatory options and a number of regulatory powers that we have available. Obviously a one-solution approach—if it is licensing, it is licensing. But I do not feel that we are impeded in our work as a regulator in what we have been doing in terms of improvement in compliance. The powers we have at the moment are securing the compliance as intended. Obviously, if the decision of the Government is to introduce things like that, then that is the next step. But we have powers to be able to move that industry to a 61 per cent improvement with what we have at the moment. That code of practice has been very welcomed. There is no grey. Either you comply this way in terms of the way you work or you are not complying. Different sites might have had different ways of doing things. That code now settles that, in that this is the way that you are to work safely in the manufactured stone industry.

ANTHONY WILLIAMS: I know the question was asked previously about how we identify those work practices that are putting workers at risk, and we do that in a myriad of ways, as I said before. By way of example, should we start to receive intelligence from the community or from other businesses that we have, in stores, dry cutting haphazardly on work sites, and we started to see a link back to one supplier, that is the sort of circumstance where we may then issue a section 155 to that installer to understand where they are installing, and we will start to visit them. They will then get a much stronger and more focused regulatory response to others. So it can often be very driven, and we see that not only in this sector but other related sectors where we use that power where we start to form the view that we have a PCBU that just is not doing the right thing. The statement was also made before about wanting to get the cowboys out of the industry. We also want the cowboys out of the industry. One thing we do call out in our road map strategy document is that we want to play a role in creating that level playing field. We do not want installers and suppliers undercutting each other by making their workers take risks.

The Hon. ANTHONY D'ADAM: In budget estimates hearings on the issue of trying to shut down the cowboys, you said, "We don't shut down businesses or sites; we shut down processes."

ANTHONY WILLIAMS: Yes.

The Hon. ANTHONY D'ADAM: Under the current regime, if you have a non-complying, recalcitrant employer you will shut down processes but you cannot actually deal with the core problem. Whereas if you have a licensing scheme, surely you can then cancel the licence. You can take them out and they cease to be able to operate as a business. Is that not a much stronger regulatory approach?

ANTHONY WILLIAMS: If I can use a practicable example, if we do identify people dry cutting—to cut power points or whatever it is on a construction site—and we issue a prohibition notice to stop that, it effectively stops that business. Now that notice might not be to shut down the business as such, using those words, but it will stop that task until such time that we are satisfied that they have improved their processes to the point where the inspector has formed the view that they can recommence that. It effectively does stop their installing, so it does a similar thing.

The Hon. MARK BUTTIGIEG: I think my colleague's point is that you might have one dry cutting process in one kitchen or site that occurs where you have issued a prohibition, which stops that particular activity but it does not stop the business from engaging in other work. A licensing system would do that because effectively if you lose your licence, you lose your ability to operate. Let us go back there in a little while. I want to explore some of the evidence in response to my colleague's questions. Ms McCool, I know you said you would take it on notice but I want to ask you to follow up on section 155. Are we aware that any have been issued whatsoever?

CORRECTED

MEAGAN McCOOL: Yes. There have been some recent ones as well, but we can definitely pull them out for you and explain who they were issued to and the reasons for.

The Hon. MARK BUTTIGIEG: Great. So we have a clear understanding of the hierarchy, if you like, of the punitive approach, the first step is, what, an improvement notice? If I were engaged in uncontrolled dry cutting, would the first step be an improvement notice or could I go straight to a fine?

MEAGAN McCOOL: No, it has always been a prohibited practice. Even before the on-the-spot fines, a prohibition would be issued, which stops the work. The other thing is a prohibition is never lifted. You could change your practices so you are not dry cutting, but you can never go back to it. To breach a prohibition is a \$100,000 penalty in terms of it is prohibited and banned, particularly if you breach the prohibition. If you breach the on-the-spot fine, it does not have the same—as I said, normally we can issue prohibition and the on-the-spot, but the prohibition actually prohibits the behaviour and makes it very clear. Also, if there is a repeat offence of that prohibition, that can result in a 100 grand penalty.

The Hon. MARK BUTTIGIEG: The prohibition is on the act of dry cutting? So if you continue with wet cutting, that process is okay?

MEAGAN McCOOL: Without getting into too much technical information, you need to be cutting the stone by what we call "controlled cutting", which is either with water or a vacuum. It is controlled at the source to basically capture that dust. If there is no evidence of those things in place, then essentially it is a prohibited practice.

The Hon. MARK BUTTIGIEG: Yes. To be clear, the prohibition note is on the original uncontrolled cutting? If I subsequently right my wrongs and start vacuuming or wet cutting, it is okay for me to continue to do that process. Is that correct?

MEAGAN McCOOL: That is correct, because you are now compliant.

The Hon. MARK BUTTIGIEG: Okay. Beyond that, when does the fine kick in? What makes you give a fine if you have issued a prohibition notice?

MEAGAN McCOOL: Essentially, as I said, if it is a contravention and it is a clear breach, obviously the inspector forms their opinion and then they can issue that straightaway. There is nothing in terms of any—particularly the on-the-spot fine, as I said, that is \$3,600. But the prohibition, as I said, is generally issued as well because then you have the two angles of compliance. With or without that on-the-spot fine being introduced, we were already prohibiting the behaviour and we can prohibit that in any industry as well.

The Hon. MARK BUTTIGIEG: But, in theory, you could issue the \$3,600 fine without the prohibition, could you?

MEAGAN McCOOL: You could, but it is still a contravention if it is a repeat breach.

The Hon. MARK BUTTIGIEG: To be clear, that \$3,600 is directed to individuals and/or ABNs or whoever the person is or the entity doing it?

MEAGAN McCOOL: It is generally issued to the person conducting the business or undertaking, regardless of who did it. It is not necessarily issued to the person doing it specifically, unless of course they own the business. So it is issued to the business.

The Hon. MARK BUTTIGIEG: If I am Mark Buttigieg working for Caesarstone and I do this on four occasions, Caesarstone could get four fines of \$3,600?

MEAGAN McCOOL: Which could then result in further action, so that could end up in a prosecution. Essentially, as you know in our hierarchy of compliance, as I said, we escalate repeat offences.

The Hon. MARK BUTTIGIEG: Those two fines were two in the space of—where are we?—1 July 2020. So almost two years: two fines in two years. Were they as a result of people proactively reporting or was it as a result of SafeWork going out and checking?

MEAGAN McCOOL: I would need to take that on notice with the other question. We can pull apart what they were for, who they were to and whether it was proactive or reactive.

The Hon. MARK BUTTIGIEG: The flavour of the submission from SafeWork is that there is a number of—and I grant that there seems to be quite a bit of activity in this area—education webinars. We have heard about the site visits. It is what I would characterise, in my interpretation, as an ameliorative approach or a reactive approach, if you like. But going back to my colleague Mr Donnelly's questioning around the licensing regime, does SafeWork in principle support the concept of a licensing regime a la Victoria, notwithstanding your caveats

CORRECTED

about the impact to the regulatory impact statement and the national approach? Let us assume that that came back okay. Do you support a licensing regime?

MEAGAN McCOOL: On that assessment, if the assessment is that it is the right regulatory tool, of course we would support it, but it is a decision of the Government.

The Hon. MARK BUTTIGIEG: Just to clarify again that line of questioning from my colleague, the point Mr Donnelly was making is that New South Wales has taken a conscious decision to go under the umbrella of that national approach with the regulatory impact statements and all the rest of it, but clearly there is an alternative path, which the Victorian jurisdiction has taken and gone out on their own, to use your words. Do you have a view on whether or not that would be appropriate in New South Wales?

MEAGAN McCOOL: As I said, for us it has to go to the national table, and that is exactly where it is right now. So that is—

The Hon. MARK BUTTIGIEG: Just to clarify: It does not have to, does it, clearly because—

The CHAIR: Ms McCool was answering.

The Hon. MARK BUTTIGIEG: Yes, sorry. Apologies.

The CHAIR: When the witness is answering, we allow them to finish before we start again. Ms McCool, you have the call.

MEAGAN McCOOL: Thank you. In terms of Victoria, as I have mentioned before, are not under the national legislation, so they are not bound by the requirements as New South Wales are. For New South Wales, we have to take any issue of change, because we are tweaking what the national law says, to the national table. It is only when the nationals either do not agree with us or we do not get majority vote that we can then go it alone. The process it is at now, it is at that national table. Essentially, if it is positive or negative, as I said, if it is negative then New South Wales has the decision if they want to go it alone. But at the moment we do not have that ability to do so until the national decision is known.

The Hon. ANTHONY D'ADAM: Did New South Wales bring it to the national table? Which jurisdiction actually raised it in the national ministry or council?

MEAGAN McCOOL: It was through a national task force. There were a whole lot of different members. There were doctors. There were regulators. There was industry. I was not personally on that national task force but there was a member from Safe Work Australia on that panel, but we would have to go through the communiques or request that through that national task force.

The Hon. MARK BUTTIGIEG: I am just trying to understand the legislative interaction whereby Victoria seems to have got autonomy to do its own thing but New South Wales cannot. Did you want to tease that out for me?

MEAGAN McCOOL: We adopted the harmonised laws in 2012. We signed up then through an intergovernmental agreement, where all the jurisdictions except Western Australia and Victoria signed up. Western Australia have slowly come into the harmonised arrangements but Victoria has stayed without. A lot of their laws mirror our laws. But way back the Government decided to adopt, under an intergovernmental agreement, those harmonised laws to make it consistent around the country in relation to work health and safety so that, no matter where you worked, the same requirements apply. We have remained true to that process since 2012.

The Hon. MARK BUTTIGIEG: By virtue of the 2012 opt-in we have locked ourselves into this national approach, is essentially what we are saying?

MEAGAN McCOOL: That is correct.

The Hon. ANTHONY D'ADAM: I have further questions, unless there are others who want to have a go.

The CHAIR: We have about 10 minutes until we are expecting the arrival of the Senate candidate. I will allow you to continue, and then I will see if there are any more on the other side before we get to two o'clock.

The Hon. ANTHONY D'ADAM: Earlier in the proceedings, I asked the witnesses whether they had received training or onboarding in relation to the safety requirements of handling manufactured stone. Their evidence was that they had not. What mechanisms are being put in place to ensure appropriate training is being delivered to the workforce in the industry?

CORRECTED

MEAGAN McCOOL: Through those site visits, it is a key duty that people are trained, instructed and know what they are working with. That is a duty. Where all those notices have been coming from is where there has been a failure of those duties. Out of the 220 cases where people have been diagnosed with silicosis, not just in the manufactured stone industry but since 2017, we have reviewed each and every one of those situations. How did it happen? Who did they work with? Where did it go wrong? As Mr Williams mentioned in the opening, 16 have gone to a full investigation, seven have since been closed, seven are ongoing and two are actually being filed in court, so they are on foot at the moment.

The Hon. ANTHONY D'ADAM: Coming back to the training question, in a practical sense, how is that maintained? There are no specific training requirements, are there, in terms of handling manufactured stone for individual workers? What are the specifics of the requirements that are imposed on a duty holder in—

MEAGAN McCOOL: There are two things. The code of practice is your rule book. Workers need to be trained on what that code of practice is in terms of what compliance looks like and how to work safely with the stone. That is one aspect. The other aspect, which was way back when we had the task force in New South Wales—one of the recommendations was to get a national unit of competency, and we have been successful in securing that with the national industry skills council. Not only is it a standalone unit but that unit is going to be used in any trade course, whether you are a bricklayer, a concreter, a landscaper or a manufactured stone worker. By simply having that standalone unit available, it is available to any workplace and it meets a national requirement on how to work safely.

The Hon. ANTHONY D'ADAM: There is no mandate for that training, is there?

MEAGAN McCOOL: Not at this point.

The Hon. MARK BUTTIGIEG: Can I just follow up on that? If I am going to cut stone as part of my livelihood or as part of my trade, so to speak, there is no requirement for me to do those units of competency?

MEAGAN McCOOL: No. When we ran the task force, that became very obvious very early on. We looked at all elements of government, whether it was the health sector, SafeWork or the education sector—all the way through the chain. There was a gap of where is silica being spoken about in trade courses or any sort of formal training. That gap has been closed, but that unit is available for people to access.

The Hon. MARK BUTTIGIEG: I would use the analogy of other trades, for example, plumbing or electrical, where you have a licensed and qualified regime that is called up in the legislation. Is that not the utility that you have to do those units of competency again?

MEAGAN McCOOL: Equally, you could look at why license? Why not mandate the unit of competency? Now that we have got the code of practice, that is mandated. That is what—

The Hon. ANTHONY D'ADAM: Could that be done now?

MEAGAN McCOOL: —those assessments are looking at. There is a range of regulatory and non-regulatory options to be assessed as to what will this licensing bit do? It might be that there is something else. As I said, it could be mandating that unit of competency. That is what this assessment is going through to ensure that the decision made is the right one that will solve the problem.

The Hon. MARK BUTTIGIEG: Can you understand the frustration of participants in this industry, particularly the witnesses we heard from this morning who have suffered physically and materially from this? While we wait for regulatory assessments, inquiries, hearings, reports and national task forces, people are actually dying and suffering from this. The public looking in on this would think that we actually need to get out in front of the game—just bite the bullet and do it. I am not blaming—you are constricted within the parameters of what government tells you you can and cannot do, but can you see the frustration with politicians like ourselves and people like this who are suffering with this?

MEAGAN McCOOL: Yes, 100 per cent. Not a day goes by when we go home from work having a great day. This is hard work. We cannot offer enough to these workers that have been impacted. It is not okay. Our condolences go to them. What we are doing, as I said, is improving the industry for where it is now and for the future. We do not have the disease personally, and I cannot imagine having that disease, but in terms of the work we do, we are going at it and we have not lost sight of it in the time that we have been given this opportunity to close this gap on this industry.

ANTHONY WILLIAMS: If I could clarify, just to further add to the education question, if our inspectors form the view that workers are clearly not trained appropriately to do the work they are required to do, notices will be issued in relation to that. There is not a total void there in terms of workers not being afforded the

CORRECTED

appropriate training. There is a general obligation for workers to be provided with the skills they need to do that work and do it safely. Our inspectors will not hesitate to use their tools to secure that as required.

The Hon. ANTHONY D'ADAM: How does an employer demonstrate that their workers have been trained?

MEAGAN McCOOL: There has to be evidence. There has to be records, whether that is they have shown training certificates, they have shown what they did on site or even toolbox talks—everything. We collect all evidence and then we would determine whether it is adequate or not.

ANTHONY WILLIAMS: If they are competent.

The Hon. ANTHONY D'ADAM: How can you be sure that the training is comprehensive? In the absence of some licensing scheme or a certificate of competency being issued to an individual worker, you cannot be sure, can you?

MEAGAN McCOOL: We are also watching the practice. While we are there, we are watching the work being undertaken and that it is being done safely in accordance with the requirements and, now with that code of practice, that it is done to standard.

The Hon. ANTHONY D'ADAM: It is a relatively volatile industry, isn't it? From accounts that I have heard, there is a high degree of called community participants and a lot of people circulating through the industry. How can you be sure that the workers who are potentially exposed to this hazardous material actually have the requisite knowledge to protect themselves? You cannot be sure, can you?

MEAGAN McCOOL: All of our materials are translated into the languages that match that industry. We take interpreters, if required. We have done and will continue to do. In terms of ensuring that anyone at risk in that industry receives the same attention from SafeWork, we use interpreters and continue to use them. We have translated materials. There are a number of tools, including our website. You click on the language, and it converts to the language for that worker.

The Hon. ANTHONY D'ADAM: We received evidence in the earlier hearing around the obligations to notify in the case of asbestos, if the monitoring indicates that the levels of exposure are higher than permitted. There is no comparable requirement in terms of silica particle detection—

MEAGAN McCOOL: No, and there is not one for asbestos either.

The Hon. ANTHONY D'ADAM: —being required to be notified to the regulator, is there?

MEAGAN McCOOL: No, not with asbestos. There are clearance certificates that are done on site where essentially once it is removed a licensed asbestos assessor would assess that it is within requirements and issue a clearance certificate. But, as I said, there is no notification for asbestos or silica around the exposure standard.

The Hon. ANTHONY D'ADAM: Clause 475 of the Work Health and Safety Regulation requires air monitoring notification.

MEAGAN McCOOL: Yes. So clearance certificates?

The Hon. ANTHONY D'ADAM: Yes.

MEAGAN McCOOL: Is that the section?

The Hon. ANTHONY D'ADAM: The evidence from the Australian Institute of Occupational Hygienists was that:

Clause 475 describes that air monitoring is required immediately before and during the removal of licensed asbestos work—that is correct—

Clause 476 then outlines that if respirable asbestos fibres are recorded to be over 0.02 fibres/ml, then the work must stop, the regulator must be notified ...

There is no equivalent requirement in terms of respirable crystalline silica, is there? If a workplace is conducting air monitoring and the detection indicates levels above the mandated minimum, then there is no requirement for the regulator to be alerted to that, is there?

MEAGAN McCOOL: No. It is a requirement, though, in the law that no exposure standard should be exceeded, so there is a penalty in that respect. But in regard to air monitoring for silica—and you might already be familiar with it—the samples are taken over the course of a week and sent to a laboratory which takes over a month to come back, so the work is being continued in that period. What I mentioned earlier about the research

CORRECTED

we are doing, we will have in market by June a real-time silica detector that will go on the wall. There will be rebates available to make it something to purchase and that will actually set off an alarm in situ while the work is being undertaken. That is the space that we are in at the moment in relation to it. But in terms of air monitoring right now, the results are taking up to about a month because an occupational hygienist must be used. They have to monitor it generally over about five days. It is sent to a laboratory, so it is about a month for that process to happen.

The Hon. ANTHONY D'ADAM: Either way you do not hear about it if they have exceeded the standard, do you, as the regulator?

MEAGAN McCOOL: No. That was a task force recommendation that we presented to Safe Work Australia.

The Hon. LOU AMATO: That technology is already out, is it not, where they can measure it on site? It is already out, is it not?

MEAGAN McCOOL: No, it will be in market around June this year. We have procured that through a research project.

The Hon. MARK BUTTIGIEG: Ms McCool, on that section 155, I have had that spreadsheet that you attached. According to the analysis I have had done, they can only see three section 155s listed in round two. What was the operable time frame for round two? Was it 2020?

MEAGAN McCOOL: That would probably be close to the mark.

The Hon. MARK BUTTIGIEG: So three section 155s listed but all non-silica is the information I have. Does that surprise you?

MEAGAN McCOOL: I would have to look at the data. I do not have it in front of me to be able to comment. What those section 155s were actually for, they could have been quite far reaching in terms of what they collected. But I have taken it on notice to—

The Hon. MARK BUTTIGIEG: The concerning thing is that they are saying that the 155s were all non-silica related, so they have not even issued any for silica. That spreadsheet contained multiple substances; it was not just silica.

MEAGAN McCOOL: Yes. However, without having the information in front of me, there have been section 155s issued also on the suppliers. They are not a site; they are not a fabricator. There have also been them issued on the supplier, the ones that have brought the stone into the country, and that has been issued twice now.

The Hon. MARK BUTTIGIEG: The suppliers were not in that spreadsheet, were they?

MEAGAN McCOOL: No, because the request for us was the compliance of the 255 sites and that is all that that is representing. But we can broaden that response on notice, if you want us to, to all section 155s, but we have issued them also on suppliers.

The Hon. ANTHONY D'ADAM: Can you elaborate on the current requirements around health screening and ongoing health monitoring? Can you explain what the current requirements are?

MEAGAN McCOOL: It is probably more of a question for icare this afternoon; however, in terms of our—

The Hon. ANTHONY D'ADAM: No, in terms of the obligations on employers to—

MEAGAN McCOOL: Yes. The code of practice defines how often a person should be screened. In terms of our visit program, because of the nature of the risk, we enforced and issued notices for all workers to be screened. We have done that. Generally, as I said, the code now defines for that industry how often they should be screened. It is basically at commencement of employment and then periodically based on the code in terms of frequency. But if you are being screened by icare whether through the lung bus or at their clinics, which is the majority of people, you are then on their database. They are then in a program of being contacted that they are also due for screening through that way. At this point in time, as I said, we have screened 1,152 workers, which, as I said, is showing that 77 per cent of those that, unfortunately, have the disease were at 1 per cent, and out of that, as I said, you are looking at about 7 per cent of the manufactured stone industry having developed silicosis as a result of their work.

The Hon. ANTHONY D'ADAM: Every site that was visited or every site that was identified by the suppliers received a notice requiring them to get their workers screened. Is that correct?

CORRECTED

MEAGAN McCOOL: Yes, unless they had already screened them. A lot proactively have been doing that, and icare offered that screening at no cost.

The Hon. GREG DONNELLY: Can I ask both of you together, do you report separately or together directly to Ms Rose Webb in your organisation?

ANTHONY WILLIAMS: Rose Webb has retired. Natasha Mann is now the deputy secretary of the better regulation division.

The Hon. GREG DONNELLY: Do both of you report directly to her?

ANTHONY WILLIAMS: I report directly to Rose, and Ms McCool—

The Hon. GREG DONNELLY: To her successor.

ANTHONY WILLIAMS: Sorry, to Natasha Mann, and Ms McCool reports directly to me.

The Hon. GREG DONNELLY: I have a piece of correspondence I would like to take you to and ask a question if you do not mind.

ANTHONY WILLIAMS: Is that this one here?

The Hon. GREG DONNELLY: Yes. It is actually a copy of what is a significant piece of correspondence that Rose Webb was cc'ed into. It goes back to October last year. I want to draw your attention to the second page which has the list of cosignatories. I will allow you to review who was on there. There is quite a significant and rather impressive list of pretty well-known and highly regarded organisations and some of the names and some of the signatures are probably familiar to you. There are, particularly in the medical area, some very well-known clinicians. Taking you back to the first page, Ms Webb was cc'd into the piece of correspondence. We do not have time, because we are pressed, to go through the content and the attachment in detail but can I summarise it in these terms. It is almost, if we can describe it this way, a call to arms, so to speak, to deal with this issue.

We have been dealing with this now for a period in terms of understanding that it is not just a potentially clear and present danger. It is a clear and present danger, and I have to say it was particularly moving this morning to have two gentlemen give evidence who, to be quite honest, have been significantly affected by this and perhaps, to be frank once again if I may, their lives may well be shortened as a direct result of this contraction of silicosis. You probably would not be surprised if we are a little bit edgy in pushing to find out how we can move this along, so to speak, hence the fact that we are inquiring into this matter again. It does strike us, and I speak for myself but perhaps other Committee members can speak for themselves, that this actually needs a sharper edge to it moving it along quicker than it otherwise is because we have, particularly, all those that have been affected up to this point and looking backwards but then we have at the same point looking forward the potential for individuals to be contracting silicosis. We need to be dealing with both at once.

As I see it, the notion of actually having a licensing scheme—and through that one would have an ability to track the workers that work for those entities that retain and hold a licence—would create a sense of what is the universe of what we are looking at, the universe of the problem or the issues potentially there. That is why I am sort of quite befuddled by the fact that New South Wales has not proceeded with this. I understand there is the connection to the national approach but, without exaggerating it, people are actually dying from silicosis. If that does not move us all to want to try and deal with this and move things along quicker than I think is the case, what does?

MEAGAN McCOOL: As I said, we are in agreeance with that. Just looking at this letter and just quickly digesting what it is talking about, this letter reads to me that it has acknowledged the work in the manufactured stone—or engineered stone, as some call it—industry, but it is asking for it to go broader into all industries and having regulation across basically wherever silica exists. I can tell you that that is a discussion that is ongoing. The only issue with the other industries is they are performing a lot different, a lot better. But silica is in pretty much anything that is sand based, if that is the direction to head in. But we cover all industries no matter where they are.

There are, as I said, various extra things that have been applied to the manufactured stone industry, which everyone has acknowledged needed the most attention, but certainly the eyes are on anywhere that silica belongs, because, as you know, it is in bricks, it is in concrete. Natural sandstone is also in the 90 per cent silica, and that is nothing we can move from the earth's crust. That is just how it is. So sandstone is actually sitting really high with manufactured stone, but also the manufactured stone suppliers are starting to make it with lower concentrations. But I think what this letter is saying, if I am reading it correctly, and quickly, is that anywhere that silica exists it needs to have a portfolio on how it is to be managed. That would be my understanding.

CORRECTED

The CHAIR: Could I suggest to the witnesses for procedural fairness, given that it is a detailed letter, if you are seeking to provide a detailed response, perhaps it is better to be done on notice, because I think procedural fairness dictates that we cannot just provide you a document of three pages and expect you to absorb it and then respond to that immediately. I know Mr Donnelly is extremely fair on this. If there are detailed questions, perhaps it is better they are taken on notice.

MEAGAN McCOOL: I appreciate that.

The Hon. GREG DONNELLY: What I am getting at is that we, collectively, have a significant issue here. I understand from earlier comments about putting into perspective in the whole scheme of things matters to do with particularly where manufactured stone fits into the whole range of matters that SafeWork deals with, but what I am saying here is that it is quite a genie out of the bottle here, is it not, if I could put it in those terms? It really is inviting some pretty serious reflection about the full understanding of the lengths, widths and breadths of this and to really understand that it is deadly, potentially and actually. I do not know what one does to drive that home any stronger than actually putting it in those bold terms.

MEAGAN McCOOL: Yes. What I can assure you, with around 40,000 chemicals in Australia, and I will have to get the exact number, there are around 18 or 19 that are listed as the most hazardous. Silica is on that list, so it has an exposure standard against it for those reasons. So it is not that it is not important. As I said, it is in the list of the most hazardous in the country, knowing that it is also in natural product.

The Hon. MARK BUTTIGIEG: What does it cost for those air-monitoring units?

MEAGAN McCOOL: If an occupational hygienist came in, their costs to do it for you are anywhere from \$10,000 plus, and that is just once. So if you came back again or if you were doing it once a year or however often, the cost of this real-time detector is looking at around the \$18,000 mark as a one-off, with a rebate from SafeWork and a rebate from the supplier to bring that down a bit. So the ballpark is looking like \$15,000 or \$16,000, meaning a one-off purchase, and it is detecting it all day, every day in real time and it sets off an alarm if it is being exceeded.

The Hon. MARK BUTTIGIEG: So in the interim is there any assistance for the one-off air monitoring cost to defray that to business?

MEAGAN McCOOL: Not at this point.

The Hon. MARK BUTTIGIEG: So none currently, and if and when—you sound pretty confident this is going to come to market relatively soon—

MEAGAN McCOOL: Yes.

The Hon. MARK BUTTIGIEG: —there will be an out-of-pocket expense to the business of around 16, post rebate.

MEAGAN McCOOL: Yes. If I can just quickly add, then further research over the next two to three years to make it a wearable device on workers—that research is ongoing. But the gap in the system was getting those results in real time and then waiting a month for it, where work has been continuing, and it is sometimes hard to identify, "Well, where did it actually happen?" So this, as I said, is where we have been very active in this space to bring things into real time so that people are stopped when the exceedances are occurring.

The Hon. ANTHONY D'ADAM: Just one more question?

The CHAIR: Very quickly, Mr D'Adam.

The Hon. ANTHONY D'ADAM: Coming back to that question around the health screening, when you issued the notice, what provision were you actually relying on if there is no specific obligation on the employer to conduct health screening?

MEAGAN McCOOL: I am just going to go off the top of my head, I think it is clause 376. I could be wrong.

The Hon. ANTHONY D'ADAM: If you want to take it on notice, that is fine.

MEAGAN McCOOL: Yes, I can take that on notice. It prescribes that when there is harm or risk we can direct health monitoring, particularly if we believe the exposure standard is being exceeded.

The CHAIR: With that, I will draw this session to a close. Mr Shoebridge has missed his call. For the questions that have been taken on notice, the secretariat will be in contact with you and you will have 21 days to table answers to those.

CORRECTED

(The witnesses withdrew.)

(Short adjournment)

CORRECTED

Mr ADAM DENT, Chief Executive, State Insurance Regulatory Authority, affirmed and examined

Mr RICHARD HARDING, CEO and Managing Director, icare, affirmed and examined

Dr NICK ALLSOP, Group Executive, Lifetime Schemes, icare, affirmed and examined

The CHAIR: Welcome back everybody to the final session of today's hearing. Would any or all of you like to make a short opening statement? I will invite Mr Dent to kick off.

ADAM DENT: Thank you, Chair, and thank you to the Committee for inviting me to attend today. I was appointed as Chief Executive of the State Insurance Regulatory Authority in July last year and it is in that capacity I am here today. The dust diseases scheme plays a significant role in supporting the quality of life for workers whose occupation exposes them to hazardous dust. That role extends to their dependants. The scheme assists with compensation benefits, medical and health care, and support services including domestic assistance and mobility aids. The scheme acts as a critical social safety net for the people of New South Wales who suffer from dust diseases. The dust diseases scheme is not subject to independent regulation of claims, conduct or prudential functions. SIRA plays a relatively limited role in the dust diseases scheme and it is one defined in the Workers' Compensation (Dust Diseases) Act 1942. The Minister for Finance is the responsible Minister.

SIRA's regulatory role in relation to the dust diseases scheme is limited to two specific functions. Firstly, SIRA's role is to determine the contributions to be paid by insurers to the Workers Compensation (Dust Diseases) Fund. Icare acts for the Dust Diseases Authority and manages the dust diseases fund. SIRA's second function is to index the compensation payments for dust diseases—broadly based on the Workers Compensation Act 1987 provisions for exempt workers—and death benefits prescribed in section 8 of the Workers' Compensation (Dust Diseases) Act 1942. Beyond this, SIRA is actively engaged in supporting both national and State prevention initiatives. SIRA supports national strategies focused on occupational lung disease and is a member of—and I now chair—the Heads of Workers' Compensation Authorities of Australia and New Zealand, and Safe Work Australia's workers compensation Strategic Issues Group.

At a State level, SIRA collaborates with stakeholders including the Dust Diseases Authority, SafeWork NSW and NSW Health to support programs of work related to silicosis. Following the recommendations made in the 2018 review of the dust diseases scheme by this Committee, SIRA commissioned research and liaised with key stakeholders regarding updating the list of compensable dust diseases contained in schedule 1 of the 1942 Act. The research work undertaken by Professor Tim Driscoll, who is known to this Committee, was finalised in September 2021 and the report recommended five additional dust diseases be considered for inclusion in the schedule. SIRA has provided icare with all of the evidence and actuarial documents that were requested by this Committee for it to consider and provide advice to the Government on any proposed amendments to the dust diseases schedule. We will continue to support icare with any requested and proposed amendments. I look forward to seeing this work progress. I thank you again for the opportunity to support the Committee with its inquiry.

The CHAIR: Thank you very much, Mr Dent. Mr Harding, would you like to make your opening statement?

RICHARD HARDING: Thank you. Good afternoon, everybody. Again, thank you all for the opportunity to be here today to discuss the important work icare does for the people who are part of our Dust Diseases Care scheme and for those who have been exposed to hazardous dust in New South Wales workplaces. Firstly, to the financial position of the scheme. When the scheme commenced almost 100 years ago, it had no assets, other than a small operating float. The design of the scheme was such that the contributions collected from employers would cover the cost of paying the entitlements and the administration costs of the scheme each year. Due to this pay-as-you-go design, the funding ratio does not reflect the financial viability of the scheme, as it will always collect contributions to balance outgoings, and this is enshrined in the legislative design.

Due to differences between the estimated and collected contributions and the cash outflows over the years, the scheme has accumulated assets over time. These have grown, with investment income, to the point where the scheme now has \$1.2 billion in invested assets. These assets, and the associated income, benefit scheme stakeholders including: employers in New South Wales, by offsetting their contribution requirements; the victims of dust disease and their dependants, through more empathetic processes and enhanced entitlements; the Dust Diseases Board, through investment in research; the Dust Diseases Tribunal, through supporting their operations and the build of new digital solutions; and SafeWork NSW, through the co-investment in real time silica detection research and supporting their awareness campaigns.

The financial position of the scheme has also allowed the remediation of past compensation without passing the cost on to employers. The remediation program stemmed from the past misinterpretations of the 1942

CORRECTED

and 1987 legislation around entitlements. Icare did not create this decades-old issue, but we are fixing it. All current workers have been contacted and payments of \$9.6 million have been made to date. The executors and beneficiaries of deceased estates are currently being contacted and payments are being made in accordance with wills and other instructions. An additional \$1,000 has also been provided to each impacted person or estate to assist with advice around the payment. This process is almost complete, with final contacts and payments to be made by the end of June.

There has been some recent media attention around the potential growth in silicosis claims, particularly given the popularity of manufactured stone products and the significant number of tunnelling projects in New South Wales. This is a significant concern to all of us. It is important to note this is often a slow-moving condition and its true magnitude may not be known for a number of years. I can speak to the current data, however. Icare, in partnership with SafeWork, has been to every manufactured stone workplace in New South Wales offering a comprehensive subsidised screening service, an education program on risks with silica dust, guidance materials for minimising risk of exposure, and vocational support for those who wish to leave the sector. The screening program identifies people working in the sector with early signs of silica-related diseases.

Prior to 2019, the scheme accepted an average of nine silica claims a year. Today, this is around 40. There was a spike in claims in 2020, following an extensive awareness campaign and increased screening. Case numbers are not expected to increase significantly in the near future as many cases have now been identified and brought forward. Improved awareness should lead to more effective preventative measures in workplaces. As a result, we are not anticipating an impact to premiums in the short and medium term because of silica disease. It is worth noting that 95 per cent of participants of the scheme are related to asbestos diseases. It is a matter for both State and Federal governments to consider further preventative measures and actions on dust diseases.

Our comprehensive subsidised lung screening program conducts over 4,000 tests each year, including, as I mentioned, making tests available to every manufactured stone workplace across the State. Our screening program includes the mobile lung bus—taking the testing right across New South Wales—the specialised clinic in Sydney, as well as leveraging external providers. Medical screening examinations are provided free of charge for any New South Wales worker who believes they are at risk from past exposure to hazardous dusts in their current or past employment. All workers exposed to manufactured stone dust are provided a CT scan. Workers who choose to leave the industry after being exposed to hazardous dust are referred to a vocational rehabilitation provider to undertake a vocational assessment. This helps the worker identify suitable alternative work and provides ongoing support to ensure their goals are achieved. Workers who get a job that pays less than their silica industry employment are entitled to receive make-up compensation payments.

In addition to this important work, 37 research and innovation grants worth nearly \$8.5 million have been approved by the Dust Diseases Board in the past five years. The dust diseases scheme is currently supporting around 1,300 workers with approximately 300 new cases each year. In addition, over 3,000 dependants are supported under the scheme. Around \$120 million in entitlements is paid to these victims of dust-related diseases each year. It is a privilege to be able to support these people. The dedicated and passionate team at icare are deeply committed to helping people in their hour of need and providing them with the support they need to live, and in some cases die, with dignity. We look forward to supporting the Committee in its inquiry and the review of the dust diseases scheme.

The CHAIR: Thank you for that, Mr Harding. Dr Allsop, did you have an opening statement?

NICK ALLSOP: No.

The CHAIR: Mr Harding covered yours?

NICK ALLSOP: Yes.

The CHAIR: Thank you. We will now turn to questioning. I believe Mr Buttigieg is going to kick off for the Opposition.

The Hon. MARK BUTTIGIEG: Thanks, Chair. I might open by framing this in a general discussion which we have been having today vis-a-vis the reactive approach versus the proactive approach and—if I could put it in crude terms—the educational, monitoring, regulatory oversight approach versus cutting it off at the supply source and licensing. You are at the financial pointy end of all of this where you actually see, obviously, the human element, which is what matters here, but the cost of that in terms of the cost in premiums and to employers and the solvency of the fund—which you have outlined there are no issues with.

I want to get a feel for whether or not your organisations have a perspective on whether or not the current approach that the Government is taking via that, what I would call, reactive approach is going to be sustainable in the long run—notwithstanding the comments that you made, Mr Harding, which seemed to imply that things are

CORRECTED

starting to level out. But we do not know that for sure, do we? So I just want to get your feel for whether or not you think a more proactive approach is needed. Because this is a vicious cycle, is it not? Essentially, the default situation we have now is that there is no ban on the product coming into the country or on its supply. There is no licensing regime. Therefore, there is no legal custody or financial penalty really, other than fines and on-the-spot checks. My question is whether that system is good enough for this to be financially sustainable in the long run. Even if it were, should the taxpayers be footing the bill for this when, presumably, a more preventative approach could be taken?

RICHARD HARDING: I am not really in a position to comment on your question in regard to the adequacy of the regulatory framework because that is really not in our bailiwick. That is really something to have a conversation with SafeWork about. In terms of the financial viability and sustainability, the scheme, given its design, is actually designed to be able to support people with dust injuries in perpetuity through the model that I described in my opening statement. The fact that contributions are charged on the basis of the expected outgoings each year means that it is a pay-as-you-go model. So, effectively, it is viable into the future, no matter what. We are having the benefit at the moment of the fact that the scheme has accumulated \$1.2 billion in cash and assets, and we currently use that money to subsidise the cost to employers so that the intergenerational issues that exist in the nature of this product, given the time it takes for the development of the disease, can somewhat be ameliorated. We have held, for the last two years, the cost to industry at \$70 million.

As Mr Dent pointed out, SIRA work out how that then is allocated across the employer groups. That has resulted, effectively, from over the last two years, in about a \$118 million subsidy from that investment income. So the scheme is viable for both those reasons—because we are in the lucky position that over 100 years we have accumulated that asset and in the fact that the design of the scheme enables it to be ongoing in perpetuity. I think the goal for us, from icare's point of view, is to be there to support people in the unfortunate situation where it arises that they do have an impact from a dust disease and to be as involved as we can be on the preventative side through our screening program with SafeWork NSW so that we can identify as early as possible and get those people into treatment as quickly as we can. The regulatory issues and the preventative issues beyond that are really not in my bailiwick. They are probably a matter for government that needs to be addressed.

The Hon. MARK BUTTIGIEG: Looking at it from a cost-benefit analysis on behalf of the people of New South Wales and, in particular, the people who are affected by this and the employers who have to pay that levy, the logical question that you would be asking yourself would be if you have \$1.2 billion in assets and you are using that income stream to ameliorate premiums, is it not better to eliminate that cost altogether and use that \$1.2 billion more effectively by trying to prevent the thing happening in the first place? There is a kind of self-sustaining little business model here, isn't there? I am not being facetious. If you are looking at this from a cost-benefit perspective, that is the obvious question, isn't it? I know it is not in your remit to make judgements about that, but would you not think that that is a reasonable perspective to take? Have your bodies made any representations to government along those lines? We are not talking about hypotheticals here because other jurisdictions have gone further, like the Victorian one with licensing. I am not sure what the financial side of that equation is and how better or worse off they are, but presumably these questions are actively discussed.

RICHARD HARDING: In reality, the answer to your question is no because it is not in our bailiwick. The advice that they would seek from that would be from SafeWork and other parts of government. I would love to answer your question but, unfortunately, I am really not in the position to give you the answer. The approach that we are trying to take is to be in the process as early as we can through the screening program and to be out there as frequently as we can by circulating each year and attending each manufactured stone site so that we can have as much early identification as possible to enable people to identify it, to change their vocation if that is what they would like to do and to be aware of the issues, and to create awareness. We do that in partnership with SafeWork but the issue of, as you have raised, preventative regulation is really a matter for SafeWork and for other parts of government, I am afraid.

The Hon. ANTHONY D'ADAM: Mr Harding, can I jump in on the screening question? Are you confident that you have got everyone—that you have actually reached every worker in the industry and that everyone has been screened? What is your assessment? SafeWork assures us that it has visited every site and has issued sufficient notice so that employers have been required to get their workers screened. Presumably that has been done in close cooperation with icare. How confident are you that everyone has been screened? What is the hit rate?

RICHARD HARDING: I will ask Dr Allsop to provide you with a more detailed answer, but the high-level answer is yes. We are somewhat reliant on SafeWork for that outcome, but yes is the answer. Do you want to provide a little bit more context?

CORRECTED

NICK ALLSOP: Yes, absolutely, thank you. SafeWork has advised us that it believes there are between 1,100 and 1,500 people working in the manufactured stone sector in New South Wales. Over the past three years we have screened 1,200 people identified as working in that sector and we continue that screening process today. I think in April this year we are visiting the Caesarstone site in New South Wales and screening over 100 of their workers at that time. So to the extent that we can, based on the information that we have from SafeWork and our own screening records, we do believe that we have the majority, if not all, of the people in the manufactured stone sector.

The Hon. ANTHONY D'ADAM: Does SafeWork provide you with the contact details of the workers? Is that the level of information that you are provided with?

NICK ALLSOP: It is engagement with the employers and, booking their workers in for screening, we obtain those details.

The Hon. ANTHONY D'ADAM: In terms of the bookings, what is the hit rate? If you get a booking, does that mean that the worker gets screened? Or is there a proportion of drop-off where some workers actually do not front for the screening? What is that percentage?

NICK ALLSOP: I would have to come back to you on that percentage. I do not believe it to be high, but I would have to come back to you with an actual number. Employers know it is their obligation to have their workforce screened. It is in workers' best interest to be screened in order to identify what risk exposure they have, but we cannot force people to be screened either.

The Hon. ANTHONY D'ADAM: Do you get access to the information that is now being provided as a result of silicosis becoming a notifiable disease?

NICK ALLSOP: We provide notifications where we identify somebody who has contracted the disease. We provide those through to NSW Health.

The Hon. ANTHONY D'ADAM: Does the information flow back the other way so that Health advises you of workers or worksites? Presumably there is a notification to Health. Health then says, "Okay, we need to reach out to this worker to get more details about the environmental circumstances that led to them developing the disease." That might then identify a worksite where other workers may have been exposed. Can you explain how that information loop works so that we are catching as many of the workers who might be exposed? I suppose a cognate question with that is has that process then exposed worksites that were not known to be identified through the SafeWork process that has been undertaken with the importers and suppliers?

NICK ALLSOP: You may well be identifying a gap here because I do not believe—I would need to investigate and check—that NSW Health does detailed industrial histories on people who present to it directly with dust-related disease. I would have to take that on notice, check that and come back. But where a worker is identified as having a dust-related disease, they are usually then legally represented and find their way through to the dust diseases scheme through that mechanism or through the tribunal.

The Hon. ANTHONY D'ADAM: Anyone who gets notified ultimately appears on your radar. Is that the case?

NICK ALLSOP: Yes, they would likely come through. We would receive information around their screening. We would then gather industrial history information ourselves and refer that to our medical assessment panel to assess whether or not they have a compensable disease.

The Hon. ANTHONY D'ADAM: Does that include posthumous notifications? If someone is posthumously identified as having silicosis and that has been notified to Health, is there some way that that information then makes its way back to icare in terms of dependants?

NICK ALLSOP: I would have to take that away on notice. It would probably only occur if the dependants then sought legal representation and pursued a claim against the scheme.

The Hon. ANTHONY D'ADAM: There is no automatic process?

NICK ALLSOP: Not that I am aware of.

The Hon. ANTHONY D'ADAM: So there is a gap there in terms of the information flow, perhaps?

NICK ALLSOP: Potentially, yes. It is something we are pleased to take away and investigate.

Mr DAVID SHOEBRIDGE: In terms of the estimate of between 1,100 and 1,500 workers in the industry, you are relying upon SafeWork for that estimate. Is that right?

NICK ALLSOP: That is correct.

CORRECTED

Mr DAVID SHOEBRIDGE: And that is at any one time?

NICK ALLSOP: Yes, sorry. Working in the industry at the moment—yes, that is what that estimate has been presented to us as.

Mr DAVID SHOEBRIDGE: And you have screened 1,200 distinct people, or were there 1,200 screenings?

NICK ALLSOP: There were 1,200 screenings. There is a requirement based on work health and safety standards for people exposed to silica dust to be screened every three to four years. Where their exposure is heavier, that requirement reduces. In the case of manufactured stone, where the exposure is heavy, more frequent—

The Hon. ANTHONY D'ADAM: Sorry, David. Is that an explicit requirement, Mr Allsop?

NICK ALLSOP: The three to four years?

The Hon. ANTHONY D'ADAM: The requirement for screening. The earlier evidence was that it is not explicit. It is an implied—

NICK ALLSOP: The work health and safety standards do stipulate a screening requirement every three to four years. That is my understanding.

The CHAIR: I am just going to ask that we do not interject.

Mr DAVID SHOEBRIDGE: I do not mind. It is for clarification, so that is fine.

The CHAIR: More than that, it is actually talking over the top of people. I prefer that if witnesses are speaking, they have the opportunity to finish their answer before we interject.

Mr DAVID SHOEBRIDGE: So 1,200 screenings, but we do not know how many actual workers that is. That is less than 1,200 workers.

NICK ALLSOP: I would have to take that away on notice. Given the focus on going through every manufactured stone site, I do not believe there is a lot of repetition there. But there may be some, so we would have to take that away and come back to you on that.

Mr DAVID SHOEBRIDGE: And these are largely the manufacturing and workshop sites that you have been visiting. Is that right?

NICK ALLSOP: They are the fabricators, yes. Based on information from SafeWork, we believe a lot of the installers are tied employees with the fabricators, so they have likely been picked up in those processes as well.

Mr DAVID SHOEBRIDGE: So you have not been to any of the multi-level buildings sites where they are putting in 500 kitchens and 500 bathrooms?

NICK ALLSOP: No. We do not visit individual building sites. SafeWork, I believe, do, and would then make notifications or lodge notices with those employers, requiring them to have workers screened.

Mr DAVID SHOEBRIDGE: But a very large chunk of the workforce are not actually in the fabrication sites and the workshops. A big chunk of this is distributed across the whole State in building sites, and many of those workers would never go back or even have a direct contact with the fabrication site. How many of those workers are there?

NICK ALLSOP: Again, I can only rely on the information that we have been provided by SafeWork, which has indicated that between 1,100 and 1,500 people work in the manufactured stone sector. It is probably a question for SafeWork as to what the split in that number is between installers and fabricators.

Mr DAVID SHOEBRIDGE: I have to say, between 1,100 and 1,500 people could not come close to installing the number of kitchens for the northern suburbs of Sydney, let alone for all of New South Wales. How do you come to the figure that 1,100 to 1,200 people are the number of workers in the industry? As I say, it would take 1,100 to 1,200 people to be just installing the kitchens in the northern suburbs of New South Wales.

The Hon. TAYLOR MARTIN: This is for benchtops, though.

Mr DAVID SHOEBRIDGE: For benchtops.

RICHARD HARDING: Can I perhaps take a moment to respond, Mr Shoebridge? I think you have raised a very interesting point, which is potentially how we get to those installation—you mentioned the sites where there might be 10 storeys of installations going on. I think that is a very good idea and a very good

CORRECTED

opportunity that we have not yet identified, but we are reliant on SafeWork to identify for us the exposure sites and the places where we need to go and do the screening, so we work with them to do that.

The Hon. MARK BUTTIGIEG: But, Mr Harding, when I asked this morning, I put it to Ms McCool that the section 155s, which were the mechanism for determining out into the never-never—there were none issued in two years. Do these things ever get discussed?

RICHARD HARDING: Yes, they get discussed, but I am acknowledging the point that Mr Shoebridge has made, which I think is valuable.

Mr DAVID SHOEBRIDGE: If you can, on notice, indicate what strategies may be possible or that you would be considering to adopt to get to those. Mr Harding and Dr Allsop, one of the reasons I am particularly concerned about those sites is—when you talk to the workforce, they are the ones without the dust extraction. They are the ones without the adequate masks. They are the ones most exposed to significant inhalation of silica dust, and they are the ones we are not getting to.

RICHARD HARDING: I think there is a leap of faith being made that we are not getting to these people. I am not objecting to your point. I am just saying there is a leap of faith being made that we are not getting to those people because we are not in those sites. Those people are employed by the installers. They are employed by the companies that are there. We are working through those. I am agreeing with the point that you are making, but I just think—let's not make an extrapolation that we are not getting to all of them.

The CHAIR: Mr Shoebridge, do you mind if I make a note? The use of the words "leap of faith" concerns me greatly when we are talking about dust diseases. Do you think you could expand on that a little bit? Having sat through this a few times, I think that—

Mr DAVID SHOEBRIDGE: I took Mr Harding to mean that we do not necessarily have an evidentiary basis to link A and B.

RICHARD HARDING: Thank you.

The CHAIR: Yes. That is why I was just giving you the opportunity to—

RICHARD HARDING: Thank you, yes. There is no evidence to suggest that those people are not getting captured in the other—

Mr DAVID SHOEBRIDGE: All I will indicate on the record is that when I talk to the union and when I talk to people in the industry, they tell me that there is an entire workforce out there that is not employed by the fabricators and does not go to the fabrication site but is out there only doing installing. Many of them are subcontractors. Many of them work for labour hire. Many of them have no direct contact with the fabricators. That is what I have heard. It appears to be different to what you are hearing and what SafeWork has heard.

The Hon. ANTHONY D'ADAM: We heard that evidence this morning, in fact.

RICHARD HARDING: I appreciate you bringing it up, because I think it is a very important issue. I am very happy to take that away and work out what the gap is, and we can reply.

Mr DAVID SHOEBRIDGE: Has anyone done a basic check of the amount of this stuff coming into the country and whether or not 1,200 or 1,500 people, if they were working full time every day, could shape it, cut it, form it and install it? For me, assuming that New South Wales is a third of the construction industry in the country, those 1,200 or 1,500 people, given how much of this stuff I see everywhere, would have to be some of the most dynamic 500-hour-a-week workers you could possibly imagine to be installing that amount of stuff across the State. Has anyone done that kind of check as to whether or not the volume in any way could equate to that sort of workforce?

RICHARD HARDING: Again, Mr Shoebridge, you would have to talk to SafeWork about that. We are here to be responding to the identification of SafeWork and operating the screening and to be there to manage the claims.

Mr DAVID SHOEBRIDGE: Low-dose CT scans—is that your primary scanning mechanism? That is what the doctors say. That is what the national health advice is. Low-dose CT scans are the best way of finding silicosis. Are we doing that yet?

NICK ALLSOP: Yes, absolutely. We are. It is one of our identification tools. We still do X-rays as well, but anybody in the manufactured stone sector is offered CT scanning at no charge to them as part of the diagnostic process.

Mr DAVID SHOEBRIDGE: Of the 1,200 scans, how many of those have been low-dose CT?

CORRECTED

NICK ALLSOP: Everybody that we are screening in the manufactured stone environment is offered CT scanning. I would have to come back as to whether it is all low dose or not.

Mr DAVID SHOEBRIDGE: Is there a delay in getting to a low-dose CT scan? Do you take that to the workplace?

NICK ALLSOP: Unfortunately we are not able to equip our lung bus with a CT scanner. The calibration requirements with that particular piece of equipment are such that it does not lend itself to being mobile. What we do is, where people present to our clinic in Sydney CBD, we get them same-day referrals to a local radiology practice—I think at Sydney Hospital—where same-day CT scanning occurs for them. Where somebody is seen on our lung bus, we arrange for a radiology practice in their area to provide that CT scanning.

Mr DAVID SHOEBRIDGE: So there is no guarantee that they are low-dose CTs?

NICK ALLSOP: I would have to come back to you on notice on that.

Mr DAVID SHOEBRIDGE: Can you come back, on notice, about how many of these screenings have been CT scans, how many have been low dose and what the strategy is—I assume; correct me if I am wrong—for getting to 100 per cent low-dose CT scans if we can? Is that the strategy? Is that the plan?

NICK ALLSOP: Absolutely. Everybody gets the appropriate diagnostic tools to assess their impact of any silica exposure.

Mr DAVID SHOEBRIDGE: I will read directly from the annual report on the dust diseases scheme. It states:

The scheme's liabilities have been adversely impacted by a higher than expected number of claims and an increase in the expected claims handling expenses, as well as allowances for remediating past under-payments to some workers and revising future payment practices.

Breaking that down in part, to what extent have the scheme's liabilities been adversely impacted by a higher than expected number of claims? How much did that contribute to the negative turnaround in the scheme?

NICK ALLSOP: The impact of more asbestos-related sufferers entering the scheme added approximately \$77 million to the liabilities of the scheme in the December valuation. This is the result of, we believe, people living longer and healthier lives and hence living long enough to manifest these diseases and are seeking compensation through the scheme. The average age of an asbestos sufferer entering the scheme is now late 70s. Whereas many of these individuals would, unfortunately, have passed away prior to this point due to, say, smoking-related illnesses or other causes, they are now surviving long enough to enter the scheme. We had projected, given the average age of the individuals presenting, that we would see a decline in the number of people entering the scheme in these more recent years. We have not seen that decline come. What we have seen is a plateauing in the number of people entering the scheme. When we say "more than expected", it is not that the numbers are going up; they are just not going down in the way we had anticipated.

Mr DAVID SHOEBRIDGE: I could be wrong, but my reading of the data is that there is an increase in asbestos claims between 2018 and 2021—quite a significant increase—and an increase in mesothelioma claims between 2018 and 2020, again quite a significant increase.

NICK ALLSOP: Yes. That came after a period where claims were lower than had been anticipated. It is one of those things where it is really difficult to anticipate how those claims will emerge, given the really long latency periods between exposure and disease manifestation. So there is a lot of uncertainty around those numbers. The actuaries are doing their best possible efforts to model those out.

Mr DAVID SHOEBRIDGE: What has caused the increase in expected claims-handling expenses and how much is that cost?

RICHARD HARDING: Mr Shoebridge, you will recall in our previous discussion at budget estimates hearings, we talked about the reallocation of expenses between the different parts of icare as a result of a review by the Auditor-General. That resulted in an increase in the corporate overheads being allocated to dust diseases so we get a more accurate allocation.

Mr DAVID SHOEBRIDGE: How much was that?

RICHARD HARDING: That is movement from, on average, \$2 million to about \$15 million.

Mr DAVID SHOEBRIDGE: What about the allowance for remediating past underpayments? How much has that cost the scheme this year? How much will it cost it, going forward?

CORRECTED

NICK ALLSOP: The remediation, as Mr Harding indicated in his opening address, is expected to be concluded by June this year. What we have seen in terms of the liability assessment at December is an allowance for that remediation taking a few months longer than we had anticipated. We had originally anticipated that the majority of people would have been repaid by December. But, as that has not happened and the actual payment process has spilled out into this period through to June, the actuaries have added a \$22 million allowance to the liabilities at December to reflect the fact that those payments still have to occur.

Mr DAVID SHOEBRIDGE: In total how much has had to be paid out for remediation?

NICK ALLSOP: In total we have paid around \$10 million to date. We anticipate that there is about \$28 million left to pay, if we can make contact with all of the deceased estates.

The Hon. TAYLOR MARTIN: Thank you for making time this afternoon. I would like to start by asking how you are assisting workers who have been diagnosed with a dust disease but are still working in dusty conditions particularly or in the construction sector and how you are helping them to move into new occupations?

RICHARD HARDING: I will let Mr Allsop answer, if that is all right.

NICK ALLSOP: Thank you for the question. We do offer a vocational support service to workers who have been identified through screening processes as having the early markers of dust-related diseases and who wish to pursue other vocations outside of their current roles. It is, obviously, an opt-in process. The worker has to want to partake in that sort of redeployment activity. Through that, we spend time working with the individuals around what sort of career paths may be of interest to them, looking at what training opportunities that might require and supporting them to access those and, hopefully, ultimately through to job placement in a new role. Where that role may end up paying less than their current role, then we look at make-up compensation to cover that gap in earning potential as well.

The Hon. TAYLOR MARTIN: Particularly if they do not want to and, to be frank, cannot work in a dusty environment or in the construction sector itself, there is that option to do a job in another sector and have the gap covered?

NICK ALLSOP: Absolutely.

The Hon. TAYLOR MARTIN: Is that an option that is commonly taken up?

NICK ALLSOP: It is relatively early days in terms of the service. It was not something the scheme had offered in the past because the majority of customers came to us post-retirement-age. With this younger cohort of silica-related sufferers, it is something that we have had to implement and put in place. I would have to come back to you on notice with how many people have taken it up.

The Hon. TAYLOR MARTIN: That would be good, if you could. If somebody accessed your services in years gone by, are they able to come back and make use of this service, now that it is updated and with those new conditions?

NICK ALLSOP: Anybody who has been a client of the scheme or a customer of the scheme is always a customer of the scheme. So, absolutely, if they were to present to us and seek to access those services, then, yes, we would provide them.

The Hon. TAYLOR MARTIN: Are we able to get an update on the remediation of the decades-long misinterpretation of the legislation, which has led to underpayments or, in some cases, overpayments of DDC participants?

NICK ALLSOP: Absolutely. As you have identified, there has been this misinterpretation of the legislation. That has led to both under- and overpayments. If we tackle first the overpayments, we are in the process of working with NSW Treasury on legislation change to address the anomalies that exist within the Act and preserve that level of payment for all participants in the scheme. We are certainly not looking to claw back any past overpayments. What we are looking to do is enshrine in legislation the current level of payment, which is at that higher rate, in all cases.

From an underpayments perspective, we have been actively remediating the identified clients. All alive workers in contact with the scheme have been contacted and are in the process of being remediated. To date we have made payments of about \$6.4 million to those. I think we have two people that we are yet to be able to make contact with and maybe three other people where the payments are yet to go out. So we only have about \$120,000 worth of payments still to make in respect of that cohort of currently engaged workers with the scheme.

The Hon. TAYLOR MARTIN: To be totally clear, if that change were to take place, no-one would be worse off if they have been receiving overpayments because of a bungled calculation?

CORRECTED

NICK ALLSOP: Correct. There is no clawback on the overpayments. What we are trying to do is maintain payments at that level through legislation change. Did you want me to wrap up on the deceased estates and the underpayments there as well?

The Hon. TAYLOR MARTIN: That would be handy, yes.

NICK ALLSOP: We are still working through contacting the beneficiaries and executors of estates where the worker has passed away.

~Break

That is proving difficult and we anticipated that it would prove difficult. To date, we have made just over \$4 million worth of payments to those estates, which has been distributed to the beneficiaries. We still have circa \$27 million or \$28 million worth of payments to go, but we are struggling with the identification of some of the executors and beneficiaries in these cases because the records are hard to find and going back through wills and things like that takes time. We do anticipate completing this program to the extent that we can make contact with people by June this year.

The Hon. TAYLOR MARTIN: Out of curiosity, is it a privacy issue or logistical issue of just finding—

NICK ALLSOP: Yes, it is the logistics of finding these people, finding the executors, identifying the beneficiaries, making sure that we have the right distribution proportions and things like that.

The Hon. GREG DONNELLY: My first question is directed to Mr Harding or Dr Allsop. I am not quite sure which. Feel free to respond as you see fit. Earlier today we heard evidence from SafeWork witnesses. Towards the end of the opening statement they were talking about the National Dust Disease Taskforce. I will just quote from it because I know you do not have it in front of you. It said, "In June 2021 the National Dust Disease Taskforce final report was released." I will pause there. Is icare aware of the release of that report?

NICK ALLSOP: Yes, we are. We have provided feedback alongside SafeWork on that report.

The Hon. GREG DONNELLY: I will read on because I want to link up to make a connection to see if it is accurate in my mind. It goes on:

The Department of Premier and Cabinet (DPC) is coordinating NSW's contribution to the Australian all-of-government response. SafeWork NSW has provided its contribution to DPC.

It goes on with another sentence, but that is not what I want to raise. With respect to the response by icare to the National Dust Disease Taskforce final report, did you present or did icare present it directly to the Department of Premier and Cabinet as icare's response or was it done through SafeWork to the Department of Premier and Cabinet?

NICK ALLSOP: It was done directly to the Department of Premier and Cabinet as icare's response.

The Hon. GREG DONNELLY: With respect to icare's response, did icare make any particular comment or reflection or even recommendation about the matter of the establishment of a licensing regime for the manufactured stone industry?

NICK ALLSOP: No, we did not. That is a recommendation more appropriately addressed by SafeWork and government. So, no, we did not make comment on that particular item.

The Hon. GREG DONNELLY: You say "more appropriately". Surely from icare's point of view you have a significant interest in wanting to know the size and dimension of the width, breadth and depth of the manufactured stone industry in New South Wales to quite an accurate level. That is a fair statement, would it not be? You would want to know that.

NICK ALLSOP: It would certainly aid us in planning for screening services and compensation services into the future. I think it is worth noting—

The Hon. GREG DONNELLY: Sorry, I am cutting you off. You say "aid", but it would be more than aid though, would it not? It would provide some actual precision for you of actually having eyes on the actual dimension of the manufactured stone industry, surely?

NICK ALLSOP: It would add to research and understanding in that regard, yes.

The Hon. GREG DONNELLY: I think Mr Harding actually said that with respect to the number of employees and the understanding or the comprehension that icare has of the manufactured stone industry, you rely—those are your words—on the information provided to you by SafeWork. Is that correct?

RICHARD HARDING: That is largely correct, yes.

CORRECTED

The Hon. GREG DONNELLY: You do not have any separate source or access of information to give you any greater precision or knowledge about the size of this industry, other than what is provided to you by SafeWork. Is that correct?

NICK ALLSOP: And what we can glean from the information on our own records in terms of people who have presented for screening or identified as having silica-related disease.

The Hon. GREG DONNELLY: Presumably they are within the subset of people of the known individuals impacted by silicosis. That would be right, would it not?

NICK ALLSOP: Our health monitoring services cover those who may not have been impacted yet but are in the industry, yes.

The Hon. GREG DONNELLY: With respect to SafeWork and their evidence earlier today, they indicated there are approximately 255 sites. They used that figure 255 sites, what are called the fabrication or manufacture sites. Is that something you are aware of? Have they communicated to you the number of sites and where they are?

NICK ALLSOP: Yes, they have. We have been actively engaged with SafeWork in terms of visiting those sites and screening the workforces there.

The Hon. GREG DONNELLY: They are the sites, but when one turns one's mind to the matter of installation, what are you able to say about icare's understanding of the number of persons working in installation? I deliberately use the words "working in". I am not talking about those who might have an employer/employee relationship and may be working out of one of these fabrication plants doing the work and would be presumably on the books, so to speak, of the fabrication plant, but rather the installers. What sense do you have of the numbers of installers in New South Wales?

NICK ALLSOP: To our earlier answer, I think that is a question best posed to SafeWork. We rely on their information in terms of accessing sites.

The Hon. GREG DONNELLY: What has SafeWork told you are the number of installers in the manufactured stone industry in New South Wales?

NICK ALLSOP: They have advised us that they believe there are between 1,100 and 1,500 people working in the manufactured stone industry in New South Wales. I do not have the split between fabricators and installers in terms of that number and, again, that is a question probably best posed to SafeWork. I think it is important for the Committee to understand that in screening individuals in this industry we have no legal right of access to workplaces. We cannot go onto worksites without being invited. We are heavily reliant on SafeWork and their identification—

The Hon. GREG DONNELLY: I understand—

The CHAIR: I ask that we allow the witness to finish before asking supplementary questions. Dr Allsop, have you finished your answer?

NICK ALLSOP: I was just going to say that we are heavily reliant on SafeWork to identify worksites and provide us a means to gain access, be that through notifications that they issue or guidance that they issue to those employers requiring us to screen their workforces.

The Hon. GREG DONNELLY: I understand that. Can I ask you to imagine this scenario. We know there are up to 255 fabrication sites in New South Wales. That is 255 that we know of. That has been communicated to yourselves by SafeWork and we all know this from our own intuitive knowledge. On top of that, there is all the installation work that is going on in New South Wales. How seriously do you think we should take icare's belief that the total number of people employed or engaged or working in the manufactured industry is between 1,100 and 1,500, because you are told that by SafeWork and that that is believable? I find it unbelievable that icare—with the size of the organisation, the resources at its disposal and, dare I say, the absolute smarts of the people who run it—can buy the line that there are only between 1,100 and 1,500 people working in the manufactured stone industry in New South Wales. What do you say to that?

NICK ALLSOP: I do understand the point you are making. We are only able to rely on the information that we have presented to us, and we have no reason to disbelieve the information presented to us. Our role is to provide that screening support and compensation where somebody is identified as having a disease. We will continue to do that to the best of our ability and continue to partner with other agencies across government in that support practice.

CORRECTED

The Hon. GREG DONNELLY: I understand the seniority of yourselves at the table, but if you have a number put in front of you which, honestly, beggars belief—no-one in this room believes there are only between 1,100 and 1,500 people working in the manufactured stone industry. You could go and ask a person. Just walk out into Martin Place, pick someone off the corner and say, "The manufactured stone industry, how many people would you think?" And you should say, "Between 1,100 and 1,500?" They would say, "You've got to be joking." They know nothing about it. This is icare. How can you possibly buy that and then say to the inquiry this afternoon you can only rely on the information provided by WorkSafe?

NICK ALLSOP: Sorry, I think we may be getting tied up in a definitional issue here as well, because we screen over 3,000 people a year for silica-related illnesses. This is far more than the 400 or so a year that we are screening from the manufactured stone sector itself. That 3,000 screens includes people working in tunnelling, people in construction and people working for councils where there is exposure to silica. This may be a definitional issue in terms of manufactured stone versus the broader workforce that is potentially exposed to silica. It could easily be that the installers that you are talking about are being picked up through construction entities, rather than being identified as manufactured stone employees. That 3,000 people that we screen every year for silica-related exposure may be capturing those. Sorry, we may have got tied up in the definitional question.

The Hon. MARK BUTTIGIEG: I might continue on that line because I think it is important. My colleague was pursuing this because it is somewhat incongruent. You have got people, I think they call them actuaries, who calculate—

Mr DAVID SHOEBRIDGE: I think Dr Allsop knows about those people.

NICK ALLSOP: Yes, I have a little bit of experience.

The Hon. MARK BUTTIGIEG: I am sure you do. It is the function of these people, is it not, to within an inch of its life try to calculate as best they can future potential liabilities so that you can determine premiums and liquidity of the fund—all those sorts of things which affect the recipients of compensation and employers? And then the idea that there would not be questions asked about the input data that influences those financial numbers vis-a-vis the line of questioning my colleague was pursuing—in other words, putting it in context again, 255 manufactured stone sites of which SafeWork say represent 85 per cent of the total. Let us forget the 15 per cent that we are not aware of for the moment. If the estimate at the top end was 1,500 total of people in that industry, that means around about, what, seven employees on average per manufacturing site? The idea that those sorts of very basic, back-of-the-envelope calculations would not be fed into by those people calculating the finances of such a big fund, it does beggar belief, doesn't it?

RICHARD HARDING: Maybe I can help for a minute, Mr Buttigieg. The actuarial processes have nothing to do with the establishment of the screening process because they are two different issues that you are conflating. In respect to your question—

The Hon. MARK BUTTIGIEG: But, sorry, does the screening not then determine part of the problem, which feeds into the finances as well?

RICHARD HARDING: At the point in time where we have identified someone who is making a claim, yes. But if you would let me finish, I think we have actually answered this question a number of times. I think the point is we are reliant on SafeWork for the information about the sites and the employees. That is the current nature of the process and, quite frankly, as I alluded to before, we have no other evidence on which to base that discussion, even though it might appear on your intuition that there is a higher number. So we are working on that basis. But as Mr Allsop has just pointed out, when we do go out and do the screening of over 4,000 lung bust screens a year, we are capturing a broader audience than that 1,200 to 1,500 people, and they are people exposed in different locations. I have already accepted the point made by Mr Shoebridge that there are other locations where intense exposure sites are likely to be occurring. I think that is a very good addition to our—and we can take that back and work with SafeWork on it. But I do not know that we are going to give you in another answer to the question that you and Mr Donnelly are asking. There is only this one answer.

The Hon. MARK BUTTIGIEG: With all due respect, the concern is that it seems to me as though icare is effectively outsourcing figures which affect its financial operation to another government body and essentially washing its hands. The perception could be drawn from someone on the outside looking in that this is a self-sustaining industry. Because if we do not get the accurate figures and the fund continues to be solvent based on those figures and employs vast amounts of people and has \$1.2 billion in investment, then it is actually in our interest not to get accurate figures—to be non-generous, if I can use that term.

RICHARD HARDING: I reject the proposition you are putting because that would suggest that we are not working in the interests of injured people who are victims of dust disease exposure. I think that is not a representation of the way that the people of icare who are working in the dust diseases scheme behave and act.

CORRECTED

But I take your point about—maybe if I could first clarify, the issue of the number of people in the industry that need to be screened or otherwise has nothing to do with the financial viability of the scheme or the actuarial processes that go to determining the viability of the scheme. It is not until that person has defined exposure and until that person makes a claim that the actuarial process would kick in to help us identify liability for that. As we heard earlier from Dr Allsop, this disease, as with all dust diseases, is long term in nature and what actually results over time we are yet to actually find out. We are in the early days of how this disease will develop for a lot of the participants here.

I think there is a number of factors here that create uncertainty at that end in the longer term. But in terms of identifying the number of people in the industry, that is really not our role. That is the role for SafeWork as the regulator of employers and the regulator in respect to safe work sites. That is clearly the role for SafeWork. We are here to support them through the screening process because we have the technical capability to do that from our knowledge of the diseases. We are here to support injured people at the time that they need it to get access to the benefits of the scheme. That is our core role. Everything else I think is really a question for SafeWork. It is about their role as the site regulator, as the regulator of employers and the regulator of safe work sites. I wish I could give you a different answer, but that is the only answer there is.

Mr DAVID SHOEBRIDGE: Mr Harding, it is true that it is SafeWork's job to keep sites safe. It is not your job to be out there to ensure that there is no dust and the extraction fans are working and the masks are on. That is not your job. We agree with that.

RICHARD HARDING: Thank you, yes.

Mr DAVID SHOEBRIDGE: But it is your job to make sure that any worker that might have been exposed to dangerous levels of silicosis is getting as early a screening as possible. That is your job, right?

RICHARD HARDING: We agree and we are working to the best of our ability to do that in partnership with SafeWork, who are providing us the access to those sites. I think we saw Dr Allsop again alluding to the fact that we do not have the ability to access sites without the access through SafeWork.

Mr DAVID SHOEBRIDGE: Indeed, even with SafeWork, they cannot compel the employer to get you on site.

RICHARD HARDING: Exactly.

Mr DAVID SHOEBRIDGE: So that does not really answer the core issue and I suppose it is why I started asking questions about that number. If SafeWork comes to you with a number that on the face of it is not credible and says that is the size of the workforce, there is no statutory provision that says you can outsource that thinking to SafeWork. You have an obligation to get to as many workers as possible who have been potentially exposed to silicosis and if SafeWork is not helping or not coming up with credible figures or not doing the job they should do, then you have to step up. Do you accept that?

RICHARD HARDING: I think SafeWork has an obligation, is what we talked about a minute ago, Mr Shoebridge—

Mr DAVID SHOEBRIDGE: To keep workplaces safe.

RICHARD HARDING: Sorry—

Mr DAVID SHOEBRIDGE: But not to identify people who need a screen?

The CHAIR: Mr Shoebridge, please allow the witness to finish.

RICHARD HARDING: That in itself is part of their obligation, right? I think we can split straws but, in reality, our job is to work with SafeWork to go out and do the screening. I agree with you 100 per cent that we are here and our goal, the thing that we want to do, is to get out there and screen as many people as possible to identify as early as possible. We are happy for your suggestions about the fact that there are different ways to do that. We believe we are getting to the majority of people through the fact that we are doing 3,000 to 4,000 screens a year to get out there.

Mr DAVID SHOEBRIDGE: Dr Allsop, you said, on notice, you would provide details about the screening. Could you break it down into what the occupation or exposure was of the 3,000 screenings we know so that we can get some handle on how many of them may be in this Venn diagram of construction work and silicosis? Can you provide us with that?

NICK ALLSOP: We certainly can for the last couple of years, yes.

CORRECTED

Mr DAVID SHOEBRIDGE: I will just put ones that are fact checked that I have been doing while this discussion has been happening. There are about 380,000 people in the construction sector in New South Wales. I think we can all agree that pretty much every modern building you see has a fair chunk of manufactured stone in it—bathrooms, kitchens, commercial buildings often have lots more, terrazzo floors and the like. Even if we take the highest number of 1,500 workers, that is less than 0.4 per cent of the workforce. That number does not make sense to me. Can I ask you, will you be fact checking that number independently given you have that obligation to find the workers wherever they are, regardless of what SafeWork are doing? Will you fact check it?

RICHARD HARDING: Yes. To the degree that we can, yes.

Mr DAVID SHOEBRIDGE: You should be being helped by SafeWork in this place. I have no problem with you leaning on SafeWork if they have already done some of the work identifying the workers. That is only sensible. But if they are coming to you with a figure that is just not credible, or that is open to challenge, do you accept that you have an independent obligation to challenge and test it?

RICHARD HARDING: I just answered the question a moment ago. We will go and challenge it. I think, Mr Shoebridge, we can all push forward views about how many people are employed in the sector. The reality is at the moment we have no evidence other than the evidence provided to us through SafeWork, and that is the basis upon which we are working.

Mr DAVID SHOEBRIDGE: Or our eyes and ears as we walk around the State and look at building sites. That is, I think, what has been missing here. Is there any mechanism to recover for the scheme against manufacturers, installers or others, as there is under workers compensation, in terms of recovery claim?

NICK ALLSOP: No.

Mr DAVID SHOEBRIDGE: If a worker brings a common law claim that parallels the dust disease claim, does that terminate the dust disease claim?

NICK ALLSOP: No. That is done through the Dust Diseases Tribunal.

Mr DAVID SHOEBRIDGE: If a claim is made in the Dust Diseases Tribunal, it does not in any way impact on the payments that are made?

NICK ALLSOP: No.

Mr DAVID SHOEBRIDGE: Do the payments that are made in the Dust Diseases Tribunal take into account the payments made under the statutory scheme?

NICK ALLSOP: That is a question for the tribunal.

The Hon. ANTHONY D'ADAM: I wanted to ask Mr Harding what is the status of the Driscoll report that Mr Dent referred to? It is with icare and the Minister, isn't it?

RICHARD HARDING: Yes. We received the report in November last year. We have been working with the NSW Treasury team. As Dr Allsop mentioned earlier, we are working on legislation in respect to the remediation issues that we have identified and how we correct those. We are at the moment trying to identify the best solution, whether it is regulation or legislative change, and we are bringing that forward with the help of NSW Treasury once the Government has made its final decision.

The Hon. ANTHONY D'ADAM: What are the issues that are being considered in terms of that process?

RICHARD HARDING: There are not any, other than how to do it and the timing of it. There is no debate.

The Hon. ANTHONY D'ADAM: There is no debate. It is going to happen. It is just a question about how to do it.

RICHARD HARDING: There is no debate. It is about how to do it, the best way of getting it done and the timing of getting it done with the other legislative changes going on. It is not a question; it is just a process.

The Hon. ANTHONY D'ADAM: What is the anticipated time frame for resolving that process question?

RICHARD HARDING: Ultimately, that is a matter for the Government, about when they bring it forward, but we are currently working with them and we would—

The Hon. ANTHONY D'ADAM: No, there is the preparation of the advice and then there is the decision of the Government.

CORRECTED

RICHARD HARDING: We are working with them right now. The advice is happening and the engagement is happening. We would hope that it gets brought forward very quickly.

The Hon. ANTHONY D'ADAM: You have provided the advice, you have settled on a model and it is now sitting with the Government. Is that the answer?

RICHARD HARDING: We are still working with them on whether we can do this through drafting a regulatory instrument instead of drafting a legislative instrument. That is not going to take very long to settle on. That is just a discussion. Once we have done that, then it will be in the hands of the Government.

The Hon. ANTHONY D'ADAM: In your opening statement you were talking about the viability of the fund. In layman's terms, you have got sufficient money with your investments to cover your liability. I think you said that you were then using that situation to provide relief to employers. Is that correct?

RICHARD HARDING: Correct.

The Hon. ANTHONY D'ADAM: You are limiting their payments to \$70 million a year, I think you said?

RICHARD HARDING: Correct.

The Hon. ANTHONY D'ADAM: Is that a discretionary call that sits with icare or the Minister in terms of whether you use those funds to give relief to employers or perhaps supplement benefits to beneficiaries of the fund?

RICHARD HARDING: Yes. We have taken legal advice in respect to the nature of that process and decision, which sits within the discretion of the icare board as the overseeing body for the fund. If we were to look at addressing benefits, obviously that would need to go back through the Government. But in respect to the current process where we are using it to support premiums, that is a normal part of the insurance practice.

The Hon. ANTHONY D'ADAM: So the board can decide to give money to employers, but if it goes the other way in terms of increasing benefits to workers, that has to go to the Government?

RICHARD HARDING: The benefits are normally enshrined in legislation, which is why it would need to come back through the Government.

The Hon. ANTHONY D'ADAM: That is not entirely correct, is it? Is the retraining and redeployment a statutory benefit?

NICK ALLSOP: No, that is something we are doing.

The Hon. ANTHONY D'ADAM: You are using discretion to do that.

NICK ALLSOP: So is the screening process as well, in all honesty. That is not something we are legislated to do. It is something we offer because it is the right thing to do, and the assets of the scheme allow us to do that in a heavily subsidised manner. The position we find the scheme in financially not only allows us to support employers through capping contributions but allows us to support them through subsidised screening. We are also looking at more empathetic ways of delivering the entitlements to injured people under the legislation. We cannot go outside the remit of legislated benefits. It is not like we can suddenly double weekly compensation amounts. That would be a clear breach. But what we can do is look at how we deliver those in an empathetic manner, allowing more people access to potentially more of what is available within that legislative boundary.

Mr DAVID SHOEBRIDGE: But, in terms of the remediation scheme, what it has identified is that for a class of claims that predate—I cannot remember the date. Someone will help me out at some point.

RICHARD HARDING: It is 1987.

Mr DAVID SHOEBRIDGE: The ability to actually pay dependants for those claims—there is probably no legal right for dependants to be paid before 1987 and, if we need to fix that, we need some legislative intervention. I can tell you on behalf of my party, we would vote that through tomorrow if you put the proposal to Parliament.

RICHARD HARDING: It is coming.

Mr DAVID SHOEBRIDGE: I am hoping to get that same commitment from the Labor Party.

The Hon. TAYLOR MARTIN: You are making promises and you will not even be here.

Mr DAVID SHOEBRIDGE: You have got to do it in the next two weeks. Do it in the next two weeks and we will vote it through. I really do doubt that there would be a single MP in the Parliament that would vote

CORRECTED

against ensuring that those dependants got the same rights as dependants where the claim is made after 1987. Just get it to the House and we will get it through.

RICHARD HARDING: If I can just give you some comfort, Mr Shoebridge, we have not reduced payments or not paid people who have previously been paid. We are not clawing back anything. No-one is being disadvantaged at this point. We are continuing the current form. We are bringing that legislation forward. It is with the Government. It will come as quickly as we can bring it and as quickly as the Government brings it forward.

The Hon. ANTHONY D'ADAM: Coming back to the retraining and redeployment service, I do not know if you were listening to the evidence this morning? Did you hear the evidence that was provided this morning?

RICHARD HARDING: No, I am sorry. We had other meetings. I have heard some short version of it. I have not heard the original.

The Hon. ANTHONY D'ADAM: Mr Klohk's evidence was that the service was pretty inadequate and that it was making recommendations that were clearly inappropriate to his circumstance. Perhaps on notice, given that you have not heard the evidence and you cannot make a comment about the specifics, you might be able to provide some feedback on those observations that were made by Mr Klohk. Is the service directly provided by icare or is it something that you are contracted with someone?

NICK ALLSOP: We have third-party providers that we engage to deliver the service.

The Hon. ANTHONY D'ADAM: Are you able to describe in a bit more detail the nature of the assistance that is provided and the extent of the support that is provided for retraining and redeployment?

NICK ALLSOP: Absolutely. Perhaps if I do it by way of an example, so I will change names to protect the identities of those involved. We have an injured worker, identified through our screening program, who has 1 per cent silicosis diagnosis and is understandably very concerned about this. He is an immigrant to Australia. English is not his first language. He has a family to support and has been earning really good money as a stonemason. Following his screening and identification as having that 1 per cent impairment level, he is understandably concerned about everything he has heard about the risks and very afraid for not only what that means for his health but how he will support his family into the future as well.

In the support that we provide through icare, we are able to put him in contact with a vocational rehab specialist. Through the use of a translator service that we also fund, this person sat with the individual—let's call him Tom, say—and worked through what his career goals would be outside of the stonemasonry industry. Through the course of that, it was identified that he had a passion for forklift driving. It was something that he was really interested in pursuing as a career. The rehab consultant then worked with Tom to identify appropriate training programs to give him access to the right skills to move into that career. He was supported by icare in accessing those programs. We funded his access into the training required and then supported him, again through the rehab consultant, to identify potential workplaces and apply for roles with those workplaces.

I am very pleased to say that Tom is now happily working as a forklift driver and has left the stonemasonry industry. He is continuing to provide for his family and is continuing to be regularly re-screened through icare's services, free of charge, to ensure that should the disease he has unfortunately progress he is provided with the right information and the right support to be able to continue his life and continue supporting his family. So the service is holistic. It does try to address the needs of every individual. I will say that it has only been running for a relatively short period of time because this is a new cohort of younger sufferers that have been identified in recent years, whereas I think I mentioned earlier that most of the people that came to the scheme in the past were beyond retirement age and did not require vocational redeployment.

The Hon. ANTHONY D'ADAM: And there is a wage top-up, is there, as part of it?

NICK ALLSOP: If the occupation that the person moves to pays less than what they were earning in their previous occupation, yes, there is.

The Hon. ANTHONY D'ADAM: Does that create a financial incentive for icare to find a worker an alternative position? Ultimately, if they are on statutory benefits, then that is an ongoing cost, whereas if they are redeployed to another industry where they are able to work, that cost then ceases for icare.

Mr DAVID SHOEBRIDGE: It is in everyone's interests, is it not, to get a worker back—

NICK ALLSOP: Yes, I would think so.

CORRECTED

RICHARD HARDING: I think it is in all our interests to help people get back into the workforce in the best form that we can. Whether that means that we continue to pay a top-up payment or not is not really the point. It is about getting people back into a workplace where they can have that—

The Hon. ANTHONY D'ADAM: I suppose where I am going with that is this: Does it then create a dynamic where workers are pushed into taking on positions that perhaps are not necessarily suitable, which seems to be what was suggested in evidence earlier today?

RICHARD HARDING: We have no evidence of that happening. In respect to the evidence you heard this morning from Mr Klohk, we would be very happy—obviously individuals have different experiences through the sort of process that Dr Allsop has described. We would be very happy to talk to Mr Klohk and try to work out what happened with his experience and support him in whatever way we can. That is our job. To your point about is there a systematic problem where people are being pushed into jobs, I do not believe that is the case. There is certainly no evidence that we can see of that happening on a systematic basis. I mean, it may be an individual issue.

The Hon. ANTHONY D'ADAM: The case management is done by icare, is it?

RICHARD HARDING: Sorry?

The Hon. ANTHONY D'ADAM: Icare actually does the case management directly; it is not done through a third-party provider?

NICK ALLSOP: Yes, that is correct.

Mr DAVID SHOEBRIDGE: Just quickly on the 1 per cent impairment finding, I have to say I think that has been a positive change in the way that this area has been dealt with because it allows those services to be provided. Does that also allow for the payment of a full statutory benefit while looking for work?

NICK ALLSOP: Yes, it does.

Mr DAVID SHOEBRIDGE: Is there a need, though, for some legislative clarity in this space to make it clear that if a person with dust disease has to transition out of an industry that the payment is payable regardless? Or is there sufficient legal clarity to allow for the 1 per cent mechanism to work?

NICK ALLSOP: We would always be happy to explore additional legal clarity, especially when we are dealing with Acts that go back to 1926. We are more than happy to.

Mr DAVID SHOEBRIDGE: Have you made representations to get that kind of clarity?

NICK ALLSOP: Not as yet. It is not part of the current legislation that is being drafted.

Mr DAVID SHOEBRIDGE: Is that something that at some point you will put to the board, Mr Harding?

RICHARD HARDING: We are happy to take the feedback on and understand it. In terms of the current situation, we do not see any evidence that there is a problem. So the 1 per cent mechanism is working. We are seeing that happen. We are happy to have as much feedback as you like, Mr Shoebridge. We are welcoming it, not resisting it.

Mr DAVID SHOEBRIDGE: I will just indicate looking forward, it is nothing you would want to lift the bonnet up and look too closely at, and there might be actually a benefit in getting some legislative clarity in that space going forward. In terms of reimbursement—

The CHAIR: Is this a single question?

Mr DAVID SHOEBRIDGE: It goes back to a point that I heard some evidence on. The dust diseases Act, I think it is section 8E, "Reimbursement of compensation from negligent third parties", it mirrors section 151Z of the Workers Compensation Act in terms of recovery. Have you (a) brought any recovery claims under section 8E, and (b) have you considered whether or not you can bring recovery claims from the likes of Caesarstone and others, which have no insurance in Australia, to cover their product?

NICK ALLSOP: I think we would have to take that away on notice and come back to you as to whether or not there have been any of those sorts of actions.

Mr DAVID SHOEBRIDGE: Do you accept though that given Caesarstone is the largest player in the industry and has no insurance cover for their product, that may make any recovery claim that the scheme has potentially worthless?

NICK ALLSOP: I do not feel qualified to advise on the financial soundness of Caesarstone.

CORRECTED

The Hon. ANTHONY D'ADAM: Is that a decision—

Mr DAVID SHOEBRIDGE: Have you—

RICHARD HARDING: That is not something we can provide advice on, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Given it is the biggest player in the industry and their own filings with the United States regulator make it clear they have no insurance cover for Australia, there has not been any kind of analysis by icare about whether or not that creates an unfunded—well, removes a potentially quite valuable right from the scheme?

NICK ALLSOP: We will focus on providing compensation to anybody impacted adversely by a dust disease in New South Wales. Recoveries are a secondary aspect to that.

Mr DAVID SHOEBRIDGE: But it is a part of the scheme. In the end, if you cannot recover it from the negligent player under section 8E, it is met by the non-negligent employers who are doing the right thing. There is a moral hazard here.

RICHARD HARDING: Look, I think we are not qualified to answer the question about, as Dr Allsop just pointed out, the financial soundness of a global stone manufacturer. The recovery issues will arise as the liability arises. The fact that they have no insurance in Australia does not necessarily mean they are not able to meet their obligations if there are any. That is a different question again. There is no current evidence to suggest that. I do not know what their balance sheet looks like. I have no view of their support they might get from their global parent. It is a question that we are unable to answer.

Mr DAVID SHOEBRIDGE: They have no assets in the jurisdiction and no insurance in the jurisdiction. They are at the tender mercy of Caesarstone if they want to keep paying the claims. Maybe you are happy with that but I am not, and I do not think the scheme should be.

The CHAIR: Mr Shoebridge, that really was not a question. I am going to ask one on that point, if that is okay, before I pass to the others, noting there is about five minutes to go. Putting the issue about Caesarstone aside, has there been any attempt or investigation about the recovery from any manufactured stone importer, provider or manufacturer into the scheme to date?

RICHARD HARDING: No.

The CHAIR: Should there be?

RICHARD HARDING: We can look at it, yes.

The Hon. ANTHONY D'ADAM: Is that a decision that would be made at the board level? How would those kinds of recovery decisions—

RICHARD HARDING: Ultimately, we would put a recommendation, as management, to the board about making that recovery, if it was appropriate to do so.

The Hon. MARK BUTTIGIEG: I take you to the stats which we touched on earlier in evidence. This is in your submission. There is a table of a breakdown of new cases of silicosis and silica-related dust diseases for the financial years 2015-16 through to 2021-22. I think one of you put on evidence, maybe in your statement, that new cases had gone up from nine to 40. That was from financial years 2017-18 to 2018-19, I think, from the looks of the table. Does that sound right?

NICK ALLSOP: Yes.

The Hon. MARK BUTTIGIEG: In terms of those new cases, what is the definition that falls into to satisfy a new case? Is it a workers compensation claim or a screening test or—

NICK ALLSOP: It is claims accepted into the scheme through the medical assessment process that determines eligibility for compensation.

The Hon. MARK BUTTIGIEG: So if a person does not make a claim, in terms of the statistics, they do not have silicosis?

NICK ALLSOP: They do not have silicosis and are being compensated under our scheme. Yes, that is correct.

The Hon. MARK BUTTIGIEG: There is quite a significant jump from financial year 2018-19 to 2019-20. It is almost threefold. These are claims. Let us be clear, these are current claims, right? They are not historical, so these are new cases. Then there is a drop-off from financial year 2019-20 to 2020-21 from 107 to 37. This year, which is anomalous because we are only a quarter into the year, it is down to nine. Given the advent

CORRECTED

of COVID, would that—and let us take out 2021-22. If you look at the drop-off from 2020 to 2021, would the advent of COVID have affected those figures given the restrictions on people?

NICK ALLSOP: There would be some small impacts because of the closure of our screening services. That would have flowed on to fewer people passing through the medical assessment process than might ordinarily have been the case. We do not anticipate that has been more material in the last nine months, where we have had services closed for about five months.

The Hon. MARK BUTTIGIEG: Is it possible we could see the likes of that 107 peak in 2019-20 happen again or even an upward trajectory?

NICK ALLSOP: I think it is highly unlikely. What that peak represents is the early identification of a fairly significant number of people who had no symptoms of silica-related disease and would not ordinarily have presented for screening or even been concerned about their exposure to silica dust in the workplace. The intensive screening program focused across manufactured stone, tunnelling and various other industries where silica exposure has occurred has drawn out and identified early a number of people who might not have been picked up by the scheme for another 15, 20 or even 30 years. I think bringing those forward is absolutely a good thing. It has given people awareness and information to help manage their own health outcomes as well as be supported by the scheme and potential retraining, deployment to other industries and those sorts of things. Because they have been identified early, I do not anticipate we will see that level of a spike again because we have picked up a large number of people who might have come through in a much slower fashion as symptoms emerged into the future.

The Hon. MARK BUTTIGIEG: My recollection is that is somewhat counterintuitive given what we have seen, for example, in other jurisdictions like Queensland. I think the more proactive they got, the more the figures went up. It could be a case, couldn't it, that the more proactive we get down here, you could actually see quite a significant rise, as you did in that particular year? My question is are we a little bit blasé in being comfortable about this thing stabilising given the veracity of those figures and the underlying—

RICHARD HARDING: If I can jump in, the reality is that the numbers are very small. The volatility in the numbers is high. It is not something that you would form predictions on the basis of. We are not suggesting it is stable; we are just suggesting to you that we believe 107 is a result of the proactive work in the screening that was done prior to that. Where it rests as an ongoing thing is yet to be determined. We do not expect it to increase significantly because we believe we have brought a whole lot forward. To your point, that will develop over time as people's exposure and their issues grow.

The Hon. MARK BUTTIGIEG: You accept as a general proposition, though, there is a positive correlation between the degree of proactivity, education and exposure of the issue and the case numbers?

RICHARD HARDING: I am accepting that the 107 spike is directly referable to the increase in scanning and screening and being out in the community with SafeWork NSW.

NICK ALLSOP: If I may—just to provide a point of clarity around the recoveries piece because I know that was the focus. It is in fact the Dust Diseases Tribunal that has the rights of recovery under the Act, not the Dust Diseases Care scheme. It is not our role to seek recoveries from those manufactured stone sites or other employers in the industry. It is the tribunal and its dealings where that occurs.

The CHAIR: Thank you for that clarity. On that note, I call this hearing to a close. For questions that have been taken on notice, you will have 21 days to provide a response. Once again, on behalf of the Committee, I thank you and all of the other witnesses who have appeared today. The testimony and the evidence has been very valuable in us generating this report for what is the final statutory review for this term of the Parliament. I call the hearing to a close and thank everyone.

(The witnesses withdrew.)

The Committee adjourned at 16:02.