



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON LAW AND JUSTICE

2024 Review of the Dust Diseases Scheme



Report 86

June 2025

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Standing Committee on Law and Justice

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2024 Review of the Dust Diseases Scheme

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Chair: Hon Greg Donnelly MLC



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Terms of reference

1. That, in accordance with section 27 of the *State Insurance and Care Governance Act 2015*, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers compensation and motor accidents legislation, which include the:
 - (a) Workers' Compensation Scheme
 - (b) Workers' Compensation (Dust Diseases) Scheme
 - (c) Motor Accidents Scheme
 - (d) Motor Accidents (Lifetime Care and Support) Scheme.
2. In exercising the supervisory function outlined in paragraph 1, the committee:
 - (a) does not have the authority to investigate a particular compensation claim, and
 - (b) must report to the House at least once every two years in relation to each scheme.

The terms of reference were referred to the committee by the Legislative Council on 10 May 2023.¹

¹ *Minutes*, NSW Legislative Council, 10 May 2023 pp 31-34.

Committee details

Committee members

Hon Greg Donnelly MLC	Australian Labor Party	<i>Chair</i>
Hon Chris Rath MLC	Liberal Party	<i>Deputy Chair</i>
Ms Abigail Boyd MLC*	The Greens	
Hon Susan Carter MLC	Liberal Party	
Hon Anthony D'Adam MLC	Australian Labor Party	
Hon Stephen Lawrence MLC	Australian Labor Party	
Hon Bob Nanva MLC	Australian Labor Party	
Hon Rod Roberts MLC	Independent	

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* Ms Abigail Boyd MLC substituted for Ms Sue Higginson MLC from 1 August 2024 for the duration of the inquiry.

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Amanda Assoum, Principal Council Officer
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Chair's foreword

This review of the Workers' Compensation (Dust Diseases) Scheme focused on support for younger workers within the scheme and the risk factors and safety measures related to dust exposure in the tunnelling industry in New South Wales.

First, the committee considered whether the current scheme adequately supports younger workers. We heard concerning evidence regarding the increasing number of young workers being diagnosed with silicosis and the number of silica-related claims being made by workers under the age of 40. In addition, the financial stress placed on younger workers who have been denied long careers in their chosen industry as a result of a dust disease diagnosis is considerable. The evidence showed that the current financial support provided under the scheme, as set out in *Workers' Compensation (Dust Diseases) Act 1942*, the *Workers Compensation Act 1987*, and SIRA's Workers Compensation Benefits Guide, is not adequate. Therefore, we have recommended that the NSW Government consider amending the legislation to provide workers within the scheme a full salary replacement for 52 weeks (at a rate that truly reflects their previous salary, including regular overtime payments), and payments after 52 weeks at a rate equivalent to what a worker would receive under the Workers' Compensation Scheme.

Similarly, we also heard evidence that financial payments for re-training are restrictive, workers face challenges when transitioning to alternative, safer work and the stress associated with loss of career, financial instability and unemployment often results in negative psychological symptoms for workers. The committee has made several recommendations in this review on these issues with the view to improve financial, vocational and psychological support under the scheme for workers who are faced with a life changing diagnosis.

In addition to the support for younger workers, the committee also examined the impact of dust diseases in the tunnelling industry, in particular the risk factors related to dust exposure and the adequacy of safety measures. Whilst there is a notable increase in awareness and safety protections, several stakeholders commented that tunnelling work still presents a significant risk of silica related diseases, particularly silicosis, due to the exposure to respirable crystalline silica dust. The committee heard that factors such as the increase in tunnelling projects, the local geological conditions, the risk profile of different tunnelling methods and workers are important considerations when examining the level of risk of dust diseases presented by the tunnelling industry.

Tunnelling contractors are required to collect air samples of respirable crystalline silica from the breathing zone of workers during their work activities. However, the committee was concerned to hear that both stakeholders and workers face significant difficulties in accessing and obtaining data and information on air quality and dust exposure in tunnelling projects. Specifically, stakeholders noted the challenges in obtaining air quality data using workplace entry permits. The recommendations we have made regarding accessing and sharing air quality and dust exposure data should go some way in addressing some of the transparency and accountability concerns raised during this review.

In addition, the committee notes the evidence indicating the impending likelihood of a high number of cases of silicosis that will enter the scheme in the future and has recommended that SIRA consider increasing the contribution levy to employers for workers involved in tunnelling, with a specific increased levy for those involved in mined tunnelling using roadheaders, to ensure the continued viability of the scheme.

The adequacy of safety measures in controlling and minimising dust exposure in the tunnelling industry to prevent dust-related diseases was another key issue examined during the review. In particular, we considered whether the workplace exposure standard should be reduced, the adequacy of air monitoring

in tunnelling worksites and the screening of workers for dust diseases. Based on the evidence, the committee is of the view that the safety measures used to manage exposure to respirable crystalline silica in the tunnelling industry are not consistent across NSW Government projects. Therefore, we have recommended that the NSW Government consider developing a consistent safety standard on the management of respirable crystalline silica for NSW Government funded tunnelling projects. In addition, the evidence showed that the current workplace exposure standard of 0.05 mg/m³ (eight-hour time weighted average) for respirable crystalline silica may not be protective of adverse health effects for workers. As a result, the committee has also recommended lowering the workplace exposure standard for respirable crystalline silica to 0.025 mg/m³ in the tunnelling industry to better protect workers.

During the inquiry, it was clear that adequate air monitoring and control measures is critical to ensuring the safety of workers and regulation compliance at tunnelling worksites. However, stakeholders noted that there are 'gaps' in the existing framework. Whilst the committee acknowledges that SafeWork NSW is currently undertaking work in this space, including reviewing the *Code of Practice for Tunnels Under Construction* to make sure it is relevant and supports current and emerging work practices and technologies in the tunnelling industry, we have made several recommendations regarding air monitoring controls on tunnelling worksites, including that the NSW Government consider introducing statutory roles for certified occupational hygienists and ventilation officers for tunnelling projects.

Stakeholders were also concerned about the adequacy of screening practices for workers, including whether all workers should have access to CT scanning and be screened by icare. The committee acknowledges the challenges posed by the use of private medical providers to screen workers for exposure to respirable crystalline silica and have recommended the NSW Government consider requiring all tunnelling projects receiving NSW Government funding use the services of icare for screening workers and monitoring health related to respirable crystalline silica exposure.

In considering the role of SafeWork NSW, we have recommended that the allocated dedicated funding for a compliance team within SafeWork NSW continue for a further two years to continue strengthening the enforcement of silica regulations. In addition, we have asked that the NSW Government consider establishing a formal agreement between SafeWork NSW and Comcare to grant SafeWork NSW jurisdiction over tunnelling projects funded by the NSW Government.

During the review, the committee also heard evidence on other issues relating to the scheme, in particular issues for workers who have been exposed to dust in multiple states, whether the list of diseases under the scheme should be expanded, and the emerging challenges in the use and operation of the National Occupational Respiratory Disease Registry. The committee has made some recommendations in this report on these issues, which should assist in improving and enhancing support under the scheme.

On behalf of the committee, I would like to thank all participants for their contribution to this important inquiry, including the organisations and individuals who made submissions and gave evidence at a public hearing. I wish to acknowledge and thank my committee colleagues for the collegiate way in which they have engaged and participated in this important inquiry. Finally, can I thank the Committee Secretariat and Hansard staff for their hard work and professionalism, without which this report could not have been produced.

The Hon. Greg Donnelly MLC
Committee Chair

Recommendations

Recommendation 1

7

That SafeWork NSW prioritise the completion of the review of public feedback on the Silica Worker Register and implement, as soon as practicable, the necessary new regulations to commence the Silica Worker Register.

Recommendation 2

20

That the NSW Government consider amending the *Workers Compensation Act 1987* to provide:

- workers within the Dust Diseases Scheme a full salary replacement for 52 weeks (at a rate that truly reflects their previous salary, including regular overtime payments)
- workers within the Dust Diseases Scheme payments after 52 weeks at a rate equivalent to what a worker would receive under the Workers' Compensation Scheme.

Recommendation 3

20

That icare review and expand the financial assistance it provides for career and educational counselling services for workers in the Dust Diseases Scheme, and to assist them in finding jobs in their chosen industries once they complete their courses, ensuring the assistance lasts for the duration of the training course and should not stop if the worker secures paid employment.

Recommendation 4

21

That icare develop enhanced vocational support and re-training options which focus on finding work of approximate equal salary to what the worker was previously receiving.

Recommendation 5

21

That, within six months of this report, icare convene a working group of stakeholders to develop a program of re-education, re-training and vocational programs to support workers transitioning away from dust related working environments. The working group should also examine issues relating to barriers to accessing support including eligibility and levels of income support. The working group should consist of:

- union representatives from unions who cover high risk industries such as mining, construction and tunnelling
- employer groups who cover employers in high-risk industries
- support organisations who assist dust sufferers
- any other party that the Minister deems fit to appoint.

The working group is to develop a paper outlining the proposed program, no later than 12 months from its first meeting.

Recommendation 6

22

That the NSW Government consider amending the *Workers' Compensation (Dust Diseases) Act 1942* to include provisions for:

- mental health services for workers upon entry into the Dust Diseases Scheme
- mental health services to be available for immediate family members of workers within the Dust Diseases Scheme.

Recommendation 7**22**

That icare implement policies and develop resources that offer greater support to working-age culturally and linguistically diverse workers in the Dust Diseases Scheme, including:

- assisting with English lessons for return to work programs
- producing information in multiple languages, such as safety information at work, healthcare services to access and making a claim under the scheme
- hiring staff from diverse backgrounds.

Recommendation 8**22**

That SafeWork NSW produce information in multiple languages and hire staff from diverse backgrounds.

Recommendation 9**23**

That icare continue to provide compensation under the Dust Diseases Scheme to workers with a migrant background regardless of whether they return to their country of origin.

Recommendation 10**43**

That the NSW Government strengthen SafeWork NSW's role in resolving disputes under the *Work Health and Safety Act 2011* between authorised entry permit holders and persons conducting a business or undertaking to facilitate the provision of documents to workplace entry permit holders if there is suspected contravention.

Recommendation 11**44**

That the NSW Government consider amending the *Work Health and Safety Act 2011* to provide workplace entry permit holders explicit rights to use portable device, take measurements, capture photos and record videos in relation to work health and safety compliance, including in relation to respirable crystalline silica, to enhance their ability to investigate and improve safety compliance.

Recommendation 12**44**

That the NSW Government consider developing a Memorandum of Understanding between SafeWork NSW and persons conducting a business or undertaking regarding the sharing of data and information relating to respirable crystalline silica exposure levels to assist with future projections and health monitoring of workers for the purposes of enabling all respirable crystalline silica in air data to be accessed and considered by icare, SIRA, policy makers and researchers promptly when requested.

Recommendation 13**45**

That SIRA, to the extent that it is consistent with the principle of premiums reflecting risk, consider increasing the contribution levy to employers for workers involved in tunnelling, with a specific increased levy for those involved in mined tunnelling using roadheaders, to ensure the continued viability of the scheme.

Recommendation 14**76**

That SafeWork NSW update the *Code of Practice for Tunnels Under Construction* to include the mandatory use of Powered Air Purifying Respirators in all tunnelling projects.

- Recommendation 15** 76
- That the NSW Government consider developing a consistent safety standard on the management of respirable crystalline silica for NSW Government funded tunnelling projects. The standard should:
- not be lower than has been adopted on any NSW Government funded tunnel project to date
 - include best practice risk assessment, control, review, reporting and investigation requirements
 - be a mandatory compliance element for tunnelling contractors.
- Recommendation 16** 77
- That the NSW Government consider lowering the workplace exposure standard for respirable crystalline silica to 0.025 mg/m³ in the tunnelling industry to better protect workers.
- Recommendation 17** 78
- That SafeWork NSW takes measures to include specific requirements for air monitoring for respirable crystalline silica in the *Code of Practice for Tunnels Under Construction* to ensure greater consistency and effectiveness of air quality control measures, leading to more reliable data and better management of air quality.
- Recommendation 18** 78
- That the NSW Government consider introducing statutory roles for certified occupational hygienists and ventilation officers for tunnelling projects to ensure accountability and authority in relation to air monitoring and ventilation.
- Recommendation 19** 79
- That the NSW Government consider requiring all tunnelling projects receiving NSW Government funding to use the services of icare for screening workers and monitoring health related to respirable crystalline silica exposure.
- Recommendation 20** 79
- That the NSW Government consider mechanisms through which information held by private medical providers in relation to their screening of workers for exposure to respirable crystalline silica can be made readily available to icare.
- Recommendation 21** 79
- That the NSW Government consider allocating dedicated funding for a compliance team within SafeWork NSW to continue enforcing strengthened silica regulations for a further two years.
- Recommendation 22** 80
- That the NSW Government consider establishing a formal agreement between SafeWork NSW and Comcare to grant SafeWork NSW jurisdiction over tunnelling projects funded by the NSW Government.
- Recommendation 23** 87
- That the NSW Government consider amending the *Workers' Compensation (Dust Diseases) Act 1942* to provide full compensation to any worker who has been exposed in New South Wales, regardless of whether they were also exposed in other states.

Recommendation 24**88**

That the NSW Government engage an expert panel to review the list of diseases in the Dust Diseases Scheme, with a view to expanding the types of diseases included in Schedule 1 of the *Workers' Compensation (Dust Diseases) Act 1942*.

Recommendation 25**88**

That the NSW Government explore ways to adequately compensate physicians who make and update records on the National Occupational Respiratory Disease Registry.

Recommendation 26**89**

That the Minister for Work Health and Safety consider writing to the Australian Minister for Health and Aged Care seeking an amendment to the *National Occupational Respiratory Disease Registry Act 2023* (Cth) to expand the scope and functionality of the National Occupational Respiratory Disease Registry:

- to include all diseases covered by the Dust Diseases Scheme, not just silicosis,
- to be used as a health surveillance tool.

Conduct of inquiry

The terms of reference were referred to the committee by the Legislative Council on 10 May 2023.

The committee received 18 submissions and one supplementary submission.

The committee held 4 public hearings at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, and answers to questions on notice.

Procedural issues

On 20 November 2024, the Hon Mark Banasiak MLC successfully moved a motion in the Legislative Council, under Standing Order 52, for an order for papers relating to respirable crystalline silica air monitoring for 15 tunnel projects, either completed or ongoing, in New South Wales (see appendix 1).

The return to order was received on 18 December 2025, with a revised indexed list of documents received on 7 January 2025, and then a final return received on 21 February 2025 with personal information redacted. There are 64 boxes in this return, comprised of 27 boxes of public documents, 16 boxes of privileged documents and 21 boxes containing personal information. Public documents are deemed published by authority of the House and can be accessed by anyone, for example, media and members of the public. Privileged documents refer to documents that are subject to claims of legal professional privilege or public interest immunity. These documents are only available to members of the Legislative Council and while members may view the documents, they cannot make public the information contained therein. Where a document is subject to a claim that it contains personal information that should not be made public but is not otherwise subject to a claim of privilege, these documents are available only to members of the Legislative Council and not published or copied without an order of the House. Any member may, by communication in writing to the Clerk, request that versions of the documents with personal information redacted be produced.

The return to order generated media scrutiny of workers' exposure to silica dust on tunnelling projects in Sydney and raised further questions about the effectiveness of SafeWork NSW as the regulator (see appendix 2).

Chapter 1 Background

This chapter provides an overview of the Dust Diseases Scheme including its size, cost, and how it is administered. It outlines the most recent reviews of the scheme by this committee, then introduces the two focus areas of this review: the support available to younger workers within the scheme, and other risk areas for silicosis, including tunnelling and quarrying. Finally, the chapter summarises recent developments in New South Wales and nationally for regulating the management of dust diseases.

Overview of the Dust Diseases Scheme

- 1.1 The Workers' Compensation (Dust Diseases) Scheme (Dust Diseases Scheme or the scheme) is a no-fault scheme for New South Wales workers who have developed a dust disease from occupational exposure to hazardous dust. The scheme provides participants and their dependents with compensation benefits as well as access to medical, healthcare, and related support services.
- 1.2 To be eligible for the scheme, a person must have a medical diagnosis of a dust disease covered by the scheme, evidence that the exposure to harmful dust occurred while they were employed in New South Wales, and a level of disability as a result of the dust disease.² There are currently 19 diseases covered by the scheme, including asbestosis, asbestos-related pleural diseases, mesothelioma, silicosis, and lung cancer.³

Management of the scheme

- 1.3 Three agencies are involved in managing the Dust Diseases Scheme:
 - icare: a public financial corporation that operates and provides services for the New South Wales Government's insurance and care schemes
 - State Insurance Regulatory Authority (SIRA): an independent agency that regulates certain statutory insurance schemes in New South Wales
 - SafeWork NSW: the workplace health and safety regulator in New South Wales.
- 1.4 The Dust Diseases Scheme is administered by a specialist unit within icare called Dust Diseases Care. Supports provided by icare under the scheme include the payment of compensation benefits to workers and their dependents; the payment of reasonable medical, hospital, ambulance, and related expenses; and the payment of funeral benefits.⁴

² icare, *Who we Care For* (2025), <https://www.icare.nsw.gov.au/injured-or-ill-people/work-related-dust-disease/who-we-care-for>.

³ *Workers' Compensation (Dust Diseases) Act 1942* Sch 1.

⁴ icare, *Fact Sheet: Dust Diseases Care*, <https://www.icare.nsw.gov.au/-/media/icare/unique-media/treatment-and-care/what-we-do/harmful-dust-exposure/media-files/files/dust-diseases-care-information-sheet.pdf>.

- 1.5** In addition, icare provides free lung screening services through a mobile 'lung bus' and a clinic in Sydney.⁵ In 2023-2024, icare provided 4,866 screening appointments.⁶
- 1.6** The Dust Diseases Scheme is principally funded by a levy paid by employers as part of their workers compensation insurance premiums. Each year, icare informs SIRA of the scheme funding requirements and SIRA determines the insurers or classes of insurers required to make contributions, the amount of any such contribution, and when the contribution is to be paid.⁷ The average cost of the levy to employers is 0.03 per cent of wages.⁸
- 1.7** SIRA's formal role in the scheme is limited to determining the employer contributions as above and indexing the compensation payment for dust diseases annually. SIRA also collaborates with and provides support to other workers compensation agencies, both nationally and in New South Wales.⁹
- 1.8** SafeWork NSW is responsible for monitoring and enforcing compliance with work health and safety (WHS) legislation in New South Wales, including specific protections for dusts such as silica. The two key pieces of legislation are the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2017*.¹⁰
- 1.9** In fulfilling its monitoring and enforcement functions, SafeWork NSW provides education and awareness, conducts workplace inspections, investigates incidents, and takes actions against breaches of WHS laws.¹¹

Size of the scheme

- 1.10** In 2023-2024, there were 1,781 workers and 3,248 dependants receiving support under the Dust Diseases Scheme.¹² The total benefits paid that year were \$118.78 million.¹³
- 1.11** The following table shows the number of new participants in the scheme and the total benefits paid for the last four years:

⁵ Submission 12, icare, p 15.

⁶ Submission 12, icare, p 16.

⁷ Submission 4, State Insurance Regulatory Authority, p 3; Evidence, Ms Mandy Young, Chief Executive, State Insurance Regulatory Authority, 11 December 2024, p 17.

⁸ Submission 12, icare, p 21.

⁹ Evidence, Ms Young, 11 December 2024, p 17.

¹⁰ Submission 13, SafeWork NSW, p 1.

¹¹ Evidence, Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW, 29 November 2024, pp 55-57.

¹² Submission 12, icare, p 18.

¹³ Submission 12, icare, p 18.

Table 1 New scheme participants and total benefits paid, 2020-21 to 2023-24¹⁴

Financial year	New scheme applicants with eligibility for benefits	Total benefits paid (including workers and dependents)
2020-21	357	\$119.4 million
2021-22	292	\$161.2 million
2022-23	316	\$118.28 million
2023-24	382	\$118.78 million

- 1.12** In 2024, the estimated operating cost of the scheme was \$160 million, of which \$75 million was contributed by the levy and the remainder by investment returns.¹⁵

Previous reviews

- 1.13** The Standing Committee on Law and Justice is required to conduct a review of the Dust Diseases Scheme at least once every Parliament, in accordance with section 27 of the *State Insurance and Care Governance Act 2015*.¹⁶ To date, the committee has conducted four reviews, in 2021, 2019, 2018 and 2017, in addition to an earlier review of the Dust Diseases Board conducted in 2014.
- 1.14** The two most recent reviews (in 2019 and 2021) focussed on the issue of silicosis in the manufactured stone industry. On 13 December 2023, Australian, state and territory Work Health and Safety ministers announced a ban on engineered stone effective 1 July 2024. This prohibits any work involving the manufacture, supply, processing, or installation of engineered stone, including benchtop, panels, and slabs.¹⁷

The focus of this review

- 1.15** The committee has resolved to focus on two issues in this review:
1. The support available to younger workers within the scheme, including:
 - a. How younger workers can readily access appropriate supports to maintain or extend their working life in suitable duties,
 - b. When this is not possible due to dust disease, how the scheme can provide financial supports commensurate to their situation in flexible ways, and
 - c. Related medical, care and treatment supports for them, and when appropriate, their families.
 2. Other risk areas for silicosis, including, but not limited to, tunnelling and quarrying.

¹⁴ Submission 12, icare, p 18.

¹⁵ Submission 12, icare, p 21.

¹⁶ *State Insurance and Care Governance Act 2015* s 27; *Minutes*, NSW Legislative Council, 10 May 2023, Item 8, pp 31-34.

¹⁷ SafeWork NSW, *Engineered Stone Ban*, <https://www.safework.nsw.gov.au/hazards-a-z/hazardous-chemical/priority-chemicals/crystalline-silica/engineered-stone-ban>.

- 1.16** The first focus area follows from the committee's prior reviews, which outlined the rapid re-emergence of silicosis in New South Wales, particularly among younger workers.¹⁸ Evidence was received that the scheme has not adapted to meet the needs of these workers, which are distinct from those of the traditional participants of the scheme (older, retired workers with asbestos-related diseases). In 2022, this committee expressed concerns about the suitability of the scheme to support younger workers with silicosis:

... we remain concerned about whether the scheme is providing sufficient, appropriate support and compensation to victims of silicosis who, as we have heard, are for the most part a younger cohort of workers than the scheme was originally designed for.¹⁹

- 1.17** The second focus area responds to recent reporting by stakeholders and in the media about the risks of silica exposure in major infrastructure projects in New South Wales, especially those involving tunnelling.²⁰

Silica and silicosis

- 1.18** The two focus areas will continue the committee's recent focus on issues arising from silica. Crystalline silica is a natural mineral found mostly as quartz in sand and sandstone. Workers can come across silica when excavating or tunnelling through sandstone.²¹
- 1.19** Exposure to silica dust can lead to serious illnesses including silicosis, lung cancer, kidney disease and chronic obstructive pulmonary disease. Silicosis occurs when inhaled dust causes irreversible inflammation and scarring of the lungs. Symptoms include shortness of breath, coughing, tiredness, and chest pain. Silicosis is irreversible and can be fatal.²²
- 1.20** The following table shows the number of silica-related claims in the Dust Diseases Scheme over the last six years. Most claims for silica-related diseases are for silicosis.²³

¹⁸ Standing Committee on Law and Justice, NSW Legislative Council, *2021 Review of the Dust Diseases Scheme* (2022), pp 3 and 6 and 59-62.

¹⁹ Standing Committee on Law and Justice, NSW Legislative Council, *2021 Review of the Dust Diseases Scheme* (2022), p 72.

²⁰ See, for example Adele Ferguson and Amelia Ballinger, 'The death trap that lurks beneath our city', *Sydney Morning Herald*, 21 February 2023; Australian Workers Union, *60 Minutes investigates disease killing Australian workers* (20 February 2023), <https://awu.net.au/national/news/2023/02/18898/60-minutes-investigates-disease-killing-australian-workers/>.

²¹ SafeWork NSW, *Crystalline silica*, <https://www.safework.nsw.gov.au/hazards-a-z/hazardous-chemical/priority-chemicals/crystalline-silica>.

²² SafeWork NSW, *Crystalline silica*, <https://www.safework.nsw.gov.au/hazards-a-z/hazardous-chemical/priority-chemicals/crystalline-silica>; Lung Foundation Australia, *Silicosis: Occupational lung disease* (2025), <https://lungfoundation.com.au/patients-carers/conditions/occupational-lung-disease/silicosis/>.

²³ Submission 12, *icare*, p 11.

Table 2 Silica-related claims under the Dust Disease Scheme, 2018-19 to 2023-24²⁴

Financial year	New claims received each year	Cumulative total at end of each year
2018-19	37	37
2019-20	106	143
2020-21	36	179
2021-22	32	211
2022-23	56	267
2023-24	81	348

Recent developments

- 1.21** A number of developments relating to the Dust Diseases Scheme have occurred since the committee's last review in 2021. These are summarised below.

The Work Health and Safety Amendment (Crystalline Silica Substances) Regulation 2024

- 1.22** On 1 September 2024, the Work Health and Safety Amendment (Crystalline Silica Substances) Regulation 2024 came into force in New South Wales. This model regulation, replicated in other Australian jurisdictions, provides for stronger regulation of the processing of materials containing crystalline silica across all industries.
- 1.23** According to SafeWork NSW, the regulation was introduced to give effect to decisions made by the Australian, state and territory work health and safety ministers at a meeting on 28 February 2023.²⁵ The regulation requires employers who are undertaking high risk crystalline silica processes to:
- provide instruction, information, and training to workers about the health risks associated with exposure to respirable crystalline silica
 - develop a silica risk control plan
 - undertake air monitoring and provide results to SafeWork NSW where they indicate the airborne concentration of respirable crystalline silica in the workplace exceeds the workplace exposure standards, and
 - provide health monitoring for workers.²⁶

²⁴ Submission 12, icare, p 10.

²⁵ Submission 13, SafeWork NSW, p 2.

²⁶ Submission 13, SafeWork NSW, p 2. See also SafeWork NSW, *Work Health and Safety Amendment (Crystalline Silica Substances) Regulation 2024*, <https://www.safework.nsw.gov.au/legal-obligations/legislation/accordians/work-health-and-safety-amendment-crystalline-silica-substances-regulation-2024>.

- 1.24 The Australian Workers Union remarked that the regulation would impact 'a large number of industries,' but that the mining industry in most states would not be subject to it.²⁷

The Silica National Strategic Plan 2024–30

- 1.25 On 16 December 2024, the Australian and state and territory governments endorsed the Silica National Strategic Plan 2024–2030 (the plan). This plan was made following the National Dust Disease Taskforce's Final Report from 2021, which called for finalisation of a strategy to drive coordinated national action to address increasing rates of silicosis.²⁸
- 1.26 The plan comprises three aims and five priority areas. Each priority is then divided into action items, with lead agencies assigned to each one. The three aims are:
1. Eliminate silica-related diseases in Australia
 2. Support workers and others affected by silica-related diseases
 3. Be an international leader.²⁹
- 1.27 The Asbestos and Silica Safety and Eradication Agency will provide annual progress reports under the plan, with the first due by 31 December 2025.³⁰

The Silica Worker Register

- 1.28 In October 2023, amendments to the *Work Health and Safety Act 2011* were passed to enable SafeWork NSW to establish and keep a silica worker register.³¹ The amendments provide that the register is to be used in tracking the health and safety of workers on the register, including for epidemiological research, or for any other purpose prescribed by the regulations.³²
- 1.29 Regulations are required for the silica worker register to become operational. A draft Work Health and Safety Amendment (Silica Worker Register) Regulation 2024 was placed for public consultation between 4 October and 3 November 2024. SafeWork NSW advised it will be carefully considering and assessing feedback received in response, which will inform the further development of the draft regulations.³³ It also advised that it expects the new regulations to be finalised 'shortly after the consultation period.'³⁴

²⁷ Submission 14, The Australian Workers Union, p 2.

²⁸ Asbestos and Silica Safety and Eradication Agency, Australian Government, *Silica National Strategic Plan 2024–30* (2024), p 4.

²⁹ Asbestos and Silica Safety and Eradication Agency, Australian Government, *Silica National Strategic Plan 2024–30* (2024), p 11.

³⁰ Asbestos and Silica Safety and Eradication Agency, Australian Government, *Silica National Strategic Plan 2024–30* (2024), p 25.

³¹ *Work Health and Safety Amendment Act 2023* Sch 1 [34].

³² *Work Health and Safety Act 2011* s 273B(3).

³³ Submission 13, SafeWork NSW, p 3; Evidence, Mr Curtin, 29 November 2024, p 50.

³⁴ Submission 13, SafeWork NSW, p 3.

The National Occupational Respiratory Disease Registry

- 1.30** The *National Occupational Respiratory Registry Act 2023* (Cth) received Royal Assent on 22 November 2023. This created the National Occupational Respiratory Registry, which became operational on 22 May 2024.
- 1.31** Under the Act, health professionals are required to report all new diagnoses of silicosis to the Registry. Physicians can also choose to report other occupational respiratory diseases to the Registry, with patient consent. As of 3 September 2024, consequent on the creation of the Registry, the previous requirement to notify silicosis diagnosis to NSW Health no longer applies.³⁵
- 1.32** The Registry will store data on silicosis in Australia. It is intended to improve understanding of preventable occupational respiratory diseases, and to reduce or eliminate new cases.³⁶
- 1.33** The Registry is discussed further in Chapter 5.

Committee comment

- 1.34** The committee notes the recent developments relating to the Dust Diseases Scheme since the committee's last review in 2021. In particular, the Silica Worker Register which is to be administered by SafeWork NSW. We understand that SafeWork NSW undertook a public consultation period last year, concluding on 3 November 2024. However, seven months have passed with no further updates as to the progress of the draft regulations. The committee further notes that the NSW Government website simply states that the public feedback is under review with no timeline given as to when the outcome of the consultation will be shared.³⁷ Given the importance of the register to track the health and safety of workers exposed to respirable crystalline silica, the committee calls on SafeWork NSW to prioritise the completion of the review of public feedback on the Silica Worker Register and implement the necessary new regulations to commence the Silica Worker Register as soon as practicable.

Recommendation 1

That SafeWork NSW prioritise the completion of the review of public feedback on the Silica Worker Register and implement, as soon as practicable, the necessary new regulations to commence the Silica Worker Register.

³⁵ Department of Health and Aged Care, Australian Government, *Occupational respiratory diseases* (4 September 2024), <https://www.health.gov.au/our-work/nordr/diseases>.

³⁶ Department of Health and Aged Care, Australian Government, *National Occupational Respiratory Disease Registry* (4 September 2024), <https://www.health.gov.au/our-work/nordr>.

³⁷ NSW Government, Have your say: Silica worker register, <https://www.haveyoursay.nsw.gov.au/silica-worker-register>.

Chapter 2 Support for younger workers in the scheme

The first focus area of this inquiry is the support available to younger workers within the Dust Diseases Scheme. The increase in diagnoses of silica-related diseases in recent years has led to a rise in the number of younger, working-age scheme participants. This chapter examines whether the scheme adequately supports these workers. This involves consideration of the suitability of the scheme as a whole, as well as the adequacy of specific supports for younger workers, including financial, vocational and psychological supports. Additionally, the chapter discusses whether there is a need for more support for culturally and linguistically diverse workers in the scheme.

The suitability of the scheme for younger workers

- 2.1 A significant issue during this inquiry was whether the Dust Diseases Scheme (the scheme) is adapted to meet the needs of younger workers who receive a dust disease diagnosis while they are still of working age. This issue is particularly pertinent for those diagnosed with silicosis and other silica-related diseases, which tend to have a younger age of diagnosis than other dust diseases.
- 2.2 Inquiry participants explained that the scheme was originally set up to support workers with asbestos-related diseases. These workers were usually either too unwell to continue working or already retired by the time they entered the scheme. They also generally had a short life expectancy post-diagnosis.³⁸ The scheme was therefore intended to support retired workers with a terminal disease for a brief period of time.
- 2.3 By contrast, workers with silicosis in the scheme tend to be younger and still of working age.³⁹ According to icare, in 2024, the average age at time of acceptance into the scheme for workers diagnosed with silicosis was 58. This is compared to mesothelioma, which was 77, and asbestosis, which was 80.⁴⁰
- 2.4 The following table shows the age of workers making silica-related claims in the scheme for the last six years:

³⁸ Submission 12, icare, p 3; Evidence, Ms Sherri Hayward, Senior Legal Officer, Construction and General Division, NSW Divisional Branch, Construction, Forestry and Maritime Employees Union, 29 November 2024, p 10; Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 39.

³⁹ Submission 2, Australian Lawyers Alliance, p 8; Submission 3, Slater and Gordon Lawyers, p 3; Evidence, Ms Hayward, 29 November 2024, p 10; Evidence, Mr Timothy McGinley, Senior Member, Dust Diseases Special Interest Group, Australian Lawyers Alliance, and Senior Associate, Maurice Blackburn Lawyers, 29 November 2024, p 26; Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 39.

⁴⁰ Submission 12, icare, p 13.

Table 3 Silica-related claims in the Dust Diseases Scheme by age range, 2018-19 to 2023-24⁴¹

Age range	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	Total
18-30 years	2	5	-	-	3	2	12
31-40 years	5	20	2	8	12	6	53
41-50 years	14	26	11	2	11	23	87
51-60 years	4	47	10	8	10	19	98
61-70 years	6	6	4	4	10	14	44
71-80 years	5	-	6	6	6	8	31
80+ years	1	2	3	4	4	9	23
Total	37	106	36	32	56	81	348

2.5 As can be seen from above, from 2018-19 to 2023-24, over 70 per cent of the silica-related claims were made by workers aged 60 or below, including 65 claims made by workers aged 40 or under.

2.6 Inquiry participants also presented anecdotal evidence about the younger age of workers diagnosed with silicosis compared to other dust diseases. Australian Lawyers Alliance commented that most of its clients are in their 20s, 30s and 40s, 'still in the prime of their working lives'.⁴² Dr Jane Muir, Member, Royal Australasian College of Physicians, and Fellow of the Australasian Faculty of Occupational and Environmental Medicine added that in a case series analysis of workers diagnosed with silicosis, the average age was 'late 30s, early 40s', although she noted this was a small data set.⁴³ Slater and Gordon Lawyers described this cohort of younger male workers:

The new cohort of workers diagnosed with silica-related diseases are mostly younger workers, with quite different life circumstances. These workers are usually aged in their 20s to 50s and working full-time as stonemasons or tunnellers (predominately). They are generally male, have young families, and are the breadwinner in their families. They are paying rent or have mortgages. They are not financially secure and not yet financially established. Often English is not their first language and many have low education attainment. Depending on the severity of their disease, they may need to go back to work to support themselves and their families.⁴⁴

2.7 Due to the younger age of diagnosis, and the lower severity and progression of silicosis compared to some other dust diseases, workers diagnosed with silicosis have a longer life expectancy.⁴⁵ In 2024, it was expected that workers with silicosis would remain alive and in the scheme for an average of 17 years, compared to seven years for those with asbestosis and two years for those with mesothelioma.⁴⁶ Workers with silicosis are therefore supported by the scheme for longer, and from a younger age.

⁴¹ Submission 12, icare, p 10.

⁴² Submission 2, Australian Lawyers Alliance, p 8.

⁴³ Evidence, Dr Jane Muir, Member, Royal Australasian College of Physicians, and Fellow of the Australasian Faculty of Occupational and Environmental Medicine, 29 November 2024, p 44.

⁴⁴ Submission 3, Slater and Gordon Lawyers, p 2.

⁴⁵ Submission 12, icare, p 13.

⁴⁶ Submission 12, icare, p 13.

- 2.8** The Australian Institute of Occupational Hygienists said it was an 'increasing challenge' for the scheme to manage younger workers diagnosed with silica related diseases, while Mr Timothy McGinley, Senior Member, Dust Diseases Special Interest Group, Australian Lawyers Alliance, and Senior Associate, Maurice Blackburn Lawyers said the scheme was 'ill-suited' to do so.⁴⁷
- 2.9** One challenge for this cohort is that there is a legislative requirement for a worker to be at least partially incapacitated because of their dust disease to be eligible for support under the scheme. However, due to the shorter latency period of silica related diseases, many workers are not actually incapacitated when they are diagnosed.⁴⁸ Improved medical screening is also leading to workers being diagnosed much earlier in the diseases process, when they have minimal or no symptoms.⁴⁹ In fact, icare stated that over 70 per cent of new silica related cases have no symptoms or impairments at the time of diagnosis.⁵⁰
- 2.10** In practice, in order to allow these participants to access support, icare gives them a notional one per cent disability. icare reported that more than half of workers with silicosis, and almost all working age applicants, enter the scheme on one per cent disability. As at March 2024, only about 10 per cent of those workers have had their disease progress beyond that level.⁵¹

The adequacy of financial support for younger workers

- 2.11** The following sections will consider the adequacy of supports for younger workers in the scheme. The first section looks at financial support.

Rates of financial support under the scheme

- 2.12** The provision of financial support under the scheme is set by the *Workers' Compensation (Dust Diseases) Act 1942* and the *Workers Compensation Act 1987*, as well as SIRA's Workers Compensation Benefits Guide.
- 2.13** All workers with a reduced or total incapacity for work due to their work-related dust disease are entitled to financial compensation for loss of income via fortnightly payments:
- for the first 26 weeks of incapacity, workers receive salary replacement equivalent to their actual weekly wage (up to \$2,522.90 per week)
 - after 26 weeks, weekly payments are capped at a maximum statutory rate (currently \$593.40), plus payments for dependents (currently \$156.40 for a spouse, and \$111.80 for a child, with additional rates for multiple children).⁵²

⁴⁷ Submission 1, Australian Institute of Occupational Hygienists, p 6; Evidence, Mr McGinley, 29 November 2024, p 26.

⁴⁸ Submission 12, icare, p 3.

⁴⁹ Submission 2, Australian Lawyers Alliance, p 8.

⁵⁰ Submission 12, icare, p 3.

⁵¹ Submission 12, icare, pp 3 and 14.

⁵² Submission 12, icare, p 6; State Insurance Regulatory Authority, *Workers Compensation Benefits Guide – October 2024* (October 2024), pp 15-16, 27, and 50 and 58.

- 2.14** Workers are entitled to payments as set out above regardless of whether they were still working or retired when they entered the scheme.⁵³
- 2.15** Workers are also entitled to 52 weeks of special payments if they undergo retraining.⁵⁴ For workers who obtain employment in another occupation, they are entitled to receive 'make-up' compensation payments if their new role pays less than what they had been earning in their previous employment.⁵⁵

Concerns around the rates of financial support

- 2.16** Inquiry participants raised a range of concerns with the provision and rates of compensation under the scheme.
- 2.17** Some argued that 26 weeks is not long enough to receive a replacement salary. Australian Lawyers Alliance said it was 'not a significant amount of time for young workers, who are grappling with a life-changing diagnosis as well as the prospect of finding a new career, to retrain and rehabilitate'.⁵⁶
- 2.18** Another issue was that the salary replacement may not accurately reflect what the worker was earning. Australian Lawyers Alliance commented that many workers, such as stonemasons, regularly perform overtime, but overtime payments are not taken into account when their salary replacement rate is determined. It said this means 'when workers receive the initial 26 weeks of pay, it is usually already at a much lower rate than the workers were receiving whilst employed in the industry'.⁵⁷ Slater and Gordon Lawyers made a similar comment.⁵⁸
- 2.19** Criticisms were also heard about the rate of payment after 26 weeks. icare pointed out that for some workers, their payment will go from approximately \$5,000 per fortnight to approximately \$1,000 per fortnight once they pass 26 weeks, representing an 80 per cent pay cut.⁵⁹ Elsewhere, icare said that the payments 'do not allow a reasonable living wage' for workers, especially those who are diagnosed at a young age and who have many years ahead of them in which they must support their families.⁶⁰
- 2.20** The Australian Manufacturing Workers' Union said that young workers will 'watch their financial future and independence drain away' under the scheme due to insufficient compensation.⁶¹ As an example of the inadequacy of payment rates, it commented that young workers often take out a loan for a work vehicle, which is paid back over multiple years; but the

⁵³ Submission 12, icare, p 6.

⁵⁴ Submission 12, icare, p 5.

⁵⁵ Submission 12, icare, p 6.

⁵⁶ Submission 2, Australian Lawyers Alliance, p 9. See also Submission 3, Slater and Gordon Lawyers, pp 4-5.

⁵⁷ Submission 2, Australian Lawyers Alliance, p 9.

⁵⁸ Submission 3, Slater and Gordon Lawyers, pp 4-5.

⁵⁹ Evidence, Mr Rohit Mandanna, General Manager, Lifetime and Workers Care, icare, 11 December 2024, p 10.

⁶⁰ Submission 12, icare, p 3.

⁶¹ Submission 8, Australian Manufacturing Workers' Union, p 8.

payments under the scheme would not be sufficient for a worker to keep up with those payments and retain their vehicle.⁶²

- 2.21** The Australian Manufacturing Workers' Union also criticised the payments for dependents, saying it was 'a form of structural violence to pay only \$156.40 for a dependent spouse and \$111.80 for a dependent child'.⁶³
- 2.22** The CFMEU Construction and General Division NSW Branch commented on the difference in payments after 26 weeks in the Dust Diseases Scheme compared to the Workers' Compensation Scheme. It remarked that, at the time of its submission, an average construction worker with total incapacity in the Workers' Compensation Scheme would be likely to receive \$2,523 per week, whereas the same worker in the Dust Diseases Scheme would only be entitled to a maximum weekly benefit of \$593.40 (plus additional payments for dependents).⁶⁴
- 2.23** Some argued the inadequacy of financial support under the scheme may provide an incentive for workers to stay in unsafe occupations. The Asbestos Diseases Research Foundation pointed out that workers are 'more likely to be earning substantially more by remaining in unsafe work than what will be paid under the dust disease scheme'.⁶⁵ Australian Lawyers Alliance commented that its clients have 'felt "trapped" into staying in jobs where they remain exposed to high levels of crystalline silica,' because 'they cannot afford to be unemployed, to re-train or to work in lower-paying jobs' without sufficient financial support'.⁶⁶
- 2.24** Slater and Gordon added that from its experience, workers will continue to stay in unsafe jobs because 'they feel 26 weeks does not afford them sufficient time to find and retrain in a new role in a new industry, and they are often not able to support their families at the minimum statutory rate'.⁶⁷
- 2.25** Both Australian Lawyers Alliance and Slater and Gordon recommended that workers be paid a full salary replacement for a minimum of 52 weeks.⁶⁸ The Australian Manufacturing Workers' Union said that workers should be paid a salary replacement until they obtain new employment (upon which it could be reduced commensurate with the new salary).⁶⁹
- 2.26** icare questioned whether retired workers should be eligible for payments under the scheme. It gave an example of a worker whose last exposure to workplace dust happened in 1985, who retired in 1999 and who was diagnosed with mesothelioma in 2023. It said that this worker was paid \$4,487.20 in salary replacement for his first 26 weeks, and then \$1,175 per fortnight thereafter (plus a payment for his spouse).⁷⁰ icare argued this worker 'is in retirement and does

⁶² Submission 8, Australian Manufacturing Workers' Union, p 8.

⁶³ Submission 8, Australian Manufacturing Workers' Union, p 7.

⁶⁴ Submission 15, CFMEU Construction and General Division NSW Branch, p 20. See also Evidence, Ms Hayward, 29 November 2024, p 11.

⁶⁵ Submission 18, Asbestos Diseases Research Foundation, p 1.

⁶⁶ Submission 2, Australian Lawyers Alliance, p 10.

⁶⁷ Submission 3, Slater and Gordon Lawyers, pp 4-5.

⁶⁸ Submission 2, Australian Lawyers Alliance, p 10; Submission 3, Slater and Gordon Lawyers, pp 4-5.

⁶⁹ Submission 8, Australian Manufacturing Workers' Union, p 7.

⁷⁰ Submission 12, icare, p 23.

not require compensation for loss in income as his income was never actually impacted by his dust disease'.⁷¹

Special payments for training

- 2.27** A concern was also raised about special payments for re-training. icare criticised the fact that these payments end after 52 weeks, with no provision to be paused or extended, such as to accommodate holiday periods, or unexpected life events.⁷² It gave an example of a worker who was undertaking a TAFE course and asked to postpone its completion until February due to the Christmas period, but his special payments were due to end in January and could not be extended.⁷³
- 2.28** icare also added that a worker is not eligible for the payment if they are receiving any paid income, even if the income is negligible or related to their training.⁷⁴ It argued this 'can prevent workers from taking on limited paid employment while they are retraining that could lead to them securing full time employment, due to the financial impact of being without sufficient income for the duration of their training.'⁷⁵ It gave an example of a worker undertaking unpaid training to become a personal trainer, who was offered six hours of paid work per week, which would become full time at completion of his training. Under the provisions, this paid work (which was not sufficient to meet the worker's living costs) would disqualify him from receiving the special payment.⁷⁶
- 2.29** Australian Lawyers Alliance recommended that workers should receive special payments for the entire duration of their training or study, plus an additional 26 weeks afterwards to support them while they find employment in their new field.⁷⁷

The adequacy of vocational and training support for younger workers

- 2.30** Medical practitioners usually advise workers who are diagnosed with a dust disease to leave their industries to avoid any further exposure to hazardous dust.⁷⁸ However, work like stonemasonry or tunnelling is often highly specialized. The qualifications, skills, and experience that workers have acquired may not easily translate to alternate work.⁷⁹ Additionally, many workers in these industries may lack knowledge about alternative job opportunities and/or be of a non-English speaking background, making it more difficult for them to find and acquire work.⁸⁰
- 2.31** The provision of vocational and training support within the scheme is therefore a way to support workers transitioning to alternate, safer work. Currently, there is no legislative

⁷¹ Submission 12, icare, p 23.

⁷² Submission 12, icare, p 5.

⁷³ Submission 12, icare, p 22.

⁷⁴ Submission 12, icare, p 6.

⁷⁵ Submission 12, icare, p 6.

⁷⁶ Submission 12, icare, p 22.

⁷⁷ Submission 2, Australian Lawyers Alliance, p 10.

⁷⁸ Submission 12, icare, p 3; Evidence, Dr Muir, 29 November 2024, p 43.

⁷⁹ Submission 2, Australian Lawyers Alliance, p 8.

⁸⁰ Submission 12, icare, p 5.

requirement to provide workers within the scheme with this type of support.⁸¹ However, icare told the committee that it identified there was a need for such supports and, on its own initiative, developed a vocational assistance program.⁸² This program provides vocational assessments and counselling, retraining and skill enhancement opportunities, and assistance with job seeking, interview preparation and securing work trials.⁸³

- 2.32** Inquiry participants supported, in general, the provision of vocational and training support for workers in the scheme.⁸⁴ However, some felt that the current offerings could be improved.
- 2.33** Australian Lawyers Alliance said that vocational and training support provided by icare 'is inconsistent, with many clients not receiving any assistance at all'.⁸⁵ Slater and Gordon Lawyers called for 'improving retraining and rehabilitation' programs, while Maurice Blackburn Lawyers said that icare should be 'empowered and properly resourced' to deliver them.⁸⁶
- 2.34** Some inquiry participants suggested there should be a legislative, mandatory requirement to provide this type of support for workers, rather than it be at the discretion of icare.⁸⁷ The committee was pointed to sections 64B and 64C of the *Workers Compensation Act 1987*, which provide that, in certain circumstances, an employer is liable to pay compensation for the cost of education, training or other types of assistance required to assist an injured worker to return to work. It was suggested there should be equivalent provisions for the Dust Diseases Scheme.⁸⁸
- 2.35** Another concern, expressed by several participants, is that workers are frequently only offered unskilled, low-paid jobs, such as a truck driver, courier, cleaner, or security guard.⁸⁹ Ms Sherri Hayward, Senior Legal Officer, Construction and General Division, NSW Divisional Branch, Construction, Forestry and Maritime Employees Union suggested there is a culture in vocational assessments where 'any job is a good job', so highly skilled workers are 'being sent to be courier drivers' when they could retrain in another skilled field like engineering.⁹⁰

⁸¹ Submission 12, icare, p 5.

⁸² Submission 12, icare, p 5; Evidence, Mr Mandanna, 11 December 2024, p 14.

⁸³ Submission 12, icare, pp 3 and 5; Evidence, Mr Stuart Farquharson, Interim Chief Executive Officer, icare, 11 December 2024, p 2.

⁸⁴ Submission 2, Australian Lawyers Alliance, pp 8-9; Submission 16, Unions NSW, p 5.

⁸⁵ Submission 2, Australian Lawyers Alliance, p 8.

⁸⁶ Submission 3, Slater and Gordon Lawyers, p 3; Submission 7, Maurice Blackburn Lawyers, p 5.

⁸⁷ Submission 16, Unions NSW, pp 5-6; Submission 15, CFMEU Construction and General Division NSW Branch, p 19.

⁸⁸ Submission 15, CFMEU Construction and General Division NSW Branch, p 19; Submission 16, Unions NSW, p 5.

⁸⁹ Submission 2, Australian Lawyers Alliance, p 8; Submission 3, Slater and Gordon Lawyers, pp 5-6; Submission 7, Maurice Blackburn Lawyers, p 4; Evidence, Mrs Joanne Wade, Head of National Asbestos and Dust Diseases, Slater and Gordon Lawyers, 29 November 2024, p 27.

⁹⁰ Evidence, Ms Hayward, 29 November 2024, p 12.

- 2.36** It was noted that this not only results in less earning capacity for the workers, potentially causing financial stress, but can also lead to poor mental health.⁹¹ Maurice Blackburn Lawyers explained how taking a lesser skilled job can impact workers' sense of self-worth:

... it is almost always the case that the worker has developed a profound sense of achievement in gaining the specialised skills that they have acquired in working in industries like stonemasonry and tunnelling. Suggesting that they should be satisfied with a lesser skilled job can severely impact their sense of self-worth and mental health.⁹²

- 2.37** Maurice Blackburn Lawyers also suggested that if low-paid jobs are the only alternatives provided to workers, it creates a 'perverse incentive' for them to remain in their current roles, despite the health risks this presents.⁹³

Support to return to work where appropriate

- 2.38** The committee heard that workers diagnosed with silicosis who have no or mild symptoms often express a strong preference to remain in their job.⁹⁴ While leaving their workplace is generally medically preferred, it can be possible, in some cases, for them to remain in their role.⁹⁵ This is especially given that, as explained by the Royal Australasian College of Physicians, many workers with silicosis 'will not significantly progress in their immediate foreseeable future'.⁹⁶ However, workers with a diagnosed lung disease will usually require enhanced safety measures to remain at work.
- 2.39** Dr Jane Muir, Member, Royal Australasian College of Physicians, and Fellow of the Australasian Faculty of Occupational and Environmental Medicine, told the committee that she has diagnosed many workers with silicosis in the last 18 months, with almost all of them asymptomatic. She explained that she always recommends they find a new occupation, but, 'overwhelmingly', the workers want to stay in their roles. Dr Muir explained that she therefore implements a number of safety measures to allow them to stay. These include mandatory use of power-assisted respirators, monthly to three-monthly personal exposure monitoring, and frequent lung function tests and CT scans.⁹⁷
- 2.40** Dr Muir said this is not 'perfect', but a practical compromise between workers and their doctors, although she noted that if a workers' health deteriorated, she would no longer support them staying at work:

⁹¹ Submission 2, Australian Lawyers Alliance, p 8; Submission 3, Slater and Gordon Lawyers, pp 5-6; Submission 7, Maurice Blackburn Lawyers, p 4.

⁹² Submission 7, Maurice Blackburn Lawyers, p 4.

⁹³ Submission 7, Maurice Blackburn Lawyers, p 4.

⁹⁴ Answers to questions on notice, Dr Jane Muir, Member, Royal Australasian College of Physicians and Fellow of the Australasian Faculty of Occupational and Environmental Medicine, 10 January 2025, p 8.

⁹⁵ Evidence, Dr Aruvi Thiruvarduchelvan, Consultant Respiratory and Sleep Physician, 29 November 2024, p 43.

⁹⁶ Answers to questions on notice, Dr Muir, 10 January 2025 p 7.

⁹⁷ Evidence, Dr Muir, 29 November 2024, p 43.

Now, it is not perfect because whilst they've got those PAPRs [Powered Air Purifying Respirators] on, it is still a high-risk environment. But this has been the compromise that has been made for these gentlemen—all gentlemen; I've got one lady, a cleaner—to allow them to keep their occupation because they desperately don't want to be put out of work. I have been monitoring them closely for the last 18 months to two years. So far there hasn't been any disease progression. In the event of any disease progression in any of these workers, I would have a very, very low threshold to say, "Look, I can't support you staying in this high-risk work environment any longer", and we would need to look at alternative duties.⁹⁸

- 2.41** The Australian Institute of Occupational Hygienists referred the committee to a guide published by the Queensland Workers' Compensation Regulatory Services for workers returning to work with a mine dust lung disease.⁹⁹ It reported this includes a number of measures to be implemented, including stricter exposure standards, enhanced medical surveillance, and increased dust monitoring frequencies.¹⁰⁰ The Institute said there are still 'significant challenges' for workers returning to work, but welcomed this guide as a 'first step'.¹⁰¹

The adequacy of psychological support for younger workers

- 2.42** The committee heard that workers diagnosed with dust diseases often experience negative psychological symptoms. These include anxiety, depression, anger management issues, social withdrawal, relationship breakdowns, and suicidal thoughts.¹⁰²
- 2.43** Australian Lawyers Alliance explained that these symptoms can occur not only because of the diagnosis, but also because of the loss of the worker's career and the stress associated with unemployment and financial instability.¹⁰³ It commented that psychiatric injuries 'can often be more debilitating than their silica-related disease'.¹⁰⁴ In severe cases, secondary psychiatric injuries can prevent young workers from returning to the workforce, even if their dust disease does not.¹⁰⁵
- 2.44** icare provides workers in the scheme with free psychosocial support, including counselling and psychotherapy, if their diagnosis has impacted their mental health.¹⁰⁶ icare advised that psychological support is regularly offered, and services are usually approved quickly:

Mental health services are approved quickly when there is evidence that the need for the support arises from the worker's dust disease. icare's case managers are predominantly qualified allied health staff who are skilled at recognising when mental health services are required, and who regularly offer this type of support to workers.

⁹⁸ Evidence, Dr Muir, 29 November 2024, p 43.

⁹⁹ Submission 1, Australian Institute of Occupational Hygienists, p 4.

¹⁰⁰ Submission 1, Australian Institute of Occupational Hygienists, p 4.

¹⁰¹ Submission 1, Australian Institute of Occupational Hygienists, p 4.

¹⁰² Submission 2, Australian Lawyers Alliance, pp 10-11.

¹⁰³ Submission 2, Australian Lawyers Alliance, pp 10-11.

¹⁰⁴ Submission 2, Australian Lawyers Alliance, p 11. See also Submission 12, icare, p 7.

¹⁰⁵ Submission 2, Australian Lawyers Alliance, p 11.

¹⁰⁶ Submission 12, icare, p 7.

The only limitation on accessibility is the reluctance of the workers to engage with mental health services.¹⁰⁷

- 2.45** However, Slater and Gordon reported that scheme participants sometimes need to 'fight' to obtain approval for mental health services, and that this approval 'can take quite some time'.¹⁰⁸ It called for mental health services to be made available to workers upfront when they are accepted into the scheme.¹⁰⁹ Similarly, Australian Lawyers Alliance said that icare is often slow to approve funding for psychological support or denies it to workers completely.¹¹⁰
- 2.46** Currently, mental health services are not provided to family members under the scheme.¹¹¹ Both Australian Lawyers Alliance and Slater and Gordon called for this to change, so that immediate family members are also eligible for psychological support.¹¹² icare advised a legislative change would be required to change this.¹¹³

The need for targeted support for culturally and linguistically diverse workers

- 2.47** Some inquiry participants expressed the view that there is a need for greater support for culturally and linguistically diverse workers, including those of migrant backgrounds, in the scheme.
- 2.48** Australian Lawyers Alliance said that while historically the scheme has mostly supported Australian-born workers, 'the current silicosis epidemic has disproportionately affected workers from culturally and linguistically diverse backgrounds, many of whom are recent immigrants and non-permanent residents'.¹¹⁴ It said that many of its clients, especially stonemasons, were from South-East Asia and the Middle East.¹¹⁵ These workers were identified as facing a range of additional challenges in navigating the scheme.
- 2.49** Inquiry participants noted that workers who speak English as a second language may experience 'significant language barriers' in understanding safety information at work, accessing healthcare and screening services, and claiming compensation under the scheme.¹¹⁶
- 2.50** Maurice Blackburn Lawyers said that workers with limited English skills can experience a 'profound lack of confidence and personal agency'.¹¹⁷ It said this makes it very difficult for them

¹⁰⁷ Answers to supplementary questions, Mr Stuart Farquharson, Interim CEO, icare, 30 January 2025, p 11.

¹⁰⁸ Submission 3, Slater and Gordon Lawyers, p 5.

¹⁰⁹ Submission 3, Slater and Gordon Lawyers, p 5.

¹¹⁰ Submission 2, Australian Lawyers Alliance, p 11.

¹¹¹ Answers to supplementary questions, Mr Farquharson, 30 January 2025, p 11.

¹¹² Submission 2, Australian Lawyers Alliance, p 11; Submission 3, Slater and Gordon Lawyers, p 6.

¹¹³ Answers to supplementary questions, Mr Farquharson, 30 January 2025, p 11.

¹¹⁴ Submission 2, Australian Lawyers Alliance, p 12.

¹¹⁵ Submission 2, Australian Lawyers Alliance, p 12.

¹¹⁶ Submission 7, Maurice Blackburn Lawyers, pp 5-6; Submission 10, Lung Foundation Australia, p 7; Answers to supplementary questions, Ms Natasha Flores, Industrial Officer Work Health & Safety, Workers Compensation, Unions NSW, 31 January 2025, pp 3-4.

¹¹⁷ Submission 7, Maurice Blackburn Lawyers, pp 5-6.

to find and secure alternate work, especially if combined with a limited capacity to work in other roles plus associated psychological impacts.¹¹⁸ It recommended that icare implement policies and resources to provide 'proper support' to workers from culturally and linguistically diverse backgrounds, including in return-to-work programs.¹¹⁹ There were also suggestions that SafeWork and icare produce information in multiple languages and hire staff from diverse backgrounds.¹²⁰

2.51 Inquiry participants also pointed out that these workers may require English lessons to obtain alternate work.¹²¹ Mr Timothy McGinley, Senior Member, Dust Diseases Special Interest Group, Australian Lawyers Alliance, and Senior Associate, Maurice Blackburn Lawyers said 'they will probably require more training in English, as my colleague said, but it is entirely reasonable to expect they'll be able to do it ... we envisage that that should be part of the system in individualised care plans for those sorts of people'.¹²²

2.52 Australian Lawyers Alliance said that many workers with a migrant background are forced to return to their country of origin after their diagnosis, either because they lose their visa when they stop working or because they need family support.¹²³ However, icare does not fund any medical or related care administered outside Australia. The Alliance argued that this 'unfairly prejudices' migrant workers:

This unfairly prejudices migrant workers who, through no fault of their own, develop chronic illnesses as a result of working in (and for the benefit of) NSW and Australia more broadly, and are now unable to access necessary medical treatment and support in their home countries.¹²⁴

Committee comment

2.53 The committee is troubled to learn of the increasing number of young workers being diagnosed with silicosis, and the number of silica-related claims being made by workers under the age of 40. The committee notes the challenges posed by the Dust Diseases scheme in terms of its ability to support younger workers diagnosed with silicosis or silica-related diseases that are not incapacitated or showing symptoms.

2.54 The committee considers the current financial support provided under the Dust Diseases scheme, as set out in *Workers' Compensation (Dust Diseases) Act 1942*, the *Workers Compensation Act 1987*, and SIRA's Workers Compensation Benefits Guide, as inadequate. As noted by inquiry participants, 26 weeks is not long enough to receive a replacement salary and that the salary replacement may not accurately reflect what the worker was earning. The financial stress placed on workers, particularly young workers, who have been denied long careers in their chosen

¹¹⁸ Submission 7, Maurice Blackburn Lawyers, pp 5-6.

¹¹⁹ Submission 7, Maurice Blackburn Lawyers, p 6.

¹²⁰ Submission 10, Lung Foundation Australia, p 7; Answers to supplementary questions, Ms Flores, 31 January 2025, pp 3-4.

¹²¹ Evidence, Mrs Wade, 29 November 2024, p 27; Evidence, Mr McGinley, 29 November 2024, p 27.

¹²² Evidence, Mr McGinley, 29 November 2024, p 27.

¹²³ Submission 2, Australian Lawyers Alliance, p 12.

¹²⁴ Submission 2, Australian Lawyers Alliance, p 12.

industry as a result of a dust disease diagnosis is considerable. Understandably, the inadequacy of financial support under the scheme may provide an incentive for workers to stay in unsafe occupations. As a committee, we do not want to see this as being the only option available to workers.

- 2.55** Further, the discrepancies between payments available under the Dust Diseases Scheme and the Workers' Compensation Scheme as highlighted by the CFMEU is of concern. Given this, the committee sees merit in the proposal put forward by inquiry participants that workers be paid a full salary replacement for a minimum of 52 weeks (at a rate that truly reflects their previous salary, including regular overtime payments), and that payments after 52 weeks be at the same rate as what a worker would receive under the workers' compensation scheme.

Recommendation 2

That the NSW Government consider amending the *Workers Compensation Act 1987* to provide:

- workers within the Dust Diseases Scheme a full salary replacement for 52 weeks (at a rate that truly reflects their previous salary, including regular overtime payments)
 - workers within the Dust Diseases Scheme payments after 52 weeks at a rate equivalent to what a worker would receive under the Workers' Compensation Scheme.
-

- 2.56** Likewise, special payments for re-training are also restrictive as they currently end after 52 weeks, cannot be paused or extended, with workers ineligible for payments if they are receiving any paid income, even if the income is negligible or related to their training. The financial impact of this is significant for workers trying to do the right thing by leaving their unsafe workplace and re-training to find alternate employment. The committee recommends that icare review and expand the financial assistance it provides for career and educational counselling services for workers in the Dust Diseases Scheme, and to assist them in finding jobs in their chosen industries once they complete their courses, ensuring the assistance lasts for the duration of the training course and should not stop if the worker secures paid employment.

Recommendation 3

That icare review and expand the financial assistance it provides for career and educational counselling services for workers in the Dust Diseases Scheme, and to assist them in finding jobs in their chosen industries once they complete their courses, ensuring the assistance lasts for the duration of the training course and should not stop if the worker secures paid employment.

- 2.57** The committee acknowledges the undertaking of icare in developing a vocational assistance program to support workers transitioning to alternate, safer work. However, we note inquiry participants calls for improvements to this program to ensure it is consistent, offered to all clients, and that icare itself is properly resourced to deliver such programs. The committee is also concerned to hear that many workers are unable to find alternate work with pay that is commensurate to what they were previously earning. Therefore, the committee recommends that icare develop enhanced vocational support and re-training options which focus on finding work of approximate equal salary to what the worker was previously receiving.

Recommendation 4

That icare develop enhanced vocational support and re-training options which focus on finding work of approximate equal salary to what the worker was previously receiving.

2.58 The committee was concerned that many workers who have contracted a dust disease may be incentivised to stay in unsafe occupations, particularly where they have been initially assessed with a low or notional level of impairment. The committee is of the view that the type of re-training supports available and the accompanying income supports need to be examined in order to address this perverse incentive. Accordingly, the committee recommends that within six months of this report, icare convene a working group of stakeholders to develop a program of re-education, re-training and vocational programs to support workers transitioning away from dust related working environments. The working group should also examine issues relating to barriers to accessing support including eligibility and levels of income support. The working group should consist of:

- union representatives from unions who cover high risk industries such as mining, construction and tunnelling
- employer groups who cover employers in high-risk industries
- support organisations who assist dust sufferers
- any other party that the Minister deems fit to appoint.

The working group is to develop a paper outlining the proposed program, no later than 12 months from its first meeting.

Recommendation 5

That, within six months of this report, icare convene a working group of stakeholders to develop a program of re-education, re-training and vocational programs to support workers transitioning away from dust related working environments. The working group should also examine issues relating to barriers to accessing support including eligibility and levels of income support. The working group should consist of:

- union representatives from unions who cover high risk industries such as mining, construction and tunnelling
- employer groups who cover employers in high-risk industries
- support organisations who assist dust sufferers
- any other party that the Minister deems fit to appoint.

The working group is to develop a paper outlining the proposed program, no later than 12 months from its first meeting.

2.59 Furthermore, the committee heard that the stress associated with loss of career, financial instability and unemployment, in addition to the actual diagnosis of a dust disease, often results

in negative psychological symptoms. Again, the committee received mixed reviews on the mental health services offered by icare from inquiry participants. To fully support workers faced with a life changing diagnosis, the committee is of the view that mental health services should be made available to workers upfront when they are accepted into the Dust Diseases Scheme, and that these services should be extended to immediate family members.

Recommendation 6

That the NSW Government consider amending the *Workers' Compensation (Dust Diseases) Act 1942* to include provisions for:

- mental health services for workers upon entry into the Dust Diseases Scheme
 - mental health services to be available for immediate family members of workers within the Dust Diseases Scheme.
-

2.60 Some inquiry participants expressed the view that there is a need for greater support for culturally and linguistically diverse workers, including those of migrant backgrounds, in the scheme. The committee recognises that this cohort of workers face a range of additional challenges in navigating the Dust Diseases Scheme and at present are inadequately supported to understand safety information at work, access healthcare and screening services, and claim compensation under the scheme. Given this the committee recommends that icare implement policies and develop resources that offer greater support to working-age culturally and linguistically diverse workers in the Dust Diseases Scheme, including:

- assisting with English lessons for return to work programs
- producing information in multiple languages, such as safety information at work, healthcare services to access and making a claim under the scheme
- hiring staff from diverse backgrounds.

2.61 The committee also recommends that SafeWork NSW produce information in multiple languages and hire staff from diverse backgrounds.

Recommendation 7

That icare implement policies and develop resources that offer greater support to working-age culturally and linguistically diverse workers in the Dust Diseases Scheme, including:

- assisting with English lessons for return to work programs
- producing information in multiple languages, such as safety information at work, healthcare services to access and making a claim under the scheme
- hiring staff from diverse backgrounds.

Recommendation 8

That SafeWork NSW produce information in multiple languages and hire staff from diverse backgrounds.

- 2.62** Lastly, the committee is concerned by evidence that many workers with a migrant background are forced to return to their country of origin after their diagnosis, either because they lose their visa when they stop working or because they need family support. Not surprisingly, icare does not fund any medical or related care administered outside Australia. The committee is of the view that this is unacceptable. The committee agrees with the comments made by the Australian Lawyers Alliance, that migrant workers, through no fault of their own, develop chronic illnesses as a result of working in (and for the benefit of) NSW and Australia, and as a result are unable to access necessary medical treatment and support in their home countries. The committee recommends that icare continue to provide compensation under the Dust Diseases Scheme to workers with a migrant background regardless of whether they return to their country of origin.

Recommendation 9

That icare continue to provide compensation under the Dust Diseases Scheme to workers with a migrant background regardless of whether they return to their country of origin.

Chapter 3 Risk factors related to dust exposure in the tunnelling industry

This chapter outlines the risk factors related to dust exposure in the tunnelling industry, in particular the increase in projects, the local geological conditions and the risk profile of different tunnelling methods. It then considers the reported rates of dust exposure and the difficulties in obtaining data on air quality. Finally, it discusses the prevalence of dust diseases among tunnelling workers.

The tunnelling industry in New South Wales

- 3.1 The tunnelling industry in New South Wales is a complex work environment and involves several key stakeholders, including the NSW Government and private contractors. The industry is also subject to regulations from agencies such as SafeWork NSW and Comcare.
- 3.2 Tunnelling relies on specialised workers, including tunnellers and tunnel boring machine operators, requiring significant technical expertise. There are a small number of large companies who possess the necessary expertise and resources to manage large scale projects.
- 3.3 The NSW Government is responsible for planning, approving and overseeing NSW Government funded tunnelling projects, with contractors and subcontractors engaged to deliver projects and execute construction work. Tunnelling projects are usually led by a principal contractor, with some projects involving joint venture partnerships.
- 3.4 In terms of the ability of the NSW Government to impose specific requirements relating to work health and safety obligations in the contracts it enters into, such as air monitoring data, Dr Kate Cole OAM, PhD Candidate, University of Sydney expressed the view that the government could and should be doing this, with Sydney Metro as a prime example:

Yes, absolutely. I'd point to a good example that is undertaken by Sydney Metro that does include those types of contractual requirements in each and every contract—at least since the city and south-west project and still in the west and Western Sydney airport contracts—where they are going above and beyond the regulations and putting in really specific requirements for contractors to meet, including giving them copies of air-monitoring data.¹²⁵

- 3.5 During the inquiry, the committee heard evidence on joint venture partnerships in the tunnelling industry. For example, Mr Cornelius Buitendag, Health and Safety Manager, Ghella, explained that Ghella 'typically operate[s] as a minority partner or shareholder within joint venture partnerships with larger principal contractors'. The company works:

within their [the principal contractors] stated safety management systems, which just assures us that there is a more precise, streamlined and clear way of managing one particular system on each and every project.¹²⁶

- 3.6 However, Mr Buitendag noted that the company is committed to maintaining safe and healthy workplaces for its workers and works 'closely with our partners and industry bodies, inclusive

¹²⁵ Evidence, Dr Kate Cole OAM, PhD Candidate, University of Sydney, 2 May 2025, p 26.

¹²⁶ Evidence, Mr Cornelius Buitendag, Health and Safety Manager, 2 May 2025, p 15.

of regulators, to continually strengthen and protect our workers from risk or harm'.¹²⁷ He commented that the process works in a way that 'even prior to tendering and up to tendering, all partners are involved and give input into that development of the actual management systems related to safety that will be implemented in each individual project'.¹²⁸

- 3.7** Ms Camilla Drover, Deputy Secretary, Infrastructure, Projects and Engineering, Transport for NSW also gave evidence on joint ventures and advised that 'commercially' the contractors are 'sharing 50 per cent of the risks, the profits and the downside on a project'. She explained that:

... when a JV comes together, they usually decide which safety system they will adopt for that joint venture. They may decide that it's not going to be Ghella's safety system; it may be their JV partner's safety system. Often that's a JV partner that perhaps has a longer history in Australia or New South Wales—not always, but the JV decides which safety system they'll operate under, and that will be the safety system that will be adopted for the project. They are slightly different concepts. One is a commercial coming together and one is which safety system will be operating.¹²⁹

The risk of dust diseases presented by the tunnelling industry

- 3.8** The nature and risk of work-related respiratory disease for those who work in the tunnelling industry has changed significantly over time due to technological advancements, improved safety measures and a better understanding of the risks related to dust diseases. Whilst there is a notable increase in awareness and safety protections, stakeholders noted that tunnelling work still presents a significant risk of dust disease, particularly due to the exposure to respirable crystalline silica (RCS) dust.

- 3.9** For example, Mr Andrew Marsonet, Project Director, Western Harbour Tunnel Project, Acciona Construction Australia Pty Ltd, highlighted that a project involving sandstone excavation, which is primarily composed of silica, will inevitably lead to the release of silica dust during the process so:

... every single day, every time we engage with excavation tools—whether they be roadheaders, whether they be rock saws or whether they be excavators— we are discharging silica, whether it be on the surface or underground. We do this every day. The key for us is to control and manage the silica—to collect the silica as best we can so that it doesn't impact our workforce and our staff and anyone else that goes underground.¹³⁰

- 3.10** Maurice Blackburn Lawyers commented that the risk of dust disease is just as prevalent as the predominance of twelve hour shifts means that those who work under these conditions are exposed for longer, even if fewer people are required underground due to the increased use of machinery.¹³¹

¹²⁷ Evidence, Mr Buitendag, 2 May 2025, p 15.

¹²⁸ Evidence, Mr Buitendag, 2 May 2025, p 17.

¹²⁹ Evidence, Ms Camilla Drover, Deputy Secretary, Infrastructure, Projects and Engineering, Transport for NSW, 2 May 2025, p 53.

¹³⁰ Evidence, Mr Andrew Marsonet, Project Director, Western Harbour Tunnel Project, Acciona Construction Australia Pty Ltd, 30 May 2025, p 3.

¹³¹ Submission 7, Maurice Blackburn Lawyers, p 7.

- 3.11** The Australian Workers Union, which represents Australia's tunnelling workforce, noted that these workers 'face significant risk of occupational illness and disease from prolonged exposure to RCS [respirable crystalline silica] - in all jurisdictions but especially in NSW'.¹³² According to the AWU, experts have found that tunnel workers endure the highest measured exposure to silica, which places them at an elevated risk of developing associated diseases.¹³³
- 3.12** Mrs Kate Cole, a PhD candidate at The University of Sydney, also commented on the risk of dust diseases presented by the tunnelling industry. Mrs Cole stated that the 'most prevalent work-related disease reported in tunnel workers globally is silicosis', and the main factor that determines the risk of contracting or developing silicosis is cumulative exposure to RCS.¹³⁴ In her evidence, Mrs Cole also noted that exposure to RCS increases the risk of developing lung cancer.¹³⁵

The increase in tunnelling projects in Sydney and the local geological conditions

- 3.13** During the inquiry, some participants commented on the increase of tunnelling projects in Sydney and the local geological conditions, both of which play a role in the nature and risk of dust diseases for workers in the tunnelling industry.
- 3.14** The Australian Workers Union (AWU) remarked that the 'recent boom' in Australian tunnelling began in 2013 and peaked in 2018, when seven major tunnelling projects were initiated over the course of a single year. They noted that '[e]ach of these [projects] employed approximately 4,000 workers, and almost two thirds were located in Sydney. Many other tunnel projects are also under construction or have been constructed in New South Wales over the last decade'.¹³⁶
- 3.15** Mrs Kate Cole OAM, a PhD candidate at The University of Sydney, submitted that the majority of all tunnelling in Australia occurs in New South Wales and, with the exception of Snowy Hydro 2.0, all tunnelling projects in New South Wales are funded to some extent by the NSW Government.¹³⁷ She advised that 'Sydney has the highest amount of crystalline silica in the rock' that is tunneled into in comparison to anywhere else in Australia. While every tunnel worker is at risk, according to Mrs Cole, tunnel workers in New South Wales are at the highest risk.¹³⁸
- 3.16** Likewise, the Australian Workers' Union noted that 'Sydney has a predominance of sandstone and shale in the local geology [that] provides significant benefits for tunnel construction'. However, these advantages also pose 'severe risks, as the high quartz content in these rocks produces silica dust when disturbed by cutting, crushing, hammering, or sawing'. According to

¹³² Submission 14, The Australian Workers Union, p 3.

¹³³ Submission 14, The Australian Workers Union, p 3.

¹³⁴ Submission 6, Mrs Kate Cole, p 2. See also Evidence, Mrs Kate Cole OAM, Doctor of Philosophy (PhD) Candidate, The University of Sydney, 29 November 2024, p 17.

¹³⁵ Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 36.

¹³⁶ Submission 14, The Australian Workers Union, p 3, citing Cole, K. (2016), 'Investigating best practice to prevent illness and disease in tunnel construction workers', Winston Churchill Memorial Trust of Australia, p. 6.

¹³⁷ Submission 6, Mrs Kate Cole, p 2.

¹³⁸ Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 17.

the AWU, this places 'tunnelling workers at acute risks, (though the danger extends to other construction workers and, at times, the wider community)'.¹³⁹

The risk profile of different tunnelling methods on workers

3.17 Throughout the inquiry, the committee heard evidence about the risk profile of different tunnelling methods and the varying levels of risk to workers on these projects.

3.18 In her submission, Mrs Kate Cole outlined the main tunnelling methods used in Australia:

- Tunnel Boring Machine (TBM) tunnelling, where one or more TBMs are used along with pre-cast concrete segments to line a tunnel wall.
- Mined tunnelling, where road headers, rockbreakers and surface miners are used in conjunction with bolt, mesh, and shotcrete, and also commonly used to construct declines, station boxes, and cross passages which are common to most tunnel projects.
- Cut and cover, where a shaft or decline is excavated to the required depth, and then an overhead roof support system is installed, which may be backfilled over, such as the case on most tunnelling projects.
- Drill and blast, where the controlled use of explosives is used to break rock for excavation.¹⁴⁰

3.19 Mrs Kate Cole OAM, a PhD candidate at The University of Sydney, noted that tunnel boring machine tunnelling is likely to result in lower overall exposure to RCS.¹⁴¹ When giving evidence in her role as Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, Mrs Cole explained that tunnel boring machines cover the 'whole footprint of the tunnel' so there is less space for the dust to escape to because the extraction systems are on the machines and are 'generally very good at extracting the dust from the cutter head as it's tunnelling'.¹⁴² TBM tunnelling is the primary method used on the Sydney Metro West and Sydney Metro City and Southwest projects.¹⁴³

3.20 On the other hand, mined tunnelling (for instance using roadheaders and surface miners) has the highest risk profile.¹⁴⁴ Mrs Cole explained that this method creates a 'very large risk' for workers at the face of the tunnel as it generates a lot of dust. Whilst tunnel contractors use large filtration or extraction systems to capture the dust, the 'efficacy of those extraction systems is

¹³⁹ Submission 14, The Australian Workers Union, p 3.

¹⁴⁰ Submission 6, Mrs Kate Cole, p 3.

¹⁴¹ Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 21.

¹⁴² Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 36.

¹⁴³ Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 37; See also Submission 14, The Australian Workers Union, p 9.

¹⁴⁴ Evidence, Mrs Kate Cole OAM, Doctor of Philosophy (PhD) Candidate, The University of Sydney, 29 November 2024, p 21. See also Submission 6, Mrs Kate Cole, p 3.

reduced the larger the diameter of the tunnel'.¹⁴⁵ If the dust is not adequately controlled, the risk extends to other workers as the dust travels back through the rest of the tunnel.¹⁴⁶

3.21 The Australian Workers' Union (AWU) supported the view that a very high exposure risk occurs when workers are performing mined tunnelling using roadheaders. According to the AWU, whilst 'no information has been provided by TfNSW [Transport for NSW] or SafeWork NSW on tunnel projects that use mined tunnelling as their primary construction method', a number of projects do rely principally on mined tunnelling, including NorthConnex, the M6 Stage 1, WestConnex and the Western Harbour Tunnel.¹⁴⁷

3.22 At a hearing, Ms Camilla Drover, Deputy Secretary, Infrastructure, Projects and Engineering, Transport for NSW, explained why roadheaders are generally used by Transport for NSW:

Roadheaders are individual units of machinery and, therefore, they're quite nimble and agile. That's important because, for a road tunnel, we have a semicircle profile. Road tunnels are generally much wider in diameter than, say, a metro tunnel...

If you were to use a tunnel boring machine, you would have to cut twice as much area and then half of it would be not required and you would have to backfill it, and you would also end up with twice as much spoil as you need...¹⁴⁸

3.23 The safety control measures put in place by Transport for NSW to manage the dust resulting from using roadheaders in their projects is discussed in the next chapter.

3.24 When asked whether there are different safety issues for the use of both roadheaders and tunnel boring machines at the Western Harbour project, Mr Andrew Marsonet, Project Director, Western Harbour Tunnel Project, Acciona Construction Australia Pty Ltd, advised that '[a]s far as testing for adequacy or suitability, the tests are the same'. He explained that the company does not distinguish between TBM and roadheader work in terms of exposure primarily because:

a lot of the highest areas of exposure can be away from the cutting face—for example, in the spoil areas or even when we're doing cleaning of sandstone or shotcreting or concrete pavement work or drainage work. All of that activity is consistent, irrespective of whether we're doing TBM work or roadheader work. I'd probably state that I'm referring particularly to road tunnels. Metro-style tunnels have a slightly different requirement in some areas, in terms of civil fit-out works. But in road tunnels, which WestConnex 3A and Western Harbour Tunnel are, the exposure is not just at the cutting of the excavated face.¹⁴⁹

3.25 In relation to whether any specific tunnelling workers appear to be more at risk than others, Dr Jane Muir, Member, Royal Australasian College of Physicians, and Fellow of the Australasian

¹⁴⁵ Evidence, Mrs Kate Cole OAM, Doctor of Philosophy (PhD) Candidate, The University of Sydney, 29 November 2024, p 21.

¹⁴⁶ Evidence, Mrs Kate Cole OAM, Doctor of Philosophy (PhD) Candidate, The University of Sydney, 29 November 2024, pp 21-22.

¹⁴⁷ Submission 14, The Australian Workers Union, p 9.

¹⁴⁸ Evidence, Ms Camilla Drover, Deputy Secretary, Infrastructure, Projects and Engineering, Transport for NSW, 11 December 2024, p 25.

¹⁴⁹ Evidence, Mr Marsonet, 30 May 2025, p 6.

Faculty of Occupational and Environmental Medicine, advised that based on her analysis 'by far and away, the workers who are over-represented in this group are roadheader operators'.¹⁵⁰ The Royal Australasian College of Physicians noted that:

... many workers often undertake multiple roles on the same job, and over the course of their career. This makes it difficult to break down roles and accurate risk factors or exposure based on past history. However, anecdotally the vast majority of tunnellers that Dr Muir and colleagues are treating with silicosis are roadhead operators/bolters and shotcreters.¹⁵¹

- 3.26** These workers are 'at the face' during active excavation and generally remain underground for the entirety of their shift (usually 10-12 hours), including 'meal breaks spent underground in positive pressure and filtered crib rooms'. According to the Royal Australasian College of Physicians, these 'long shifts mean workers' lungs do not have adequate time for the natural clearing mechanism to work to its full potential between shifts'.¹⁵²
- 3.27** Dr Muir highlighted that a lot of workers 'jump between tunnelling and mining, and so they have quite broad exposure histories' which increases their risk of developing respiratory related disease.¹⁵³
- 3.28** Data provided by Transport for NSW to the Australian Workers' Union included RCS exposure data for different types of workers working on the Sydney Metro City and Southwest project. This data showed many different work groups were exposed to 'high or very high levels of RCS without protection'. The workers with the highest level of exposure include roadheader operators (up to 10.4 mg/m³); plant operators (up to 7.2 mg/m³) and surveyors (up to 1.89 mg/m³).¹⁵⁴

Reported rates of dust exposure in tunnelling projects

- 3.29** The reported rates of dust exposure in tunnelling projects was another key issue examined during the inquiry.
- 3.30** The legislated safe exposure level for RCS is 0.05 mg/m³ as a time-weighted average (TWA) over an eight-hour work shift. This is commonly referred to as the workplace exposure standard (WES).¹⁵⁵ In New South Wales, Clause 49 of the *Work Health and Safety Regulation 2017* focuses on ensuring that exposure standards for substances and mixtures are not exceeded, while Clause 50 deals with monitoring airborne contaminant levels.¹⁵⁶

¹⁵⁰ Evidence, Dr Jane Muir, Member, Royal Australasian College of Physicians, and Fellow of the Australasian Faculty of Occupational and Environmental Medicine, 29 November 2024, p 44.

¹⁵¹ Answers to questions on notice and supplementary questions, Royal Australasian College of Physicians, 10 January 2025, p 3.

¹⁵² Answers to questions on notice and supplementary questions, Royal Australasian College of Physicians, 10 January 2025, p 3.

¹⁵³ Evidence, Dr Muir, 29 November 2024, p 44.

¹⁵⁴ Submission 14, The Australian Workers Union, pp 9-10.

¹⁵⁵ Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 35.

¹⁵⁶ *Work Health and Safety Regulation 2017*, Division 7, Clauses 49 and 50.

- 3.31** Mrs Kate Cole OAM, a PhD candidate at The University of Sydney, provided the committee with some insights after receiving RCS in air data from New South Wales tunnel projects: '[t]he information provided demonstrates that tunnel workers were exposed to RCS at very high concentrations, including having exposures greater than 1 mg/m³'.¹⁵⁷ Mrs Cole observed that these tunnel workers were not protected by adequate respiratory protection (i.e. 'masks') and therefore breathed in a large amount of RCS, with the highest exposures occurring when mined tunnelling was used.¹⁵⁸
- 3.32** Furthermore, Mrs Cole's research has involved estimating the number of silicosis and lung cancer cases expected to occur in tunnelling workforces based on RCS in air data. She referred to three Queensland tunnel projects as an example, where 'modelling estimated that 1 in every 10 workers were predicted to develop silicosis over their lifetime as a result of their exposure to RCS'. However, Mrs Cole emphasised that the New South Wales tunnelling industry is 'more than double the size', and some of the RCS exposures reported in New South Wales are 'not significantly different'.¹⁵⁹
- 3.33** Likewise, data provided to the Australian Workers Union (AWU) by Transport for NSW indicated that tunnel workers were exposed to RCS at 'very high levels', including exposures greater than the legislative limits.¹⁶⁰ Sydney Metro also shared information with the AWU which showed:
- ... workers building metro tunnels were consistently exposed to RCS above legislative limits ... sufficient to increase the risk of developing silicosis. While some contractors flagged and investigated such incidents, the information provided [showed] that workers such as roadheader operators were exposed repeatedly over time.¹⁶¹
- 3.34** Information from Transport for NSW shared with the AWU also showed different levels of exposure to RCS across different tunnel projects. For example, '[m]ore recent tunnel projects for Sydney Metro West show less results exceeding the WES [workplace exposure standards]. They also reported fewer instances of workers being exposed to RCS where not protected, relative to Sydney Metro City & Southwest (CSW) projects'. The AWU observed that these recent projects are all being delivered by different principal contractors than earlier metro tunnels so they may have different systems and processes in place to protect workers' health, or the results may vary as the projects progress.¹⁶²
- 3.35** In 2022 the Australian Institute of Occupational Hygienists (AIOH) published a survey of occupational hygienists about their practical experiences and perspectives on RCS exposure and regulatory action across a range of industries. From the survey, the AIOH reported 'that in construction and tunnelling sector less than 10% of respondents reported that all exposures to RCS were less than the workplace exposure standard with very good single or multilayered

¹⁵⁷ Submission 6, Mrs Kate Cole, p 2.

¹⁵⁸ Submission 6, Mrs Kate Cole, p 2.

¹⁵⁹ Submission 6, Mrs Kate Cole, p 2.

¹⁶⁰ Submission 14, The Australian Workers Union, p 8.

¹⁶¹ Submission 14, The Australian Workers Union, p 8.

¹⁶² Submission 14, The Australian Workers Union, p 8

controls in place'.¹⁶³ It also found that occupational hygienists were concerned about potential over-exposure, with:

... approximately 20% of respondents in the construction and tunnelling industries reporting that air monitoring is 'seldom' undertaken appropriately to assess exposure to RCS and where it is, compliance is suboptimal (e.g. exposures above the RCS exposure standard).¹⁶⁴

- 3.36** During a hearing, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, observed that the survey results were 'highly concerning' and 'highlight how common it is for exposure to be above the current workplace exposure standard', indicating that the current standard is 'not protective enough of adverse health effects for workers'.¹⁶⁵

The difficulties in obtaining data on air quality and dust exposure in tunnelling projects

- 3.37** There are legal obligations that require tunnelling contractors to collect samples of RCS in air from the breathing zone of workers while they perform their work activities, with occupational hygienists engaged by tunnelling contractors to collect these samples.¹⁶⁶ While information on the level of RCS exposure of tunnel workers exists in the form of RCS in air monitoring reports, during the inquiry the committee heard evidence on the challenges to accessing data on air quality and dust exposure in tunnelling projects.
- 3.38** Mrs Kate Cole OAM, PhD candidate at The University of Sydney, has been seeking access to data on RCS in air from tunnel projects, for the purposes of her research, through freedom of information requests and direct requests to stakeholders who hold this information. Mrs Cole advised that her requests to obtain this data from projects which used mined tunnelling as their primary tunnelling method have not yet been successful. According to Mrs Cole, in most cases, the NSW government agency that holds this information has decided that it is 'not in the public interest to release the information'.¹⁶⁷
- 3.39** Similarly, the Australian Workers Union (AWU) argued that the 'broad lack of transparency on air quality data raises significant concerns about the WHS practices and accountability of companies managing tunnelling projects'. The AWU remarked that the lack of transparency suggests a 'systemic issue where companies might withhold crucial health and safety data, obscuring the true scale of RCS-related health risks'.¹⁶⁸ Furthermore, the AWU were of the view that the challenges of collecting and accessing corporate data on RCS exposure highlights a need for reform of the *Work Health and Safety Act 2011*.¹⁶⁹

¹⁶³ Submission 1, Australian Institute of Occupational Hygienists, pp 6-7.

¹⁶⁴ Submission 1, Australian Institute of Occupational Hygienists, p 7. See also Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, pp 34-35.

¹⁶⁵ Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, pp 34-35.

¹⁶⁶ Submission 6, Mrs Kate Cole, p 2.

¹⁶⁷ Submission 6, Mrs Kate Cole, p 2.

¹⁶⁸ Submission 14, The Australian Workers Union, p 5.

¹⁶⁹ Submission 14, The Australian Workers Union, p 5.

3.40 At a hearing, Mr Chris Donovan, Assistant National Secretary, Australian Workers' Union, spoke to the difficulties in obtaining data on air quality and dust exposure in tunnelling projects. Mr Donovan explained that the AWU 'uncovered thousands of silica dust monitoring records held by 'Transport for NSW' pertaining to Sydney's tunnelling projects through a *Government Information (Public Access) Act 2009* (GIPA Act) request. As a result of the request, 'Transport for NSW provided data from projects using tunnel-boring machines, which generate less dust compared to road headers'.¹⁷⁰

3.41 According to Mr Donovan, the data released by 'Transport for NSW revealed that 'one in three air quality tests exceeded the legal safety limit, with some tests exceeding the limit by up to 208 times'. Mr Donovan added that '[w]hile this data is deeply concerning, 'Transport for NSW should be commended for its transparency in releasing the information'.¹⁷¹

3.42 The AWU also submitted a *Government Information (Public Access) Act 2009* (GIPA Act) request to SafeWork NSW to obtain silica dust monitoring data from projects utilising roadheaders. According to the AWU, SafeWork NSW refused to release the data, in part due to concerns raised by contractors CPB and John Holland, who argued that releasing the data would 'damage their public reputations'.¹⁷² In giving evidence, Mr Donovan expressed strong concerns over SafeWork NSW's decision to not release the data:

The refusal to release the data underscores a critical failure of our State's safety regulator. It is unacceptable that SafeWork NSW, an organisation charged with protecting worker health and safety, would prioritise the reputations of corporations over the health of workers. This lack of transparency is deeply troubling and directly undermines efforts to assess and mitigate the risks faced by tunnel workers. The data that SafeWork NSW is withholding is essential for understanding the extent of silica exposure and the number of workers who may develop a silica disease or silica-related disease in the coming years.¹⁷³

3.43 In response, SafeWork NSW explained the restrictions in releasing information obtained under notices through GIPA requests, and how they may impact transparency and worker access to information. When asked whether SafeWork NSW could release information obtained through a notice given the provisions of section 271 of the *Work Health and Safety Act 2011*, Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW, explained that:

The requirements under GIPAA start with a premise to release the information that we've got, except where there are concerns in the public interest in relation to secrecy or confidentiality of information. Section 271 of the Work Health and Safety Act provides for those confidentiality clauses. That provides that where SafeWork has issued notices to obtain information from PCBU's [person conducting a business or undertaking], that information is protected by those confidentiality clauses. In this case, the assessor has gone through a range of tests to determine whether the information can be released. Given that these details were obtained under notice, the section 271

¹⁷⁰ Evidence, Mr Chris Donovan, Assistant National Secretary, Australian Workers' Union, 29 November 2024, p 16.

¹⁷¹ Evidence, Mr Donovan, 29 November 2024, p 16.

¹⁷² Evidence, Mr Donovan, 29 November 2024, p 16.

¹⁷³ Evidence, Mr Donovan, 29 November 2024, p 16.

confidentiality provisions applied. That would allow them then to consult with the PCBU that provided the information to obtain consent to release the information...¹⁷⁴

3.44 SafeWork NSW confirmed that they will continue to work through the issue of data transparency to 'consider how information may be more readily available to workers and their representatives within the current legislative framework'. With respect to the operation of section 271 of the WHS Act, SafeWork NSW advised it is considering opportunities for 'improved transparency through the proactive release of relevant information for the benefit of workers and the wider community'. It noted that other jurisdictions, specifically Queensland and South Australia, have implemented amendments to section 271 to allow for the provision of information obtained under notice in certain circumstances.¹⁷⁵

3.45 At a subsequent hearing, Mr Curtin confirmed that SafeWork NSW is publishing workplace exposure standard notification data and with the support of the Tunnelling Dust Safety Taskforce has taken steps to make data more accessible:

Since 1 September 2024, it's been mandatory for PCBUs to notify SafeWork of air-monitoring results where the workplace exposure standard for RCS has been exceeded. Quarterly information on the number of notifications by industry is now available on the New South Wales Government's silica dashboard website. We will continue to work with taskforce members on refining the way that SafeWork collects data and to make more data publicly available. Key actions taken on by other taskforce members include making data available for sharing to develop new insights, supporting research and informing health screening. It's important to recognise that SafeWork does not hold all the data relevant in this area—it's held by various stakeholders—and collaboration is the key to bringing it together. The taskforce will play an important role in achieving this.¹⁷⁶

3.46 On a similar point, the inability of workers to access and interpret air monitoring data was also raised as an issue during the inquiry. Ms Natasha Flores, Industrial Officer Work Health & Safety, Workers Compensation, Unions NSW, commented that workers who actively become involved in WHS, are elected HSRs (health and safety representatives), or simply ask for safe working conditions, are often targeted by PCBUs (person conducting a business or undertaking). According to Ms Flores, workers do not generally have access to air monitoring equipment, to measure air quality themselves, and if they were seen to be doing this, would likely be targeted for dismissal or performance management by the PCBU.¹⁷⁷

3.47 When asked whether principal contractors are required to share data with employees, Mr David Mullins, Director, Health and Safety (Eastern Harbour), Transport for NSW, advised that there

¹⁷⁴ Evidence, Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW, 29 November 2024, p 51; See also Answers to supplementary questions, Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW, 6 January 2025, pp 18-19.

¹⁷⁵ Answers to questions on notice, Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW, 6 January 2025, p 1.

¹⁷⁶ Evidence, Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW, 2 May 2025, p 34. The Tunnelling Dust Safety Taskforce, a group of government, medical, industry and union representative, provides expert guidance to prevent and manage silica and other dust related disease associated with tunnelling projects in NSW.

¹⁷⁷ Answers to supplementary questions, Ms Natasha Flores, Industrial Officer Work Health & Safety, Workers Compensation, Unions NSW, 31 January 2025, p 3.

is 'nothing specific in our [Transport for NSW] contracts' and suggested it is 'probably just best practice to provide that information and be transparent with employee groups'.¹⁷⁸ Mr Mullins informed the committee that:

There is a requirement to share any hazards in the workplace and discuss those under a consultation process, so if there is a hazard identified, through whatever measures—whether it's an inspection, testing and monitoring process, whether it be silica or other—to raise that and discuss that with the work group under their consultation arrangements, whether that's a work health and safety committee or through a HSR or other mechanism.¹⁷⁹

- 3.48** Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW, was also specifically asked about the right of workers, health and safety representatives (HSRs) or union officials seeking information and the availability of information to workers. In giving evidence, he indicated there should be no reason why workers can't have access to information, particularly around air-monitoring results:

We would like to see workers having access to the information that relates to their health and safety in workplaces. The legislation provides for a specific clause for workers to have access to air monitoring information as it relates to their health and safety...

We would absolutely like to see more availability of this information to workers. There should be no reason why workers can't have access to information, particularly around air-monitoring results... From 1 September [2024], any exceedances in the WES will be required to be reported to SafeWork, and we've started to see some of those results coming through. We'd like to work over the next period with our stakeholders to find out how it is that we might best be able to use that information, to provide that information to workers and stakeholders more broadly and to make sure we can look at the trend and analysis of that. Where those exceedances occur, they trigger a compliance activity, and SafeWork inspectors will be undertaking those compliance activities.¹⁸⁰

- 3.49** The committee also heard from several tunnelling contractors, some of whom spoke to the release and availability of data at their worksites and their response to GIPA requests for information.
- 3.50** Mr Martin Smith, Group General Manager, Health, Sustainability and Climate, John Holland, gave evidence that John Holland provides 'de-identified results of all air quality monitoring, as well as actions and recommendations to workers via site noticeboards and toolbox ... [talks]'. According to Mr Smith, the information is shared with union representatives and the company works 'directly with impacted people if there has been an issue'.¹⁸¹
- 3.51** Mr Andrew Marsonet, Project Director, Western Harbour Tunnel Project, Acciona Construction Australia Pty Ltd, commented that Acciona does not 'hide from the information'

¹⁷⁸ Evidence, Mr David Mullins, Director, Health and Safety (Eastern Harbour), Transport for NSW, 11 December 2024, p 30.

¹⁷⁹ Evidence, Mr Mullins, 11 December 2024, p 30.

¹⁸⁰ Evidence, Mr Curtin, 29 November 2024, p52.

¹⁸¹ Evidence, Mr Martin Smith, Group General Manager, Health, Sustainability and Climate, John Holland, 2 May 2025, p 2.

and provides data on all of their monitoring to workers and makes the data available to others to review, including SafeWork NSW, clients and other stakeholders.¹⁸²

- 3.52** Furthermore, Mr Marsonet advised that workers are informed 'promptly' if there's been an exceedance, which is also reported to SafeWork NSW. In relation to medical examinations for workers following an exceedance, he commented that:

... We rely on our occupational hygienist in conjunction with our professional staff in safety to advise if we need to do further testing. Usually, the exposures are very limited in terms of duration, so I can't recall us having to send anyone away for further testing for that small-duration exposure and for the level of exposure. Where we particularly focus on is how do we eliminate that exposure going forward. That's where we provide a lot of energy and attention, and we may change our processes and procedures to provide extra protection to ensure that there's no further exceedance.¹⁸³

- 3.53** In relation to the release of air-monitoring results for tunnelling projects under GIPA requests, Mr Smith advised John Holland has revisited their original position to not release the information and 'subject to appropriate privacy provisions' they would not object to the release of this information. Mr Smith commented that the company is 'ready to work collaboratively with the Government and regulators in the event they decide that more information should be made publicly available'.¹⁸⁴

- 3.54** When further questioned on John Holland's previous decision to oppose the release of silica exposure data under GIPA requests, Mr Smith explained that the 'main objection' was the information being sought contained personal information and personal medical records, not just exceedances:

It actually had personal medical history and medical records of individuals. We were concerned about releasing that to a third party. We were made aware that the third party was making that application and that information was going to be used for the purposes of academic research. When we did finally agree to releasing the information, we agreed on the basis that the records were redacted to protect the personal information of those people who were in those records. Again, we made that decision at the time. On reflection, what we should've done and what we would do now is ask for those records to be redacted early and released.¹⁸⁵

- 3.55** In response to a similar line of questioning, Mr Glyn Edwards, General Manager, Tunnelling and Major Projects, CPB Contractors, clarified a perceived misunderstanding in relation to the release of information on air quality and dust exposure:

... I want to address what we perceive as a misunderstanding—that because CPB objected to the release of certain GIPAA applications, this, by implication, means that we're not necessarily sharing that information with certain parties. Now, from our perspective, from a worker perspective, we share this information, be it dust monitoring information, with our workers via pre-start meetings, toolbox talks and also publishing the information on noticeboards. That is a routine, regular activity that we perform.

¹⁸² Evidence, Mr Marsonet, 30 May 2025, p 3.

¹⁸³ Evidence, Mr Marsonet, 30 May 2025, p 3 and 7.

¹⁸⁴ Evidence, Mr Smith, 2 May 2025, p 2.

¹⁸⁵ Evidence, Mr Smith, 2 May 2025, p 5.

From a union perspective, we facilitate right-of-entry notices from the unions for a number of different reasons.... On occasion, we have been asked for the production of our monitoring data. Now, that information has been facilitated. To the best of my knowledge, the documentation has been provided to the unions...¹⁸⁶

Using workplace entry permits to obtain data

- 3.56** A related issue was the ability to obtain data on air quality and dust exposure in tunnelling projects using workplace entry permits. Under the *Work Health and Safety Act 2011* (WHS Act), WHS permit holders have a right to enter premises to investigate suspected contraventions of the WHS Act. Section 118 of the WHS Act allows a permit holder to inspect any work system, plant, substance and structure or other thing relevant to the suspected contravention and consult with workers.¹⁸⁷
- 3.57** As part of exercising those rights, permit holders are entitled to request documentation about hazards.¹⁸⁸ Ms Sherri Hayward, Senior Legal Officer, Construction and General Division, NSW Divisional Branch, Construction, Forestry and Maritime Employees Union, advised that air monitoring reports would 'squarely fall within that category of documents that would be related to a suspected contravention'. However, according to Ms Hayward when a request for those records is made, some PCBU claim that the records are legal professional privilege making it 'extraordinarily difficult to get your hands on any reports that would be relevant to tracking exposure'. In order to enforce the right to have access to the documents, legal proceedings need to be brought, which is a 'very lengthy, protracted legal process'.¹⁸⁹
- 3.58** When asked what could be done from a regulation perspective to ensure that data is more readily available, Ms Sherri Hayward, Senior Legal Officer, Construction and General Division, NSW Divisional Branch, Construction, Forestry and Maritime Employees Union, suggested strengthening SafeWork's role in this space as SafeWork NSW can only facilitate the resolution of a right of entry dispute but can't force the handover of documents if they think it is relevant:
- The big issue is the way that SafeWork's rights, under right of entry, are handled. They can only facilitate the resolution of a right of entry dispute; they can't force anybody to hand over documents if they think that it's relevant. SafeWork can turn up and say, "Yes, those are the documents that could be produced under section 117 of the Act." But if the PCBU says no, there's very little we can do about it. You have to go off to the IRC and get an order to that effect. We would like to see a little strengthening of SafeWork's role in that space. Air monitoring results, if a report is done, are supposed to be available for the workers. They are meant to be put up in a place where the workers can access them. We'd like to see a little bit more enforceability around that...¹⁹⁰
- 3.59** The use of portable air monitoring devices by permit holders was also considered during the inquiry. Mr Chris Donovan, Assistant National Secretary, Australian Workers' Union, (AWU)

¹⁸⁶ Evidence, Mr Glyn Edwards, General Manager, Tunnelling and Major Projects, CPB Contractors, 2 May 2025, p 13.

¹⁸⁷ Submission 15, CFMEU Construction and General Division NSW Branch, p 11. See also Evidence, Mr Chris Donovan, Assistant National Secretary, Australian Workers' Union, 2 May 2025, p 23.

¹⁸⁸ Evidence, Ms Sherri Hayward, Senior Legal Officer, Construction and General Division, NSW Divisional Branch, Construction, Forestry and Maritime Employees Union, 29 November 2024, p 3.

¹⁸⁹ Evidence, Ms Hayward, 29 November 2024, p 3.

¹⁹⁰ Evidence, Ms Hayward, 29 November 2024, pp 3-4.

gave evidence that the AWU has purchased dust monitors to conduct safety inspections for suspected contraventions but are 'banned from going onto site to use those dust monitors' even though the company 'actually uses the exact same dust monitors themselves'.¹⁹¹

3.60 In their submission, the CFMEU Construction and General Division NSW Branch noted that there is nothing in the WHS Act that prevents a permit holder from using a portable air monitoring device as part of their investigation.¹⁹² Some PCBU's (person conducting a business or undertaking) have been denying entry permit holders access to the workplace if they have, or intend to use, a portable air monitoring device even if the device is being used for an investigation.¹⁹³ Whilst acknowledging these devices are 'not perfect', Ms Hayward suggested they might provide some indication that there is something more to be looked at.¹⁹⁴

3.61 According to Ms Hayward, the argument from some PCBU's is that the WHS Act does not explicitly permit the use of portable air monitoring devices when investigating a suspected contravention, and similarly the use of mobile phones for gathering evidence. Whilst Ms Hayward did not necessarily agree with this argument, she recommended the legislation be amended to take this into account:

... If you're there to investigate whether or not the workplace exposure standard has been breached, having a personal air monitoring device is going to make that investigation much clearer. I know the ACT [Australian Capital Territory] has changed its legislation to allow for things like mobile phones to be used as part of those investigations. We would say, if we're having this argument on a daily basis about whether phones and personal air monitoring devices can be used, maybe we just make the legislation clear that they can.¹⁹⁵

3.62 The AWU also advocated for legislative reforms to the *Work Health and Safety Act 2011* (WHS Act) to afford workplace entry permit holders 'comprehensive and express access rights to take measurements, capture photos and record videos in relation to WHS compliance, including in relation to RCS, to significantly enhance their ability to identify issues'.¹⁹⁶ Mr Chris Donovan, Assistant National Secretary, The Australian Workers' Union, commented that these provisions 'certainly should be' in the WHS Act as 'many permit holders, at least in the AWU, have been denied access to site because they are seeking to take photos or conduct some sort of measurement'.¹⁹⁷

3.63 The AWU further advised that these provisions are already in place in multiple other states, specifically noting that the safety regulations in South Australia allow for permit holders to take measurements, conduct tests, and take photos and videos directly relevant to the suspected contravention.¹⁹⁸ The AWU put forward the view that amending the WHS Act in this regard will 'go some way in improving safety' and would empower workers and their representatives to

¹⁹¹ Evidence, Mr Donovan, 2 May 2025, p 23.

¹⁹² Submission 15, CFMEU Construction and General Division NSW Branch, p 12.

¹⁹³ Submission 15, CFMEU Construction and General Division NSW Branch, p 12.

¹⁹⁴ Evidence, Ms Hayward, 29 November 2024, p 5.

¹⁹⁵ Evidence, Ms Hayward, 29 November 2024, pp 5-6.

¹⁹⁶ Submission 14, The Australian Workers' Union, p 5.

¹⁹⁷ Evidence, Mr Donovan, 29 November 2024, p 21.

¹⁹⁸ Answers to questions on notice, Mr Chris Donovan, Assistant National Secretary, The Australian Workers' Union, 22 January 2025, p 3.

conduct thorough and effective monitoring, and ensure that health risks are managed with the urgency and seriousness they require.¹⁹⁹

- 3.64** At a hearing, Mr Martin Smith, Group General Manager, Health, Sustainability and Climate, John Holland, was questioned about the company's refusal to allow union representatives to bring dust detecting equipment onto one of their worksites. Mr Martin commented that the company disputed the unions' right of entry reasons at the time because there were concerns with the proposed methods for the sampling of air quality:

The particular device that the unions wanted to use, we had no confidence in its ability to monitor for silica. It was a dust-tracking device that took air quality samples for dust and not for silica. It wasn't able to detect silica at the levels that were required, so we had no confidence in those results.²⁰⁰

- 3.65** Mr Martin advised the committee that the dispute has now been resolved, with the parties agreeing to a 'protocol for the use of that dust tracker' with the company allowing its use onsite 'under certain conditions', noting the relevant union, the AWU, was involved in drafting that protocol.²⁰¹

- 3.66** When asked for his comments regarding the case with John Holland, in particular whether something positive came out of the case, Mr Chris Donovan, Assistant National Secretary, Australian Workers' Union responded:

Whether or not there's something good coming out of that case—arguably yes. I think the representative from John Holland indicated that there was some arrangement made whereby they would allow the Australian Workers' Union to enter tunnelling projects with the use of the dust monitor in certain circumstances. To that end, I imagine that's a relative benefit. However, if we're talking about the overarching benefit, in a sense it restricts us to some degree because on sites where we can simply go on and use it, those companies could just point to a case with John Holland where access to use the thermometer was restricted. It's not the best-case scenario, no.²⁰²

- 3.67** The question around the powers of authorised permit holders was put to Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW, at a hearing. Mr Curtin acknowledged that there is 'disputation in terms of the entry permit requirements and that there have been concerns raised between unions and industry about how that applies', noting that whilst SafeWork NSW inspectors will get involved in entry permit discussions they are not a decision-maker in that regard.²⁰³

- 3.68** Mr Curtin subsequently advised that if a dispute arises about the exercise of a right of entry by a WHS entry permit holder, any party to the dispute can ask SafeWork NSW to appoint an inspector to attend the workplace to assist in resolving the dispute under section 141 of the WHS Act. He explained:

¹⁹⁹ Answers to questions on notice, Mr Donovan, 22 January 2025, p 3; Submission 14, The Australian Workers Union, p 5; See also Evidence, Mr Donovan, 29 November 2024, p 21.

²⁰⁰ Evidence, Mr Smith, 2 May 2025, pp 6-7.

²⁰¹ Evidence, Mr Smith, 2 May 2025, p 7.

²⁰² Evidence, Mr Donovan, 2 May 2025, p 25.

²⁰³ Evidence, Mr Curtin, 2 May 2025, p 42.

An inspector assists the parties to resolve the dispute, an inspector does not have legal authority to decide the dispute. If the dispute remains unresolved, either party may apply to the Industrial Relations Commission of New South Wales (IRC) to deal with the dispute, including by arbitration, under section 142 of the WHS Act.²⁰⁴

The prevalence of dust diseases among tunnelling workers and future projections

- 3.69** During the inquiry, the prevalence of dust diseases among tunnelling workers and future projections was discussed, with some stakeholders commenting that this is not easily identified given the challenges in obtaining and accessing the relevant data and information.
- 3.70** The Asbestos Diseases Research Foundation referred to a 2022 report by Curtin University commissioned by the Australian Council of Trade Unions which 'estimated upwards of 100,000 cases of silicosis resulting from the exposure levels at that time', with a sizable proportion of these being in New South Wales.²⁰⁵ The Asbestos Diseases Research Foundation noted that the 'crucial factor' is that even with the ban on engineered stone coming into force, cases of silicosis will continue to emerge from historical exposure and from other at-risk occupations like tunnelling, quarrying and construction.²⁰⁶
- 3.71** The Thoracic Society of Australia and New Zealand were of the view that the total number of cases of silicosis and other silica related diseases is currently likely to be under-recognised in New South Wales. They commented that the 'true prevalence of these disorders will only be revealed after implementation of appropriate respiratory surveillance for all silica-exposed workers and optimal notification of cases into state and national registries'.²⁰⁷
- 3.72** The Australian Institute of Occupational Hygienists (AIOH) noted that there are only a few avenues available to obtain this information. They claimed that while the newly established National Occupational Respiratory Disease Registry (NORDR) contains information of those with a diagnosed occupational respiratory disease, its use in calculating a prevalence is limited.²⁰⁸ Another mechanism suggested by the AIOH is to review the health monitoring and screening activities conducted by icare for tunnel workers. However, they noted that any prevalence calculated through the review of icare information may be limited as tunnelling contractors can choose whether to use icare or another medical provider for health monitoring.²⁰⁹
- 3.73** Similarly, Mrs Kate Cole OAM, PhD candidate at The University of Sydney, commented that there is 'no current reliable data on the number of tunnel workers in NSW with silica-related disease' The risk of disease development relates directly to the concentration of RCS that is breathed in and the length of time that workers are exposed'.²¹⁰ Accordingly, Mrs Cole advocated for the release of RCS in air data collected during tunnelling construction in order

²⁰⁴ Answers to questions on notice, Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW, 26 May 2025, p 2.

²⁰⁵ Submission 18, Asbestos Diseases Research Foundation, p 1.

²⁰⁶ Submission 18, Asbestos Diseases Research Foundation, p 1.

²⁰⁷ Submission 9, The Thoracic Society of Australia and New Zealand, p 3.

²⁰⁸ Submission 1, Australian Institute of Occupational Hygienists, p 9.

²⁰⁹ Submission 1, Australian Institute of Occupational Hygienists, p 9.

²¹⁰ Submission 6, Mrs Kate Cole, p 2.

to better understand the future burden of disease of silicosis and lung cancer as a result of building Sydney's tunnels.²¹¹

- 3.74** Noting that a tunnel contractor can use the services of whomever they like, Mrs Cole also gave evidence on the use of private clinics for health monitoring and its impact on understanding the prevalence of disease in a certain industry:

With regards to health monitoring, a tunnel contractor—or, indeed, any PCBU—can use the services of whomever they would like. If they use icare, then the New South Wales Government gets information about the number of workers being screened through these projects and through that process. You need that number. You need that denominator to know what the prevalence of disease is in a certain industry. When you go to a private medical provider, of course there is still the legal requirement to notify the regulator—and, indeed, the national registry—of a disease, but you don't have an understanding of the number of workers that have been screened.²¹²

- 3.75** In their submission, icare noted that there is an increasing trend by employers in the tunnelling industry to use the services of private medical providers, which limits their ability to systematically collect demographic, workplace and health data and understand disease prevalence.²¹³
- 3.76** Accordingly, in order to have an informed view of the current prevalence of silica-related disease, both the Australian Institute of Occupational Hygienists and Mrs Cole recommended introducing a requirement for NSW Government funded projects to use the services of icare rather than private medical providers where workers require health monitoring for crystalline silica.²¹⁴ The issue of whether all workers should be screened by icare is discussed in the next chapter.
- 3.77** In addition, Mrs Cole recommended the use of 'active case finding—a targeted case-finding program for anyone that has worked in tunnel construction'. She highlighted the lag between the time of exposure and the development of disease, noting that much of the released data was collected between 2018 and 2020 (four to six years ago), but cases of chronic silicosis are typically seen 10 years after exposure. She urged the committee to appreciate that the current exposures, or even exposures from four to six years ago, are mostly 'yet to be realised', hence the importance of active case finding. Until that occurs, Mrs Cole argued 'we won't have an accurate understanding of just how big the current issue is'.²¹⁵
- 3.78** In relation to future projections, icare advised that projections in relation to silicosis exposure are not reliable due to insufficient information being available. They added that the projections are based on 'historic exposures from sources such as mining and tunnelling, but more recently

²¹¹ Submission 6, Mrs Kate Cole, p 2.

²¹² Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 34.

²¹³ Submission 12, icare, p 8.

²¹⁴ Submission 1, Australian Institute of Occupational Hygienists, p 9; Submission 6, Mrs Kate Cole, p 2.

²¹⁵ Evidence, Mrs Kate Cole OAM, Doctor of Philosophy (PhD) Candidate, The University of Sydney, 29 November 2024, pp 17, 23-24.

there have been several large infrastructure projects within New South Wales, including the construction of the Sydney Metro, which may result in additional silicosis claims'.²¹⁶

- 3.79** icare gave evidence that having access to more data may provide an 'increased opportunity to better project' future liabilities. Mr Stuart Farquharson, Interim Chief Executive Officer, icare, commented that when looking at the claims that are currently being paid out of the scheme, the vast majority of them relate to non-silica related diseases, however, he acknowledged the importance of understanding the emerging risk and trend of silicosis related diseases.²¹⁷
- 3.80** On a related issue, Lung Foundation Australia acknowledged the challenges associated with workforce mobility, which can result in individuals being lost to care and workers being absent from monitoring and follow-up.²¹⁸ Mr Mark Brooke, Chief Executive Officer, Lung Foundation Australia, noted the transient nature of the tunnelling workforce, remarking that 'the transfer of information, histories and data for patients is at best, a leaking boat'. Mr Brooke went on to advise that 30 per cent of people calling the specialist occupational lung disease nurse are now coming out of tunnelling, a figure that is 'increasingly stepping up'.²¹⁹

Committee comment

- 3.81** The risks of work-related respiratory diseases have shifted over time due to changes in safety measures, technological advancements and a better understanding of dust-related diseases. A key theme that emerged in this inquiry is that workers face a significant risk of developing silica-related diseases, particularly silicosis, due to exposure to respirable crystalline silica (RCS) dust at tunnelling worksites. This inquiry provided an opportunity to examine the risk factors related to dust exposure in the tunnelling industry in New South Wales.
- 3.82** The committee heard that factors such as the increase in tunnelling projects in Sydney, the local geological conditions and the risk profile of different tunnelling methods on workers are important considerations when examining the level of risk of dust diseases presented by the tunnelling industry.
- 3.83** The committee acknowledges that the risk profile of certain tunnelling methods, such as mined tunnelling using roadheaders, pose a higher risk than others. In particular, several inquiry participants noted that tunnel boring machine tunnelling, the primary method used on Sydney Metro West and Sydney Metro City and Southwest projects, is likely to result in lower overall exposure to respirable crystalline silica.
- 3.84** Similarly, we heard that the level of risk for different tunnelling workers can vary depending on their role. The committee heard that workers most at risk appear to be roadhead operators, however we appreciate that many workers often undertake multiple roles on the same job and over the course of their career, which makes it difficult to break down roles and accurate levels of risk or exposure.

²¹⁶ Submission 12, icare, p 8.

²¹⁷ Evidence, Mr Stuart Farquharson, Interim Chief Executive Officer, icare, 11 December 2024, p 7.

²¹⁸ Answers to supplementary questions, Mr Mark Brooke, Chief Executive Officer, Lung Foundation Australia, 6 January 2025, p 8.

²¹⁹ Evidence, Mr Mark Brooke, Chief Executive Officer, Lung Foundation Australia, 29 November 2024, p 45.

- 3.85** We note that levels of exposure to respirable crystalline silica differ across different tunnelling projects. However, based on the evidence, the reported rates of dust exposure in tunnelling projects indicate that in some circumstances workers are exposed to respirable crystalline silica at levels greater than the limits set in legislation and regulation. This is of great concern to the committee.
- 3.86** We note that tunnelling contractors are required to collect air samples of respirable crystalline silica from the breathing zone of workers during their work activities. Throughout the inquiry, it became clear that both stakeholders and workers face difficulties in accessing and obtaining data and information on air quality and dust exposure in tunnelling projects. We understand that these challenges raise issues of transparency and accountability in tunnelling projects in relation to workplace health and safety practices. The committee notes that SafeWork NSW, while generally required to release information under the *Government Information (Public Access) Act 2009* (GIPA Act), may be restricted in certain cases from releasing information obtained through notices or investigations related to the *Work Health and Safety Act 2011* (WHS Act).
- 3.87** A related issue raised during the inquiry was the ability to obtain data on air quality and dust exposure using workplace entry permits. We note that under the *Work Health and Safety Act 2011* (WHS Act), entry permit holders have a right to enter premises and request documentation to investigate suspected contraventions of the WHS Act. The committee heard that while SafeWork NSW can facilitate the resolution of right of entry disputes, they cannot enforce the handover of documents if the entry permit holder believes them to be relevant to a suspected contravention. Some stakeholders advocated for strengthening SafeWork NSW's enforcement role in this area if there is a suspected contravention to ensure workplace entry permit holders have the information they need to effectively investigate potential safety issues and ensure compliance with WHS regulations. Therefore, the committee recommends that the NSW Government strengthen SafeWork NSW's role in resolving disputes under the *Work Health and Safety Act 2011* between authorised entry permit holders and persons conducting a business or undertaking to facilitate the provision of documents to workplace entry permit holders if there is suspected contravention.

Recommendation 10

That the NSW Government strengthen SafeWork NSW's role in resolving disputes under the *Work Health and Safety Act 2011* between authorised entry permit holders and persons conducting a business or undertaking to facilitate the provision of documents to workplace entry permit holders if there is suspected contravention.

- 3.88** The use of portable air monitoring devices by entry permit holders was also considered during the inquiry. We note that there are no provisions in the *Work Health and Safety Act 2011* (WHS Act) that prevents a permit holder from using a portable air monitoring device as part of their investigation. Some stakeholders advocated for legislative reforms to the WHS Act to afford workplace entry permit holders explicit rights to use portable devices, take measurements, capture photos and record videos in relation to WHS compliance, including in relation to respirable crystalline silica. Stakeholders suggested this would enhance entry permit holders' ability to investigate and enhance safety compliance. The committee acknowledges that similar safety provisions are in place in other states, namely South Australia and Queensland. Therefore, the committee recommends that the NSW Government consider amending the *Work Health and Safety Act 2011* to provide workplace entry permit holders explicit rights to use portable device,

take measurements, capture photos and record videos in relation to work health and safety compliance, including in relation to respirable crystalline silica, to enhance their ability to investigate and improve safety compliance.

Recommendation 11

That the NSW Government consider amending the *Work Health and Safety Act 2011* to provide workplace entry permit holders explicit rights to use portable device, take measurements, capture photos and record videos in relation to work health and safety compliance, including in relation to respirable crystalline silica, to enhance their ability to investigate and improve safety compliance.

- 3.89** The committee appreciates that the true prevalence of silica-related disease amongst tunnel workers is difficult to ascertain given the data currently available. However, we note that the total number of cases of silicosis and other silica related diseases is currently likely to be under-recognised in New South Wales. Likewise, future projections may be difficult to forecast due to insufficient information being available. It is evident that enhanced data availability and sharing between agencies, employers and workers will allow for a better assessment of emerging issues. Given this, the committee recommends that the NSW Government consider developing a Memorandum of Understanding between SafeWork NSW and PCBU's regarding the sharing of data and information relating to respirable crystalline silica exposure levels to assist with future projections and health monitoring of workers for the purposes of enabling all respirable crystalline silica in air data to be accessed and considered by iCare, SIRA, policy makers and researchers promptly when requested.
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Recommendation 12

That the NSW Government consider developing a Memorandum of Understanding between SafeWork NSW and persons conducting a business or undertaking regarding the sharing of data and information relating to respirable crystalline silica exposure levels to assist with future projections and health monitoring of workers for the purposes of enabling all respirable crystalline silica in air data to be accessed and considered by icare, SIRA, policy makers and researchers promptly when requested.

- 3.90** Furthermore, throughout the inquiry the committee received evidence of high unprotected levels of exposure to respirable crystalline silica, and the impending likelihood of a high number of cases of silicosis that will enter the Dust Diseases Scheme in the future. As noted in chapter 1, the Dust Diseases Scheme is principally funded by a levy paid by employers as part of their workers compensation insurance premiums, with employer contributions to the levy determined by SIRA. Given the likelihood that the number of people claiming compensation for dust diseases will increase, particularly those diagnosed with silicosis as a result of exposure on mined tunnelling projects using roadheaders, the committee recommends SIRA, to the extent that it is consistent with the principle of premiums reflecting risk, consider increasing the contribution levy to employers for workers involved in tunnelling, with a specific increased levy for those involved in mined tunnelling using roadheaders, to ensure the continued viability of the scheme.
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Recommendation 13

That SIRA, to the extent that it is consistent with the principle of premiums reflecting risk, consider increasing the contribution levy to employers for workers involved in tunnelling, with a specific increased levy for those involved in mined tunnelling using roadheaders, to ensure the continued viability of the scheme.

Chapter 4 Dust disease safety measures in the tunnelling industry

This chapter examines the adequacy of dust disease safety measures in the tunnelling industry, including whether the workplace exposure standard should be reduced and the requirement to consult workers. It then considers the adequacy of air monitoring on tunnelling worksites and the screening of workers for dust diseases. Finally, it outlines the role of SafeWork NSW and the issue of workplaces covered by Comcare.

The adequacy of safety measures on tunnelling worksites

- 4.1** In New South Wales the management of dust diseases is primarily focused on effectively controlling and minimising exposure to dust to prevent dust-related diseases in industry workers, in particular silicosis from respirable crystalline silica (RCS) dust. In the tunnelling industry this is done through a combination of proactive protective measures, including:
- engineering controls like ventilation and dust suppression systems
 - personal protective equipment (PPE) such as respirators
 - administrative controls training and work procedures
 - enhanced compliance with the relevant workplace health and safety legislative framework.²²⁰
- 4.2** A PCBU (person conducting a business or undertaking) must ensure that they are managing risks to health and safety from exposure to RCS at the workplace in accordance with Part 3.1 of the WHS Regulations. This requires PCBUs to, among other things, manage risks in accordance with the hierarchy of control measures. The hierarchy of control measures ranks control measures from the highest level of protection and reliability to the lowest level.²²¹
- 4.3** During the inquiry, the adequacy of different safety measures and controls in tunnelling worksites were examined, including the use of engineering controls, the effectiveness of personal protective equipment (PPE), capping working hours and the provision of training for workers.
- 4.4** Engineering controls for RCS primarily focus on reducing exposure to dust at the source. These controls can include:
- enclosed or isolated automation when cutting, grinding or drilling
 - using wet processing methods
 - local exhaust ventilation systems

²²⁰ SafeWork NSW, *Working with crystalline silica substances: Guidance for PCBUs*, <https://www.safeworkaustralia.gov.au/doc/working-crystalline-silica-substances-guidance-pcbus>, pp 30 – 34.

²²¹ SafeWork NSW, *Working with crystalline silica substances: Guidance for PCBUs*, <https://www.safeworkaustralia.gov.au/doc/working-crystalline-silica-substances-guidance-pcbus>, p 30.

- fitting large machinery such as excavators and bulldozers with positive pressure enclosed cabs.²²²

4.5 During the inquiry, some stakeholders commented on the use of engineering controls in managing exposure to RCS. When asked whether it is possible to eliminate the production of dust in tunnelling worksites, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, expressed the opinion that whilst it may not be possible to eliminate the production of dust 'it's definitely possible to minimise and reduce the amount of dust that is in the air' using engineering controls.²²³ She commented that:

... Increasingly, we have seen some very good tunnelling employers retrofit underground equipment with pressurised systems, which, therefore, removes the entire requirement for a worker to wear a dust mask at all because they've put engineering controls on the cabin. Whilst there is dust outside, there is not dust in the worker's environment.

While systems like that might be mandated in coalmining, because we don't have a code of practice that requires minimum standards, sometimes these are things that are seen as best practice rather than minimum controls. Appropriately, our work health and safety regulations allow some flexibility, and that is appropriate to allow employers the flexibility to apply certain control measures. But when we have a known safety control like HEPA-pressurised cabins, and we know that is being used in other industries and that it protects workers, that should be a minimum mandatory control when you're working underground, for example.²²⁴

4.6 However, Maurice Blackburn Lawyers noted that in many cases 'technical improvements in ventilation and other engineering controls cannot keep pace with the rate of extraction'. In addition, they remarked that the willingness and actions of employers in these industries to spend more time and capital on engineering controls including PPE for workers is in their view 'very poor'.²²⁵

4.7 Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW, gave evidence that engineering controls are sometimes 'limited by other factors such as availability of electricity or other things' and noted that some of the scrubbing machines are designed for the coal industry so they 'might be working much better in that industry than they are in terms of silica'. Whilst acknowledging that there are 'much improved controls in place, in terms of the engineering and in terms of the systems of work' in the tunnelling industry, Mr Curtin noted 'there is more work to be done'.²²⁶

4.8 The effectiveness of personal protective equipment in tunnelling sites was also considered, with some stakeholders commenting that while PPE plays a role in protecting against dust diseases, it has limitations, especially when relying solely on it. Ms Natasha Flores, Industrial Officer

²²² SafeWork NSW, *Working with crystalline silica substances: Guidance for PCBU's*, <https://www.safeworkaustralia.gov.au/doc/working-crystalline-silica-substances-guidance-pcbus>, p 32.

²²³ Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 38.

²²⁴ Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 38.

²²⁵ Submission 7, Maurice Blackburn Lawyers, p 7.

²²⁶ Evidence, Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW, 2 May 2025, p 41.

Work Health & Safety, Workers Compensation, Unions NSW, remarked that personal protective equipment is a low order control and should not be the primary control measure. Other higher order control measures such as elimination should occur first.²²⁷

- 4.9** Mrs Kate Cole OAM, PhD candidate at The University of Sydney, also cautioned the committee against assuming that reliance on masks or PPE is an appropriate safety measure. She stated that in the information obtained and shared by the AWU, respirators or masks, at least on one project, were only found to be adequate around 70 per cent of the time.²²⁸ She described masks as the 'lower form of control', noting that recommendations made by hygienists are focused on 'ventilation, dust suppression and other higher order controls because masks generally are not effective 100 per cent of the time'.²²⁹
- 4.10** Dr Jane Muir, Member, Royal Australasian College of Physicians, and Fellow of the Australasian Faculty of Occupational and Environmental Medicine, also gave evidence on the adequacy of respiratory protection measures stating that '... we don't want to rely on respiratory protection as an adequate control, because it's not perfect and there are times that it will fail, which is why the higher order controls need to be better'.²³⁰
- 4.11** Whilst acknowledging that there has been progress on most sites now where protection is standard and mandatory for all high-risk workers, including the use of Powered Air Purifying Respirators (PAPRs) for high-risk workers on some projects, Dr Muir commented that other projects take a more risk-based approach:

My understanding is that if the dust levels have been monitored and they are consistently below a certain level, they have been sticking with the P2/N95 dust masks. There has definitely been a big recognition of—or upgrade in respiratory protection. What I would say, though, is there is an over-reliance on respiratory protection. That should be the last level of defence, and there are many scenarios where workers do remove their respiratory protection, either to communicate to one another—they are incredibly difficult to hear in—or I will commonly hear from the electricians and the fitters that they need to get into very small, tight spaces, and it can be very difficult to get in with these big, bulky headsets...²³¹

- 4.12** When asked whether there is a requirement for different types of personal protective equipment for different tunnelling methods at their project sites, Mr Andrew Marsonet, Project Director, Western Harbour Tunnel Project, Acciona Construction Australia Pty Ltd, explained that 'the standard is the same' even though the 'exposure criteria might be different at the cutting face'

²²⁷ Answers to supplementary questions, Ms Natasha Flores, Industrial Officer Work Health & Safety, Workers Compensation, Unions NSW, 31 January 2025, p 4.

²²⁸ Evidence, Mrs Kate Cole OAM, Doctor of Philosophy (PhD) Candidate at The University of Sydney, 29 November 2024, p 23.

²²⁹ Evidence, Mrs Kate Cole OAM, Doctor of Philosophy (PhD) Candidate at The University of Sydney, 29 November 2024, p 23.

²³⁰ Evidence, Dr Jane Muir, Member, Royal Australasian College of Physicians, and Fellow of the Australasian Faculty of Occupational and Environmental Medicine, 29 November 2024, p 46.

²³¹ Evidence, Dr Muir, 29 November 2024, p 46.

there is still exposure where spoil is collected and discharged so a minimum PPE is still required even when tunnel boring machines are used.²³²

- 4.13** Concerns regarding the quality and frequency of fit testing for personal protective equipment were also raised during the inquiry. According to the CFMEU Construction & General Division NSW Branch, the failure to get protection masks fit tested means that there is less likely to be a tight seal to the face. Without that seal, dust can still enter which is more likely to be ingested as it is contained in the mask. Once the dust enters it has nowhere to go but the worker's body.²³³
- 4.14** Respirator fit testing is required by Australian New Zealand Standard AS/NZS1715, which is now specifically called out in the crystalline silica regulations in New South Wales. Fit testing is to be performed before a user wears a respirator on the job and should be assessed annually at a minimum.²³⁴ Mrs Kate Cole OAM, Doctor of Philosophy (PhD) Candidate at The University of Sydney, said in her experience the issue is less about accessing the services of a competent and accredited fit tester, or the time taken to perform the test, but more about the awareness by employers of the requirements for respirator fit-testing to be performed.²³⁵
- 4.15** Ms Sherri Hayward, Senior Legal Officer, Construction & General Division, NSW Divisional Branch, Construction, Forestry and Maritime Employees Union (CFMEU) advised that during the initial construction at the Rozelle interchange, workers had raised concerns about fit testing of the masks and the management of airborne contaminants.²³⁶ Despite ongoing requests for appropriate PPE and fit testing, the principal contractor insisted on using P2 paper style masks. According to the CFMEU, the masks were inadequate because the minute the worker started sweating the seal would pucker allowing dust to get in. When they were finally encouraged to shift to better quality masks, the company refused to get the workers individually fit tested.²³⁷ At the time, the contractor complained that fit testing the workers was cost prohibitive and for that reason it was not intending to roll it out for all workers, however over time they changed their position.²³⁸
- 4.16** Both the Thoracic Society of Australia and New Zealand (TSANZ) and Dr Aruvi Thiruvarduchelvan, Consultant Respiratory and Sleep Physician, commented that, in addition to the implementation of lower dust levels at the source, regulating a cap on working hours for dust-exposed workers should be considered.²³⁹ Dr Thiruvarduchelvan told the committee that many workers work 12-hour shifts which results in higher lung dust accumulation, with long

²³² Evidence, Mr Andrew Marsonet, Project Director, Western Harbour Tunnel Project, Acciona Construction Australia Pty Ltd, 30 May 2025, p 3.

²³³ Answers to supplementary questions, Construction & General Division, NSW Divisional Branch, Construction, Forestry and Maritime Employees Union (CFMEU NSW), 24 January 2025, p 7.

²³⁴ Answers to supplementary questions, Mrs Kate Cole OAM, Doctor of Philosophy (PhD) Candidate at The University of Sydney, 30 December 2024, pp 5-6.

²³⁵ Answers to supplementary questions, Mrs Cole, 30 December 2024, p 6.

²³⁶ Answers to supplementary questions, CFMEU NSW, 24 January 2025, p 4; See also Evidence, Ms Natasha Flores, Industrial Officer Work Health and Safety, Workers Compensation, Unions NSW, 29 November 2024, p 5.

²³⁷ Answers to supplementary questions, CFMEU NSW, 24 January 2025, p 7.

²³⁸ Answers to supplementary questions, CFMEU NSW, 24 January 2025, p 7.

²³⁹ Submission 9, The Thoracic Society of Australia and New Zealand, p 3; Evidence, Dr Aruvi Thiruvarduchelvan, Consultant Respiratory and Sleep Physician, 29 November 2024, p 44.

shifts not providing sufficient time for the natural clearance mechanisms of the lungs to clear inhaled particles.²⁴⁰ The TSANZ suggested that reducing the length of shifts would be a simple and effective way of improving lung health and would also assist with reducing workers' fatigue and bettering general health and wellbeing.²⁴¹

- 4.17** On the related issue of training for workers, CFMEU advised that their enterprise agreements require employers to schedule an agreed asbestos/silica awareness training course, with the training to be undertaken within three months of the commencement of the agreement and within three months for any new employee. CFMEU advised that as part of the training workers:

learn to recognise the workplace health and safety risks and hazards inherent in working with crystalline silica containing products, and to determine and plan for the implementation of safe systems of work aimed at reducing exposure to within mandatory exposure limits. During the training workers are also shown how to read and interpret air monitoring reports.²⁴²

- 4.18** For those workers not employed under a CFMEU agreement, it is at the discretion of the PCBU as to whether they train the employees on the risks of crystalline silica and how to read air monitoring reports. In the CFMEU's experience training at workplaces without a CFMEU agreement is rare and not generally available to workers, only supervisors or safety officers.²⁴³

- 4.19** During the inquiry, the committee heard evidence from some stakeholders about steps they are undertaking at tunnelling worksites to protect workers from dust disease, in particular RCS.

- 4.20** Mr Glyn Edwards, General Manager, Tunnelling and Major Projects, CPB Contractors, outlined two new measures being taken by CPB Contractors at their tunnelling worksites. From an engineering perspective, the company has enlarged the fans to increase the air into the tunnel, which 'basically gives you fresh air, which helps to blow it out', noting they are restricted in the tunnels by an air velocity, which is 'basically 0.5 metres per second'. The second measure is the introduction and use of Powered Air Purifying Respirators (PAPRs) Versaflo masks.²⁴⁴

- 4.21** The committee heard there is an increasing trend to use Powered Air Purifying Respirators (PAPRs) such as the 3M Versaflo respirator in the industry, however Mrs Cole noted their use has only recently been extended to a wider variety of tunnel construction situations.²⁴⁵ She stated that some loose fitting PAPRs do not require fit testing and provide a higher degree of protection with cool and clean air without the need for the worker to be clean shaven. Mrs Cole added that the 'reasons why they have not been made available to all workers sooner are unclear, but probably relate to factors such as awareness by employers and cost'.²⁴⁶

- 4.22** As noted in the previous chapter, Transport for NSW generally uses roadheaders for its tunnelling projects. Ms Camilla Drover, Deputy Secretary, Infrastructure, Projects and

²⁴⁰ Evidence, Dr Thiruvavurudchelvan, 29 November 2024, p 44.

²⁴¹ Submission 9, The Thoracic Society of Australia and New Zealand, p 3.

²⁴² Answers to supplementary questions, CFMEU NSW, 24 January 2025, pp 5-6.

²⁴³ Answers to supplementary questions, CFMEU NSW, 24 January 2025, pp 5-6.

²⁴⁴ Evidence, Mr Glyn Edwards, General Manager, Tunnelling and Major Projects, CPB Contractors, 2 May 2025, p 12.

²⁴⁵ Answers to supplementary questions, Mrs Cole, 30 December 2024, p6.

²⁴⁶ Answers to supplementary questions, Mrs Cole, 30 December 2024, pp 5-6.

Engineering, Transport for NSW, gave evidence on what this means for the tunnelling workers and what safety control measures are put in place to manage the dust being generated at the cutting face:

... There are control measures in place to manage the dust that is generated at that cutting face. The primary measure, and the engineering control, is ventilation systems. There are mechanical ventilation systems that suck the dust from the cutting face and take it through a whole series of cleaning mechanisms—the scrubbers, they are colloquially called. That cleans the air and also takes it away from the cutting face. That's one of the measures. There are also dust suppression systems, including wetting systems. If there is any dust in the air, water is applied to it and it obviously settles to the ground.

The other control is the fact that the worker controlling the roadheader is actually within a sealed cab and that cab is sealed. It's pressurised and there are also filters in that cab. They are the HEPA filters, so a high degree of filtration...

Over and above that, the worker is also wearing a mask.... In more recent years, the technology has improved and we're now using Versaflo masks. They are a full-face mask. ... There's a whole level of controls in place to make sure that the air that is going into that worker's lungs is managed and controlled and mitigates the risks of silica. Of course, over and above that, there is monitoring and reporting of the ambient air quality in the tunnel at the same time. If there are any exceedances of the standard—and we don't set the standard; that is set at a national level—those exceedances are reported.²⁴⁷

- 4.23** In correspondence to the committee, Transport for NSW advised that whilst Versaflo masks had been introduced, they are not mandatory on the M6 and Western Harbour Tunnel projects. They also advised that contractors are shifting towards Versaflo as better practice, but in some instances P2 masks are still used and preferred by workers.²⁴⁸
- 4.24** Ms Drover also discussed some of the innovations Transport for NSW is trialling on the Western Harbour Tunnel to improve safety for workers in tunnelling projects, including:
- the use of a boot wash, with workers now washing their before they get into the cab so they are not taking any dust particles into the cab.
 - the use of a tele-remote roadheader, which is controlled by a worker 200 metres away from the cutting face in a sealed shipping container. Whilst it is still currently underground, Ms Drover explained that the worker is 'a long way away from where the dust is being generated'. With time, Transport for NSW is hoping the header can be controlled from a surface location ensuring the worker is 'well away from the dust'.
 - an initiative called jet black, where workers go into a room to thoroughly extract dust from their clothes, hair and body.²⁴⁹
- 4.25** In addition, Transport for NSW outlined a number of other safety steps taken to ensure that dust exposure risks are effectively managed on their tunnelling worksites. These include:

²⁴⁷ Evidence, Ms Camilla Drover, Deputy Secretary, Infrastructure, Projects and Engineering, Transport for NSW, 11 December 2024, pp 25-26.

²⁴⁸ Correspondence, Ms Camilla Drover, Deputy Secretary Infrastructure, Projects and Engineering, Transport for NSW, to Chair, 11 June 2025, p 1.

²⁴⁹ Evidence, Ms Drover, 11 December 2024, p 26.

- 'a toolbox talk' at the start of every work shift, where the work to be undertaken in that shift are stepped through with particular focus on the safety requirements²⁵⁰
- the use of safe work method statements before work is undertaken on site, which includes what PPE workers must be wearing and how they must be wearing that²⁵¹
- requiring principal contractors to:
 - undertake comprehensive risk assessments to systematically identify, assess and control occupational health risks, through both qualitative methodologies and quantitative approaches, including exposure monitoring
 - enforce monitoring and reporting to demonstrate to dust control standards
 - provide training and awareness on the risks associated with dust exposure, the health implications of exposure, and the proper use of personal protective equipment.²⁵²

4.26 At a hearing, Mr Andrew Marsonet, Project Director, Western Harbour Tunnel Project, Acciona Construction Australia Pty Ltd, spoke about the company's use of remote controlled roadheaders, a new initiative introduced on the Western Harbour Tunnel project in conjunction with Austrian roadheader supplier, Sandvik. He explained that the 'tele-remote' technology involves:

... an operator sitting in a sealed room, a bit like a small, underground ATCO-type shed—sealed. They have in front of them about eight video screens, together with other telemetry coming from the roadheader, and they literally operate the roadheader from that room. The roadheader itself is probably in the order of 100 to 150 metres in advance of them at the cutting face. This is the first time it's been trialled anywhere in the world.²⁵³

4.27 In relation to the evaluation of this technology and consideration of expanding its availability and use in the tunnelling industry, Mr Marsonet commented that:

I think, as a principle, from an Acciona perspective—and I would imagine also an industry perspective—we always see automation, innovation, robotics as the way forward We're working very closely with the manufacturer with these trials. And also the operators and users of the system—we've sought their feedback.²⁵⁴

4.28 However, Mr Marsonet noted that one of the 'biggest issues' the company is currently facing with the use of this technology is the Wi-Fi bandwidth needed to operate multiple pieces of equipment, not just one roadheader:

If we think about it going forward, we need to operate multiple pieces of equipment using a wi-fi system. Can we physically get the amount of bandwidth and capability? That's one area that we've noticed is an issue, and we'll definitely work on ways of

²⁵⁰ Evidence, Ms Drover, 11 December 2024, p 30.

²⁵¹ Evidence, Ms Drover, 11 December 2024, p 30.

²⁵² Answers to questions on notice, Ms Camilla Drover, Deputy Secretary Infrastructure, Projects and Engineering, Transport for NSW, 24 January 2025, p 4.

²⁵³ Evidence, Mr Andrew Marsonet, Project Director, Western Harbour Tunnel Project, Acciona Construction Australia Pty Ltd, 30 May 2025, p 8.

²⁵⁴ Evidence, Mr Marsonet, 30 May 2025, p 8.

improving that. But I think it's a journey; it's not going to be resolved within the period of the Western Harbour Tunnel. We would expect that, over time, manufacturers working together with contractors—particularly for Acciona, for example, we are very much focused on how can we take that risk away going forward. We've been able to do it with a reasonable degree of success with shotcreting and with rock drilling for rock bolts. It still requires people to be underground, but they're not, if you like, right at the face; they're working five or 10 metres away. To work 100 metres away is the challenge for us. Probably, long term, it would be good to be able to operate them from the surface. I'm future-speculating here, but we've got to start somewhere.²⁵⁵

- 4.29** Mr Marsonet was also asked about improvements in occupational health and safety standards and whether Acciona draws on practices and regulations that the business applies in other jurisdictions, to inform and structure how their tunnelling operations are undertaken in Australia. He responded in the affirmative and explained the company not only looks overseas but also at other industries:

... We're always trying to do better and go up the hierarchy of control and try and eliminate or come up with engineer controls and do things with more automation, with surveying, with other different types of works where we can take people away from the activity that's happening in and around the excavated face, or anywhere else for that matter. We do it with lifting and we do it with some of the automation works with paving and those types of things. We are always looking for different methods and improved methods and we do draw on our overseas experience as well as our local experience.²⁵⁶

- 4.30** In relation to whether Acciona engages with the regulator about advancements in technology and practices, so the regulator has some insight into new potential enhanced standards, Mr Marsonet advised:

We definitely do. I'll do it by way of example. First of all, with the blinding concrete, which has made a huge difference in terms of reducing dust load underground. Secondly, with our boot washers outside of cabins. Our workforce cleans their boots and then they go inside the cabins and work in soft shoes and then they exchange. These kinds of things. We invite SafeWork regularly to the project. I've personally had two sessions this year with SafeWork to explain what we do and take them underground. We're very happy to share our experiences and our knowledge and how we address managing a whole raft of issues, including reducing silica exposure to our workforce. We're very happy to share that with SafeWork, and we have done so and we do so. We also share it with our client Transport for NSW, because safety is everybody's business, as we say.²⁵⁷

- 4.31** Whilst the evidence shows that government agencies and contractors are undertaking steps to enhance protection for workers from dust diseases, Mrs Cole highlighted that it was 'very evident' that the issue is not managed consistently across government:

You have Sydney Metro with very large contractual requirements, expert teams that are gaining compliance with those contractual requirements, and then, over here, you have Transport with a high level of risk to workers, absent of those contractual requirements

²⁵⁵ Evidence, Mr Marsonet, 30 May 2025, p 9.

²⁵⁶ Evidence, Mr Marsonet, 30 May 2025, p 9.

²⁵⁷ Evidence, Mr Marsonet, 30 May 2025, p 9

and absent of experts in that area to gain any type of compliance with it or, indeed, any systems in place to assure themselves of the levels of silica dust on their projects. Obtaining some type of consistency—arguably, I would think that applying the metro model more broadly, because it's already been done and it's a precedent, would be an area of benefit for the Government generally.²⁵⁸

Should the workplace exposure standard be reduced?

- 4.32** The question of whether the current workplace exposure standard (WES) for RCS should be reduced was also explored during the inquiry. The current WES for RCS is 0.05 mg/m³ (eight-hour time weighted average). This means that workers must not be exposed to levels of RCS greater than 0.05 mg/m³ over an eight hour working day, for a five day working week.²⁵⁹
- 4.33** Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, advised that 'there is scientific evidence that has repeatedly demonstrated that the current workplace exposure standard is not protective of adverse health effects...'²⁶⁰
- 4.34** Several inquiry participants indicated strong support for reducing the WES, including:
- Dr Jane Muir, Member, Royal Australasian College of Physicians, and Fellow of the Australasian Faculty of Occupational and Environmental Medicine, who explained that there's plenty of research that 'shows the level at which there is no risk is much lower than 0.05, which is the current limit—close to 0.02 or 0.025'. She also noted that tunnel workers start work in their late teens or early twenties and continue for 40 years and so having that lower level of daily dust is going to reduce accumulative dust exposure and reduce their risk over their working life.²⁶¹
 - Dr Tim Driscoll, Member, Royal Australasian College of Physicians, Fellow of the Australasian Faculty of Occupational and Environmental Medicine, and Fellow of the Australasian Faculty of Public Health Medicine, commented that 'there's very good evidence to show that 0.05 is too high and there's very good evidence which supports having a standard at about 0.025'.²⁶²

²⁵⁸ Evidence, Mrs Kate Cole OAM, Doctor of Philosophy (PhD) Candidate at The University of Sydney, 2 May 2025, p 33.

²⁵⁹ SafeWork NSW, *Crystalline silica – technical fact sheet*, <https://www.safework.nsw.gov.au/resource-library/hazardous-chemicals/crystalline-silica/crystalline-silica-technical-fact-sheet#:~:text=Workplace%20exposure%20standards%20and%20air,for%20example%2C%2012hr%20shifts>

²⁶⁰ Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 35.

²⁶¹ Evidence, Dr Muir, 29 November 2024, p 47.

²⁶² Evidence, Dr Tim Driscoll, Member, Royal Australasian College of Physicians, Fellow of the Australasian Faculty of Occupational and Environmental Medicine, and Fellow of the Australasian Faculty of Public Health Medicine, 29 November 2024, p 47.

- Mr Mark Brooke, Chief Executive Officer, Lung Foundation Australia, advised that one of the things the national strategy is looking at is reducing exposure level to 0.25, noting this is becoming the norm overseas in most developed countries.²⁶³

4.35 In relation to whether there is air monitoring technology to detect lower workplace exposure standards should the WES be reduced, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, explained that 'there has been significant progress made' in this regard, thereby indicating there is no technological impediment to lowering the WES:

... I'll refer to TestSafe Australia, which is a highly respected, very large analytical laboratory that is based here in New South Wales. Recently, experts from TestSafe Australia and respected occupational hygienists from SafeWork NSW published a paper in a well-respected peer-reviewed journal where they reported a technical solution to measure silica dust at levels at or below the lower workplace exposure standard of 0.025. The solution was as simple as replacing the type of filter we use as occupational hygienists—just a different type—and using one particular analytical method. At the moment we use one of two. The second analytical method, known as X-ray diffraction, is commonly done already. By doing that, the authors were able to demonstrate that measurability was no longer a concern.²⁶⁴

4.36 When questioned as to whether there are any potential issues associated with reducing the WES, Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW, explained that achieving a lower WES across many industry sectors may not be practical, especially in industries where workers complete shifts of 10-12 hours in length:

Shifts of this length would require a further reduction in the proposed respirable crystalline silica (RCS) WES of 0.02 mg/m³ time-weighted average (TWA) over 8 hours. The reliability of the sampling for RCS at such low levels could make it difficult to determine compliance with the proposed WES. Additionally, further reduction in the WES may result in a substantial increase in the level of respiratory protection required to be worn, as engineering controls may not be sufficient. Further, the US Occupational Health and Safety Administration has concluded that compliance with an exposure standard of 0.025 mg/m³ TWA over 8 hours would not be technically feasible for industry. Alternatively, the state of British Columbia in Canada has set a WES of 0.025 mg/m³ for silica.²⁶⁵

The requirement to consult workers

4.37 The requirement to consult workers regarding safety measures was also raised as a concern during the inquiry. According to the CFMEU Construction and General Division NSW Branch, it is important to recognise that the *Work Health and Safety Act 2011* (WHS Act) is intended to

²⁶³ Evidence, Mr Mark Brooke, Chief Executive Officer, Lung Foundation Australia, 29 November 2024, p 48.

²⁶⁴ Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, pp 35-36.

²⁶⁵ Answers to questions on notice, Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW, 6 January 2025, pp 8-9.

encourage PCBU's and workers to coordinate in the identification, management and rectification of safety issues at the workplace.²⁶⁶

- 4.38** Section 47 of the *Work Health and Safety Act 2011* (WHS Act) requires PCBU's to consult as far as reasonably practicable with workers who carry out work for the PCBU and are likely to be affected by a matter relating to health and safety. Section 49 sets out the circumstances in which consultation is required, and section 48 sets out the minimum consultation requirements.²⁶⁷
- 4.39** According to the CFMEU, it is unusual for PCBU's to comply with the requirements under s 48 of the WHS Act with many employers informing workers of the resolution of safety issues after the company has taken remedial action. By that point the workers have lost the opportunity to affect the decision making of the PCBU even where they have safer or more effective ideas for resolving the dispute.²⁶⁸ In the CFMEU's experience, many PCBU's rely on a weekly site walk and the distribution of safe work method statements to meet their consultation requirements, which in their view falls 'well short' of the standard required under s 48 of the WHS Act.²⁶⁹
- 4.40** To illustrate their point, the CFMEU again referenced the Rozelle interchange project, where the workers were not consulted on the hazard posed by silica dust or the fit testing requirements. According to the CFMEU, there was very little communication between the PCBU and the workers about the hazards on the project and many workers expressed to the CFMEU the lack of information flow on the project.²⁷⁰ Consultation at the site 'was sparse at best' even when SafeWork NSW became involved and instructed the PCBU as to its responsibilities under the WHS Act. The CFMEU highlighted that even when all the powers available under the Act are used, the power imbalance between workers and PCBU's can leave workers feeling like there is 'no point because the PCBU won't listen and is rarely chastised for its failure to consult'.²⁷¹
- 4.41** In their evidence, the CFMEU asserted that for many workers the decision to speak up is a known risk to continuing employment and until SafeWork NSW is willing and able to bring proceedings to enforce the consultation obligations, consultation under the Act will not be taken seriously by PCBU's.²⁷²
- 4.42** Similarly, Ms Natasha Flores, Industrial Officer Work Health & Safety, Workers Compensation, Unions NSW, commented that lack of worker consultation is a problem in almost all industries. Despite there being a Code of Practice available which explicitly explains how consultation should be undertaken in all workplaces, Ms Flores remarked that PCBU's still seem to struggle to understand their duty in this regard.²⁷³

²⁶⁶ Answers to supplementary questions, CFMEU NSW, 24 January 2025, p 4.

²⁶⁷ Answers to supplementary questions, CFMEU NSW, 24 January 2025, p 2.

²⁶⁸ Answers to supplementary questions, CFMEU NSW, 24 January 2025, p 3.

²⁶⁹ Answers to supplementary questions, CFMEU NSW, 24 January 2025, p 3.

²⁷⁰ Answers to supplementary questions, CFMEU NSW, 24 January 2025, p 4.

²⁷¹ Answers to supplementary questions CFMEU NSW, 24 January 2025, p 4.

²⁷² Answers to supplementary questions CFMEU NSW, 24 January 2025, p 5.

²⁷³ Answers to supplementary questions, Ms Flores, 31 January 2025, p 1.

The adequacy of air monitoring on tunnelling worksites

4.43 Adequate air monitoring on tunnelling worksites is critical to ensuring the safety of workers and regulation compliance. It helps identify potential risks, assess worker exposure, and ensure control measures are effective.

4.44 Mrs Kate Cole OAM, Doctor of Philosophy (PhD) Candidate, The University of Sydney, explained that air monitoring is assessed by the amount of silica that a worker is exposed to. This assessment is 'fixed to workers' as this is the 'only way' for a contractor to demonstrate compliance with the workplace exposure standards because it must be 'collected in the worker's breathing zone'. Occupational hygienists will collect samples of silica dust in the highest risk workers (those 'doing the dustiest activities') rather than a 'stationary point at the front or the back of the tunnel'.²⁷⁴

4.45 When asked about the air monitoring process and how it works, Mrs Cole explained the sample is collected by 'attaching a pump and a sample device to a worker in the morning at pre-start' and collecting it at the end of the shift. In the case of tunnel workers, this might be at the end of a 12 hour shift. However, as Mrs Cole elaborated 'one sample of one worker on one day is not appropriately representative of what might be happening':

... What occupational hygienists do is we measure similar exposure groups. We measure groups of workers over time repeatedly to try to get a better understanding of what's happening in that work group... The hygienist is trying to figure out the level of exposure and how different that exposure is in that group as they go on. But the workplace exposure standard is something that is not to be exceeded anyway. It's not okay to have one sample exceed and everything else is fine.²⁷⁵

4.46 Some inquiry participants were of the view that air monitoring practices could be improved to enhance worker safety and called for tighter regulation and enforcement in this area. The CFMEU Construction & General Division NSW Branch expressed the view that a harmful substance such as crystalline silica requires more prescriptive regulation to 'force PCBUs to firstly take the hazard seriously and secondly to ensure a best practice strategy for management and prevention'.²⁷⁶ According to the CFMEU, at a minimum the regulations should require:

- Air monitoring to take place on all tunnelling projects and at various intervals throughout the tunnel, not just as the drill point
- Air monitoring reports to be made available in lunchrooms and meal rooms
- PCBUs to provide training to employee on how to read the air monitoring reports
- Air monitoring to occur frequently
- To the extent that the air monitoring indicates a risk to the community at large, those reports should be made public.²⁷⁷

²⁷⁴ Evidence, Mrs Kate Cole OAM, Doctor of Philosophy (PhD) Candidate, The University of Sydney, 29 November 2024, p 22.

²⁷⁵ Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 35.

²⁷⁶ Answers to supplementary questions, CFMEU NSW, 24 January 2025, p 1.

²⁷⁷ Answers to supplementary questions, CFMEU NSW, 24 January 2025, p 1.

- 4.47** The Australian Institute of Occupational Hygienists commented that there are various methods of measuring RCS in air and a 'well-informed workplace' may use multiple methods to better understand the risk of exposure. The three main methods used for air monitoring for RCS are:
1. Personal exposure monitoring, which involves using personal samplers worn by workers in the breathing zone to measure RCS exposure during shifts, including breaks. The dust obtained by this method is subsequently weighed and analysed for crystalline silica content by a NATA accredited laboratory.
 2. Static (fixed) sampling, which involves the same samplers as the above method, but they are placed in specific areas to identify sources of dusts and to assess process and control effectiveness.
 3. Real time monitoring, which uses direct-reading devices to count dust particles and make the results visible on the devices screen.²⁷⁸
- 4.48** Importantly, several inquiry participants, including the Australian Institute of Occupational Hygienists (AIOH), Mrs Cole and Transport for NSW, noted that whilst all three methods are suitable for use in tunnelling, only personal exposure monitoring can be used to demonstrate compliance with the workplace exposure standard (WES).²⁷⁹
- 4.49** Furthermore, the use of real time air monitoring was also explored. While using real-time monitoring supports personal exposure monitoring as required by the WHS regulations, it does not replace it.²⁸⁰ Mrs Cole gave evidence that real time monitoring 'supplements' what is collected because it 'helps us understand if we have a problem':
- ... When you're underground and it looks clean, it may not actually be clean. So that real-time monitoring supplements the monitoring done every month or week in real time to make real-time improvements.²⁸¹
- 4.50** Transport for NSW commented that handheld real-time monitoring can be a 'useful, supplementary, method to assess the effectiveness of workplace controls and provide an indication of airborne particulate concentrations. However, a monitoring strategy is typically centred around ongoing personal exposure monitoring, in accordance with cl49 and 50 Work Health and Safety Regulation 2017 (NSW).²⁸²
- 4.51** At a hearing, Mrs Cole gave evidence on the importance of 'a bit more prescription around air monitoring and tasks that are occurring at that time while the air monitoring is being performed' as dust levels fluctuate depending on the method used, depending on the time of day and depending on the tasks that are being undertaken at that time.²⁸³

²⁷⁸ Answers to supplementary questions, Mrs Cole, 30 December 2024, p 1; See also Submission 1, Australian Institute of Occupational Hygienists, p 11.

²⁷⁹ Answers to supplementary questions, Mrs Cole, 30 December 2024, p 2; Submission 1, Australian Institute of Occupational Hygienists, p 10; Answers to questions on notice, Transport for NSW, 24 January 2025, p 6.

²⁸⁰ Submission 1, Australian Institute of Occupational Hygienists, p 10.

²⁸¹ Evidence, Mrs Kate Cole OAM, Doctor of Philosophy (PhD) Candidate, The University of Sydney 29 November 2024, p 22.

²⁸² Answers to questions on notice, Transport for NSW, 24 January 2025, p 6.

²⁸³ Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 36.

- 4.52** The frequency of air monitoring in tunnelling projects was also raised as a related issue. Whilst recognising the strength of the new crystalline silica regulations, Mrs Cole gave evidence that there are still gaps in the framework around controls, specifically air monitoring. In particular, she noted the absence of a code of practice and minimum frequencies for air monitoring.²⁸⁴
- 4.53** According to Mrs Cole, there has been instances where some 'large projects do a small amount of monitoring, and not very frequently' as there is no standardised approach.²⁸⁵ She observed that at the moment, the frequency of air monitoring, whether 'that's daily, weekly, monthly, six-monthly or annually, is not specified'. Nor is the specific work groups that should have air monitoring undertaken or the competence of the person who does the air monitoring.²⁸⁶
- 4.54** In giving evidence, Mrs Cole strongly advocated for a code of practice to standardise this type of air monitoring to ensure consistency and effectiveness across tunnelling projects:

Different industries, different sectors, may have different standards, and it highlights why we so desperately need a code of practice to standardise this type of air monitoring. When you're in an industry like tunnelling and construction, things change very rapidly, so monitoring a particular worksite every three months would arguably be insufficient, where things are changing all the time. Currently, the industry standard in tunnelling is around once a month, but we've seen in recent years that trend go from once a month including maybe 50 to 60 workers, to once a month being only really 10 to 12 workers. So the amount of air monitoring is reducing. Anecdotally, we anticipate that trend to continue if it's not proactively addressed because, as you would probably know, the new crystalline silica regulations require the PCBU to report the result from air monitoring to SafeWork NSW if it's above the workplace exposure standard, yet there are no requirements around how many air monitoring samples should be taken by an employer. So we're seeing the number of samples being collected be less to lower the chance, in some circumstances, that there will be an exceedance.²⁸⁷

- 4.55** In her evidence, Mrs Cole also outlined some specific elements relating to air monitoring that are needed in a code of practice, if established, such as:
- outlining the competencies of persons who plan, conduct and interpret air monitoring, noting the task should be undertaken by a person who has acquired the knowledge and skills to carry out the task, from training, qualification or experience.
 - specifying details around sampling airborne respirable dust and RCS.
 - including requirements for ventilation testing and minimum ventilation air velocities to be achieved where persons are required to work.
 - specifying the parameters to be tested.
 - standardising the names and groupings of similar exposure groups (SEGs).

²⁸⁴ Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 33.

²⁸⁵ Evidence, Mrs Kate Cole OAM, Doctor of Philosophy (PhD) Candidate, The University of Sydney, 29 November 2024, p 22.

²⁸⁶ Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 33.

²⁸⁷ Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 35.

- mandating the need to re-sample “invalid” samples immediately after noticing a failure.
- including information on a standardised prescriptive method to determine compliance with the Workplace Exposure Standard.
- mandating that workers are to be provided with their individual air monitoring results in a suitable form for their personal records where they have participated in personal exposure monitoring
- mandating that results of air monitoring of RCS be made readily available to any party who requests them and that de-identified results and trends in air quality/ventilation are posted or otherwise made visible in the tunnelling workplaces.²⁸⁸

4.56 Mrs Cole noted that many of the above elements exist in some form in the mining industry. Tunnelling construction is not regulated in the same manner as an underground mine, and therefore many of the necessary regulatory elements that are well enshrined in mining are absent in tunnelling. Mrs Cole argued that a code of practice could fill these gaps.²⁸⁹

4.57 SafeWork NSW is reviewing the *Code of Practice for Tunnels Under Construction* to make sure it is relevant and supports current and emerging work practices and technologies in the tunnelling industry. At a hearing, Mr Curtin provided an update on the review and advised that SafeWork NSW is:

on track with the tunnels under construction code of practice, in line with our commitment to this Committee in November. About a third of the revised code has been drafted. SafeWork is in contact with experts to assist the drafting of those sections that are more complex and technical in nature. We aim for a renewed industry and social partner working group to meet in June this year [2025] to consider and comment on content for the new code. According to our projected timeline, a final draft code will be ready by the fourth quarter of this year, with the final code anticipated to be released by the end of the year.²⁹⁰

4.58 Given the technical and complex nature of the tunnelling environment, the competency of the persons responsible for air monitoring was also explored in relation to the adequacy of air monitoring in tunnelling worksites. Under legislation employers must engage a competent person in relation to RCS in air monitoring. However, according to the Australian Institute of Occupational Hygienists, there are no minimum mandated competency levels for persons conducting RCS air monitoring and based on the experience of their members persons engaged do not always hold a relevant competency.²⁹¹

4.59 According to Mrs Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, air monitoring is 'not as simple as going to a store, getting monitoring equipment and putting it on a worker'. There is skill involved in understanding how to interpret

²⁸⁸ Answers to supplementary questions, Mrs Cole, 30 December 2024, pp 4-5

²⁸⁹ Answers to supplementary questions, Mrs Cole, 30 December 2024, pp 4-5.

²⁹⁰ Evidence, Mr Curtin, 2 May 2025, p 35.

²⁹¹ Submission 1, Australian Institute of Occupational Hygienists, p 10.

the information, understanding the source of exposure, and, if there is an issue, understanding what the appropriate control measures are to keep workers safe.²⁹²

- 4.60** When asked what recommendations could be made to ensure the integrity of the air samples that are taken, Mrs Cole recommended requiring all air monitoring for RCS be done under the governance of a certified occupational hygienist:

... that means overseen by a certified occupational hygienist—and it's done by what we call an MAIOH, a full member of the Australian Institute of Occupational Hygienists. We have a competency scheme and a certification scheme. Occupational hygienists have to meet minimum education and experience requirements being before awarded certain statuses. It is tertiary education; it is experience in industry. It is not as simple as assuming that because you've done air monitoring for methane that you can go and do air monitoring for crystalline silica. They are very, very different things.²⁹³

- 4.61** According to Mrs Cole, certified occupational hygienists hold specialised skills and knowledge that can contribute to significant improvements in the workplace. For example,

they design and apply rigorous frameworks including systematic processes for identifying and managing risks. Their expertise can include interpreting data, developing targeted controls and monitoring plans, and using advanced statistical techniques to evaluate uncertainties in exposure.²⁹⁴

- 4.62** Likewise, the Australian Institute of Occupational Hygienists suggested a code of practice addresses the need for basic competencies of those who undertake monitoring for RCS along with the process and interpretation of monitoring and applying the results to testing and implementation of dust control strategies. This should include monitoring undertaken by professional occupational hygienists overseen by a Certified Occupational Hygienist (COH).²⁹⁵

- 4.63** During a hearing, some contractors were asked about their standard procedures for air quality monitoring at tunnelling worksites. Mr Graeme Silvester, General Manager, Safety, Health, Environment, Quality, Sustainability and Rail Safety, CPB Contractors, gave evidence that the company engages and relies on 'independent, certified occupational hygiene experts' to conduct personal air monitoring across their projects, with the results shared with workers and exceedences notified to the regulator as required.²⁹⁶

- 4.64** Similarly, Mr Cornelius Buitendag, Health and Safety Manager, Ghella, commented that a key area of focus is adopting 'a risk-based approach', whereby a certified occupational hygienist is engaged to form part of the team that take sampling in accordance with relevant standards.²⁹⁷ Mr Buitendag stated this is 'elevated' through a three-level basis of risk assessment:

²⁹² Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 37.

²⁹³ Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 37; See also Answers to supplementary questions, Mrs Cole, 30 December 2024, pp 2-3.

²⁹⁴ Answers to supplementary questions, Mrs Cole, 30 December 2024, pp 2-3

²⁹⁵ Submission 1, Australian Institute of Occupational Hygienists, p 10.

²⁹⁶ Evidence, Mr Graeme Silvester, General Manager, Safety, Health, Environment, Quality, Sustainability and Rail Safety, CPB Contractors, 2 May 2025, p 9.

²⁹⁷ Evidence, Mr Cornelius Buitendag, Health and Safety Manager, Ghella, 2 May 2025, p 15.

... level 1, which is a baseline risk assessment, conducted prior to starting work; a level 2 risk assessment, which basically follows through with the appropriate and adequate people taking sampling on a project; and then a level 3 might be sampling taken on workers as often as every month. Those data parameters are then sent to a laboratory and then we get feedback from the laboratory on that on a paper.²⁹⁸

- 4.65** In relation to the engagement of certified occupational hygienists and ventilation engineers on tunnelling projects, Mrs Cole encouraged the committee to understand that 'neither of those positions generally have accountability or authority. Unlike New South Wales mining, these are not statutory positions'.²⁹⁹ While these roles can make recommendations for improvement, that advice is not always 'taken up' because there is no authority or accountability to those particular roles. With this in mind, Mrs Cole recommended that making those roles statutory positions in legislation would 'actually go a long way, just the same way as it is in New South Wales mining'.³⁰⁰

The adequacy of screening of workers

- 4.66** During the inquiry, the committee heard evidence on the adequacy of screening practices for workers, including whether all workers should have access to CT scanning and whether workers should be screened by icare.
- 4.67** As noted in chapter 1, icare provides free lung screening services to workers at risk of being exposed to harmful levels of silica through working in the manufactured stone industry. It is also free for people who are retired or no longer working in a dust environment, and believe they were exposed to hazardous dust in a New South Wales workplace. A subsidised screening service is also provided to New South Wales employers who are obligated to provide health monitoring to their workers who might be exposed to hazardous dusts in their workplace.³⁰¹
- 4.68** According to icare, a number of options are offered to ensure workers in New South Wales can access screening services and 'facilitate faster diagnoses'. Workers can be screened on site at icare's specialised clinic in Sydney CBD, or in the mobile lung screening clinic, known as the 'Lung Bus'. The bus travels to regional and remote areas and is equipped with a digital chest x-ray room, advanced lung-function testing equipment and a medical practitioner to conduct physical examinations.³⁰²
- 4.69** Some stakeholders called for increased screening of workers for dust diseases, in particular RCS. The Asbestos Diseases Research Foundation advised that greater surveillance and screening of workers could help in the prevention of occupational lung diseases, in high-risk industries and in the regions where tunnelling work is undertaken. Early detection of dust diseases, particularly silicosis, is especially important in helping workers remove themselves from the risks of exposure and their disease worsening.³⁰³

²⁹⁸ Evidence, Mr Buitendag, 2 May 2025, p 15.

²⁹⁹ Evidence, Mrs Kate Cole OAM, PhD Candidate, The University of Sydney, 2 May 2025, p 27.

³⁰⁰ Evidence, Mrs Cole, 2 May 2025, p 27.

³⁰¹ Submission 12, icare, p 15.

³⁰² Submission 12, icare, p 15.

³⁰³ Submission 18, Asbestos Diseases Research Foundation, p 2; See also Evidence, Mr Stuart Farquharson, Interim Chief Executive Officer, icare, 11 December 2024, p 3.

- 4.70** According to the Foundation, services like the icare Lung Bus show that there is an ever-expanding need for lung screening as 'appointment times fill up quickly' indicating that some workers may be missing vital screening services when they need them the most. They also argued that providing one central screening clinic in the Sydney CBD is not adequate in servicing the affected workforce, which is more likely located in the south-west and western suburbs.³⁰⁴
- 4.71** The Australian Institute of Occupational Hygienists (AIOH) asserted that options for extending medical assessment support for workers who have left at-risk industries is needed. Health monitoring for crystalline silica is only offered to at-risk workers while employed.³⁰⁵ At present, when workers leave their employment, the screening processes cease. As diseases like silicosis can often manifest or become apparent years after exposure, undiagnosed exposed workers may not be receiving the necessary medical screening and care they need, especially once they leave employment.³⁰⁶
- 4.72** The Thoracic Society of Australia and New Zealand (TSANZ) expressed several concerns with the existing screening program for workers who are regularly exposed to dust in their workplace. The main areas of concern include:
- respiratory surveillance in NSW is patchy and not standardised, and there is no central repository of data, system for quality control, or access to results by workers or healthcare practitioners.
 - contrary to the TSANZ recommendations, icare uses insensitive technologies (chest X-ray rather than CT scanning) to detect dust disease in workers who have a high risk of disease, meaning that early-stage disease can be missed in some cases.
 - the feedback loop between icare and SafeWork NSW is inadequate, leaving workers exposed to further workplace risk.
 - current support mechanisms and medical and financial assistance for workers impacted by dust diseases are inadequate.
 - disablement awards are often financially inadequate in enabling workers to transition to a safer job.³⁰⁷
- 4.73** Dr Jane Muir, Member, Royal Australasian College of Physicians, and Fellow of the Australasian Faculty of Occupational and Environmental Medicine, also highlighted that 'one of the biggest limitations for doing health surveillance is the lack of a central register for the results of the health surveillance':

... One of the biggest limitations is there is no connection of the people doing the health surveillance; it is with the individual medical organisation, whether it's icare or my company or another private company. I will often reach out to other companies to get old results but, again, it's very, very time consuming and it's really difficult to make that decision when you're there with the worker... So whilst I think the national register for silicosis has been a really big step, the next step needs to be where the results of

³⁰⁴ Submission 18, Asbestos Diseases Research Foundation, pp 2-3; Evidence, Mr Farquharson, 11 December 2024, p 3.

³⁰⁵ Submission 1, Australian Institute of Occupational Hygienists, p 3 and 5.

³⁰⁶ Submission 1, Australian Institute of Occupational Hygienists, p 3 and 5.

³⁰⁷ Submission 9, The Thoracic Society of Australia and New Zealand, p 2.

health surveillance go into a central register so we can follow workers through their career, because workers have told me that they're leaving and going for a new job and they're not going to declare their silicosis diagnosis.³⁰⁸

- 4.74** Mr Stuart Farquharson, Interim Chief Executive Officer, icare, gave evidence that according to the dust levy data '78,000 workers in New South Wales work in conditions with hazardous dust levels'. icare is exploring options as to how to best expand their screening services and capacity, however Mr Farquharson commented that '... a larger market with a greater capacity is required to fully support workers across the State who are exposed to unhealthy dust levels'.³⁰⁹

Should all workers have access to CT scanning?

- 4.75** Currently there is no requirement or mandate for tunnel workers to receive CT scans. The minimum health monitoring requirements include spirometry, chest X-ray and some questionnaire-type paperwork. However, both Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, and Dr Aruvi Thiruvardchelvan, Consultant Respiratory and Sleep Physician advised that using lung-function testing and chest X-ray can underdiagnose cases of silicosis or miss early stages of the disease.³¹⁰
- 4.76** Dr Thiruvardchelvan advised that the current recommendation would be to consider CT scanning early, rather than chest X-ray, and more complex lung function, including gas exchange, to try to accurately assess these patients or workers early to modify their trajectory.³¹¹ In relation to the cost of using these technologies, Dr Thiruvardchelvan commented that complex lung function can now be done more easily in the workplace health assessment setting and is 'not necessarily more expensive', whilst CT scanning is 'certainly much more expensive than the chest X-ray'.³¹²
- 4.77** During the inquiry, evidence that CT scanning is more effective at detecting potential dust diseases in workers, as distinct from lung testing and chest X-rays, was put to icare, along with the proposition that they may not be adopting best practice in relation to screening workers for diseases.
- 4.78** In response, icare advised that the Dust Diseases Care team and icare have conducted an 'extensive review' of deploying CT scanning capability in both their physical and mobile clinics. At a hearing, Mr Rohit Mandanna, General Manager, Lifetime and Workers Care, icare, explained what the review found:

... What we've found from the review is that there are significant operational, financial and environmental risks associated with having CT scanning capability in both fixed and mobile clinics. There's an external market that provides very easy access to CT scanning services, both in metro areas as well as in regional areas. We act on the clinical

³⁰⁸ Evidence, Dr Muir, 29 November 2024, p 48.

³⁰⁹ Evidence, Mr Farquharson, 11 December 2024, p 3.

³¹⁰ Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 34; Evidence, Dr Thiruvardchelvan, 29 November 2024, p 42.

³¹¹ Evidence, Dr Thiruvardchelvan, 29 November 2024, p 42.

³¹² Evidence, Dr Thiruvardchelvan, 29 November 2024, p 42.

guidance of our teams: radiographers and respiratory physicians. Where there's a need for further examination, specifically CT scanning for a particular worker, we can offer very rapid access—in many instances, same-day appointment, where the team looks to coordinate the booking for those workers. We find it very easy to, essentially, arrange access for the services via external providers.³¹³

- 4.79** Responding to the proposition that icare is not adopting best practice, Mr Rohit Mandanna, General Manager, Lifetime and Workers Care, icare, stated that icare will 'act on the clinical guidance' of their respiratory physicians and every worker who requires a CT scan is given access to one.³¹⁴ He went on to say:

We look at assessing the demand for CT services and the volume and throughput that comes through both our physical clinic in Kent Street as well as our mobile clinic. Based on the numbers that we see coming through—and we look at the data based on where we are referring our workers to external providers to complete those services—the costs of having CT scanners and employing qualified technicians, essentially, are not justified based on the volumes that we see coming through.³¹⁵

- 4.80** When asked if icare is not adopting CT scanning because it is financially too restrictive, Mr Stuart Farquharson, Interim Chief Executive Officer, icare, acknowledged the financial considerations, but also spoke to the operational considerations:

I think the point here is a little bit different. There is a financial consideration. There are also operational considerations, and we spoke about the fact that there's a nuclear medicine accreditation that could take two years. But the point and the advice that I've received—and we can come back to you on this, and we absolutely will, to confirm—is that a CT scan is not applicable and necessary in every situation. If I look at the information that I've seen—I quoted the numbers of workers that we screen through our process, which is approximately 5,000 a year. Since 2019 we've ordered 1,200 CT scans. What that implies and suggests, and as I understand, is that a CT scan is not applicable for every screen or every screening instance. Based on the medical advice where there's a need for that scan, then we will arrange for it...³¹⁶

- 4.81** icare subsequently advised that they adopt 'best practice following the Australian Government's Department of Health and Aged Care's *National guidance for doctors assessing workers exposed to respirable crystalline silica dust*, and Safe Work Australia's *Health Monitoring Guidelines for screening and diagnosing a dust disease*'. The clinical pathways adopted by icare include a referral to CT scanning as necessary. During the assessment by icare's clinical team, doctors assess the risk to the worker and review their medical history to ensure ordering a CT scan is the appropriate step to take in making a clear diagnosis.³¹⁷

- 4.82** In addition, in March 2023 icare undertook an independent feasibility assessment to determine if an in-house HRCT scanner would be appropriate. The recommendation at that time was to continue outsourcing referrals for CT scans, predominantly due to the fact that there was 'good

³¹³ Evidence, Mr Rohit Mandanna, General Manager, Lifetime and Workers Care, icare, 11 December 2024, p 8.

³¹⁴ Evidence, Mr Mandanna, 11 December 2024, p 8.

³¹⁵ Evidence, Mr Mandanna, 11 December 2024, p 8.

³¹⁶ Evidence, Mr Farquharson, 11 December 2024, p 9.

³¹⁷ Answers to questions on notice, Mr Stuart Farquharson, Interim CEO, iCare, 30 January 2025, p 6.

access to local radiology providers and it was financially more sustainable given the volume of HRCT scans required'.³¹⁸ Additionally, the provision of nuclear medicine services was identified as being higher risk and requires multiple accreditations, which icare does not hold.³¹⁹

Should all workers be screened by icare?

- 4.83** Some stakeholders such as the CFMEU and Australian Institute of Occupational Hygienists gave evidence on the issue around private screening for workers and put forward the recommendation that all workers exposed to dust in their workplace be screened by icare, as opposed to private medical providers.³²⁰
- 4.84** In response, Mr Stuart Farquharson, Interim Chief Executive Officer, icare, gave evidence that that there is an increasing trend by employers in the tunnelling industry to use the services of private medical providers, which limits icare's ability to systematically collect demographic, workplace and health data and understand disease prevalence.³²¹ Mr Farquharson added that icare has 'reached out to offer health monitoring services to major employers in tunnelling, which they have declined, with a preference to use private companies due to a larger service offering'.³²²
- 4.85** Currently icare does not receive any workplace and health monitoring data from private medical providers. They advised that there are legislative barriers preventing the voluntary sharing of workplace and health monitoring data from private medical providers with icare imposed by Australian privacy and health records legislation.³²³
- 4.86** In addition, icare gave evidence that they do not have oversight of the specific service offerings provided by private medical providers and 'does not believe it has a role in ensuring appropriate screening technologies and methods are being used'. However, icare noted it supports the National Silicosis Prevention Strategy developed by the Lung Foundation, outlining the recommendation for all providers to undergo mandatory accreditation for health monitoring purposes.³²⁴
- 4.87** When asked about the capacity implications of assuming responsibility for screening all workers exposed to dust, Mr Stuart Farquharson, Interim Chief Executive Officer, icare, said:

... If we're looking at 78,000 workers potentially impacted, our current capacity is around—it's over the 5,000 that's currently going through the system, but it's not

³¹⁸ Answers to questions on notice, Mr Farquharson, icare, 30 January 2025, p 6.

³¹⁹ Answers to questions on notice, Mr Farquharson, icare, 30 January 2025, p 6.

³²⁰ Submission 1, Australian Institute of Occupational Hygienists Inc, p 3; See also Answers to supplementary questions, CFMEU NSW, 24 January 2025, pp 7-8.

³²¹ Evidence, Mr Farquharson, 11 December 2024, p 4; See also Submission 12, icare, pp 8-9.

³²² Evidence, Mr Farquharson, 11 December 2024, p 4; See also Submission 12, icare, pp 8-9.

³²³ Answers to supplementary questions, Mr Stuart Farquharson, Interim CEO, iCare, 30 January 2025, pp 2-3.

³²⁴ Answers to supplementary questions, Mr Farquharson, icare, 30 January 2025, p 4.

anywhere close to the 78,000. As I said, we're looking at options to maximise capacity, but there is a big difference...³²⁵

- 4.88** On a similar point, icare was asked about the capacity implications should the committee recommend mandatory reporting of screening results from private clinics to icare. Mr Stuart Farquharson, Interim Chief Executive Officer, icare, indicated this would 'require some consideration' as icare would need to consider how to respond to the additional information from private clinics.³²⁶
- 4.89** icare also noted that there is an existing mechanism for mandatory reporting of screening results with the National Occupational Respiratory Disease Registry (NORDR), via a Federal Government program managed by NSW Health. Whilst icare reports all its screening results to NORDR, they suggested 'there is an opportunity for greater rigour and oversight of the NORDR to ensure that all service providers are complying with their obligations'.³²⁷
- 4.90** Whilst acknowledging icare's limited capacity to carry out screening for all workers, the CFMEU Construction & General Division, NSW Branch, put forward several observations in relation to the use of private clinics for screening workers, including:
- Screening through private clinics is a one time test. There is no mechanism for follow up and no reminder for the worker to undergo regular screening. Where there has been exposure, workers should be screened every 12 months at a minimum, but there is no repeat screening with private clinics.
 - The use of private clinics relies on the worker to remember to get rescreened, which is highly unlikely to happen. A worker is only likely to be rescreened if there is further exposure and in that case it might be too late.
 - The use of private clinics can also be a tactic by PCBU's to hide exposure and not invite scrutiny from SafeWork as to its practices in relation to dust.³²⁸
- 4.91** When asked whether there is any good reason to continue using private clinics for screening workers, Mrs Kate Cole stated she does not 'see a benefit from a worker's perspective' and explained why in her view workers exposed to dust should be screened by icare:
- ...There may be a benefit from an employer's perspective, because they may do audiometry and other types of tests at the same time. There may also be challenges with trying to get appointments in icare. It might be easier in a private medical system, but I don't think that that's a good enough reason not to use it. The services of icare that we have in this State are world-class. We should be encouraging and requiring employers that receive government funding to use their services.³²⁹
- 4.92** In support of the recommendation that workers be screened by icare, Mrs Cole also informed the committee that by centralising screening to icare those workers' records will be in the same place allowing medical professionals to look back at previous health monitoring scans and assessments to see progression over time. With private medical providers, those records are

³²⁵ Evidence, Mr Farquharson, 11 December 2024, p 5; See also Evidence, Mr Mandanna, 11 December 2024, p 5.

³²⁶ Evidence, Mr Farquharson, 11 December 2024, p 5.

³²⁷ Answers to questions on notice, Mr Farquharson, icare, 30 January 2025, p 3.

³²⁸ Answers to questions on notice, CFMEU NSW, 24 January 2025, pp 7-8.

³²⁹ Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 34.

contained in the different medical providers that are used by the contractor. Lastly, Mrs Cole noted that icare conducts follow ups with workers every year after they have had health monitoring and screening.³³⁰

- 4.93** Likewise, the Australian Institute of Occupational Hygienists recommended that where workers require health monitoring for crystalline silica it be a requirement for NSW Government employers, in addition to private entities and projects that receive NSW Government funding, to use the services of icare rather than private medical providers. This action would ensure that icare obtains information on diagnosis and the population of screened workers, thereby enabling an understanding of the prevalence of silica-related disease in this, and other, high-risk industries. Where capacity challenges exist, a secondary measure could be to require any health monitoring screening data undertaken by a provider other than icare to be submitted to icare on a routine basis.³³¹

The role of SafeWork NSW on tunnelling worksites

- 4.94** SafeWork NSW plays a crucial role in ensuring the safety of workers in New South Wales by regulating and enforcing work health and safety laws, providing guidance and support, and conducting inspections to monitor compliance. During the inquiry, SafeWork NSW spoke of their role in relation to monitoring and enforcing compliance with WHS legislation in New South Wales.
- 4.95** Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW, advised that SafeWork has 'an ongoing presence in tunnelling projects and in other infrastructure projects in New South Wales to make sure that organisations are complying with the laws and the regulations'.³³² SafeWork NSW's Construction Inspectors undertake both proactive and reactive compliance activities to support best practice management of silica risks across construction projects, including tunnelling projects. According to SafeWork NSW, '[r]egular proactive tunnel inspections are undertaken to monitor high risk activities and controls including management of RCS. As required, visits and unannounced inspections can occur in tandem with the Hygiene and Toxicology Inspectors'.³³³
- 4.96** SafeWork NSW advised that air monitoring reports for major infrastructure tunnelling sites are readily available on most sites and displayed on site notice boards and can be requested by the regulator at any time.³³⁴
- 4.97** In the 2024-25 Budget, the NSW Government committed an additional \$2.5 million to SafeWork NSW to enforce compliance with the ban on engineered stone and the stronger regulations for working with silica-containing substances which came into effect on 1 September 2024. SafeWork NSW noted that the additional funding has led to the formation of two dedicated SafeWork NSW Silica Teams on a temporary basis for 12 months in the 2024-25

³³⁰ Evidence, Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, 29 November 2024, p 34.

³³¹ Submission 1, Australian Institute of Occupational Hygienists, p 3 and p 9.

³³² Evidence, Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW, 29 November 2024, p 54.

³³³ Submission 13, SafeWork NSW, p 3.

³³⁴ Submission 13, SafeWork NSW, p 3.

financial year: Silica Compliance Team and the Silica Program Team. The Silica Compliance Team consists of five inspectors that are working to enforce compliance with the requirements as well as working with the broader SafeWork NSW inspectorate and providing guidance to PCBU's across the state.³³⁵ As of 30 June 2025, the additional funding provided by the NSW Government to support compliance with the engineered stone ban and the strengthening of the silica regulations will cease.

- 4.98** When asked whether there was any 'efficacy, value or good purpose' in having dedicated workers in the SafeWork NSW inspectorate team for tunnelling work in New South Wales, Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW, informed the committee that whilst SafeWork has a range of general inspectors that work across all sorts of industries to ensure compliance, given the 'very specific nature of critical infrastructure and tunnelling' they have a 'dedicated team focused on tunnelling'.³³⁶
- 4.99** A related issue explored during the inquiry was the role of SafeWork NSW in relation to exceedances of the workplace exposure standard (WES). As discussed in chapter 1, on 1 September 2024 legislative changes were introduced to the notification requirements for workplace exposure standard (WES) exceedances, particularly for crystalline silica. Specifically, for any air monitoring conducted after this date, a notification to SafeWork NSW is mandatory if the results indicate an exceedance of the WES.³³⁷
- 4.100** At a hearing, SafeWork NSW was asked to explain what they do when an exceedance notification is received. Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW, gave evidence that SafeWork undertakes a 'compliance activity' by going to the organisation to check that the right systems are in place to minimise those exceedances, including the right 'ventilation and respiratory protective equipment and ensuring that workers are being consulted on the work health and safety systems in place'.³³⁸
- 4.101** In relation to when a penalty might apply for the exceedance, Mr Curtin explained that this would 'depend on the observations made by the inspector at the time as to whether there has been a breach of the regulations that have a penalty attached'.³³⁹ When questioned further, he provided advice on the 'regulatory tools' used by SafeWork NSW, commenting that:
- It could involve advice. But usually, if there has been a breach, it could involve the issuing of an improvement notice. If there's an imminent threat, it could result in a prohibition notice or it could result in a penalty notice. There's a whole range of regulatory tools available to us in terms of undertaking—³⁴⁰
- 4.102** SafeWork NSW subsequently advised the committee that 'of the 36 exceedances notified to SafeWork NSW [since 1 September 2024], a total of 26 relate to tunnelling activity'. SafeWork has undertaken proactive verification work regarding workplace exposure standard (WES)

³³⁵ Submission 13, SafeWork NSW, p 3.

³³⁶ Evidence, Mr Curtin, 29 November 2024, p 55.

³³⁷ Submission 13, SafeWork NSW, p 2; See also Evidence, Mr Curtin, 29 November 2024, pp 52.

³³⁸ Evidence, Mr Curtin, 29 November 2024, p 55.

³³⁹ Evidence, Mr Curtin, 29 November 2024, p 55.

³⁴⁰ Evidence, Mr Curtin, 29 November 2024, p 55.

exceedance notifications, including email follow-up to all PCBUs that have made such notifications.³⁴¹

4.103 The related issue of notifications for controlled and uncontrolled exceedances was also raised during the inquiry. A controlled exceedance is where the air quality has breached the threshold but the other control measures, including the worker being inside the cab and wearing the appropriate mask, have helped managed the exposure. An uncontrolled exceedance is generally when there has been a breach of one of those controls.³⁴²

4.104 John Holland commented that it is important to distinguish between an exceedance and an uncontrolled exceedance as exceedances of the WES can occur in tunnel environments even when controls are in place due to the nature of the work and the geological conditions. However, according to John Holland 'actual exposure above the WES is rare due to mandatory use of respiratory protective equipment (RPE)'.³⁴³

4.105 At a hearing, Mrs Kate Cole OAM, PhD candidate at The University of Sydney, cautioned the committee that focusing only on uncontrolled exceedances can result in the risk of the general level of silica getting higher over time. She explained:

I recently did a trend analysis of that and found that silica levels in some work groups are going up because they're focusing so much on personal protective equipment ... When the focus is on these breaches, it's very much at a worker level on disciplining or going through that process of what did the worker do right or wrong, and less about what could have been done in that workplace to provide a safer workplace—better ventilation, better dust suppression and higher level engineering controls.³⁴⁴

4.106 In relation to penalty notices, SafeWork NSW stated that no penalty notices have been issued by the agency as of January 2025 in relation to WES exceedance notifications. SafeWork NSW noted that it is only empowered to issue penalty notices where there is evidence that an offence under the WHS Act or WHS Regulation has been committed, with an exceedance not automatically constituting a contravention of the Act or Regulation.³⁴⁵

4.107 Mr Curtin expressed the view that the tunnelling environment was a potential challenge for SafeWork NSW when undertaking compliance activities.³⁴⁶ When asked whether there are other factors which make it challenging for them to perform their regulatory and enforcement role, Mr Curtin commented:

I think one of the other factors in my observation has been the nature of the industry and the desire for the culture and the desire of workers to be able to continue working in the industry. Given the nature of the work and the specialisation of it, some of those workers are well rewarded for the work that they do, and they don't want to see

³⁴¹ Answers to questions on notice, Mr Trent Curtin, A/Deputy Secretary, SafeWork NSW, 6 January 2025, p 4.

³⁴² Evidence, Ms Drover, 11 December 2024, p 26.

³⁴³ Answers to questions on notice, Mr Lachlan McKenzie, Group Manager – Government & Stakeholder Relations, John Holland, received 29 May 2025, pp 1-2.

³⁴⁴ Evidence, Mrs Kate Cole OAM, PhD candidate at The University of Sydney, 2 May 2025, p 27.

³⁴⁵ Answers to questions on notice, Mr Curtin, 6 January 2025, pp 4-5.

³⁴⁶ Evidence, Mr Curtin, 2 May 2025, p 43.

themselves being removed from that work and having to go and find other work that might not have the same rewards to it. So I think, as I've observed and has been shared with me in the industry, speaking up can be very difficult. I've also observed, and health and safety representatives have shared, that often they observe production over safety, when we'd prefer to see safe production in those environments. There is a natural requirement to continue with production and keep things moving. But we should never do that at the expense of workers' health and safety. And so the culture and the nature of the industry is important.³⁴⁷

- 4.108** Ms Sherri Hayward, Senior Legal Officer, Construction and General Division, NSW Divisional Branch, Construction, Forestry and Maritime Employees Union, gave evidence that the CFMEU has concerns about the effectiveness of SafeWork NSW in exercising their legislative role under the *Work Health and Safety Act 2011* (WHS Act).³⁴⁸ Ms Hayward commented that, as regulator and educator, SafeWork 'has and continues to fall short of community standards and expectations'. She noted that SafeWork's response to the emerging silica crisis was called out by the Auditor-General, as was the inability of the agency to conduct an effective search of its own database to identify emerging hazards.³⁴⁹

- 4.109** The CFMEU also commented on the adequacy of SafeWork NSW's enforcement actions in relation to dust control regulations:

While there is no doubt that SafeWork has poured resources into the engineered stone sector, its activities in relation to silica dust in general still require more activity. There have been situations in workplaces where the Principal Contractor has not prioritised housekeeping resulting in a layer of dust on scaffolding being kicked up by workers as they walk through the structure. It is unusual for SafeWork to issue improvement notices to the PCBU for these hazards despite the risk they pose.

...

SafeWork's effectiveness in the tunnelling industry is hamstrung by the fact that a major PCBU holds a ComCare licence, excluding SafeWork from taking regulatory action. As we noted in our submission and during the hearing, the CFMEU would prefer SafeWork have jurisdiction in those areas rather than ComCare.³⁵⁰

- 4.110** When asked what measures are needed to make SafeWork NSW a 'more effective regulator', Ms Natasha Flores, Industrial Officer Work Health and Safety, Workers Compensation, Unions NSW, commented on the need for greater enforcement through prosecutions:

... we need some stick and a little bit less carrot—that's what we've had for a very long time. I would also argue that, back in the day, unions had power to prosecute, in some cases, under category three. That was something that a union could easily and quickly do to remedy something, whereas now prosecutions are extremely difficult for unions and they don't do it. It's expensive and you can only do category one and two. But that was under the previous Occupational Health and Safety Act. In that case, you sort of via past the regulator when the regulator's not going to do something. I would argue

³⁴⁷ Evidence, Mr Curtin, 2 May 2025, p 45.

³⁴⁸ Evidence, Ms Sherri Hayward, Senior Legal Officer, Construction and General Division, NSW Divisional Branch, Construction, Forestry and Maritime Employees Union, 29 November 2024, p 2.

³⁴⁹ Evidence, Ms Hayward, 29 November 2024, p 2.

³⁵⁰ Answers to supplementary questions, CFMEU NSW, 24 January 2025, p 6.

that that could be helpful because there were unions—and I was in one—that used that regularly... Quick prosecutions were easy and you could rectify a situation quickly.³⁵¹

- 4.111** In reference to the Audit Offices' performance report *Effectiveness of SafeWork NSW in exercising its compliance functions*, Maurice Blackburn Lawyers commented that the regulator lacks 'an effective strategic and data driven approach to respond to emerging WHS risks'. They noted that 'at least some of this, alongside the need for additional proactive inspections, can be attributed to resourcing'.³⁵²
- 4.112** SafeWork NSW advised that it's 'undergoing significant reform' in response to the recommendations arising from both the Audit Office's report and the independent review carried out by the Hon Robert McDougall KC (McDougall Review).³⁵³
- 4.113** As of 1 July 2025, SafeWork NSW will be established as a standalone regulator under the *Work Health and Safety Amendment (Standalone Regulator) Act 2025*. The new executive agency will be led by a SafeWork Commissioner and aims to strengthen workplace safety enforcement, protection for workers and support businesses in creating safer workplaces.³⁵⁴

The issue of workplaces covered by Comcare

- 4.114** During the inquiry, the jurisdictional engagement between Commonwealth and State regulatory bodies Comcare and SafeWork NSW was also explored, in particular as it relates to tunnelling workplaces.
- 4.115** Comcare is the national authority for work health and safety, and worker's compensation.³⁵⁵ Under the *Safety, Rehabilitation and Compensation Act 1988* (Cth) eligible corporations and Commonwealth authorities can be granted a licence to self-insure their worker's compensation liabilities and/or claims management.³⁵⁶ To be eligible for a self-insurance licence in the Comcare scheme, the relevant Minister must first declare the corporation eligible before they can submit an application to be considered by the Safety, Rehabilitation and Compensation Commission.³⁵⁷ Since 2018, five employers have elected to leave the NSW Nominal Insurer scheme and self-insure through Comcare.³⁵⁸

³⁵¹ Evidence, Ms Flores, 29 November 2024, pp 6-7.

³⁵² Submission 7, Maurice Blackburn Lawyers, p 11.

³⁵³ Answers to supplementary questions, Mr Trent Curtin, A/Deputy Secretary, SafeWork NSW, 6 January 2025, p 19.

³⁵⁴ SafeWork NSW, *Minns Labor Government to establish SafeWork NSW as a standalone regulator*, <https://www.safework.nsw.gov.au/news/safework-media-releases/minns-labor-government-to-establish-safework-nsw-as-a-standalone-regulator>

³⁵⁵ Australian Government, Comcare, About Comcare, <https://www.comcare.gov.au/about/about-comcare>

³⁵⁶ Australian Government, Comcare, Self-insured licensees, <https://www.comcare.gov.au/scheme-legislation/self-insured-licensees>

³⁵⁷ Australian Government, Comcare, Self-insured licensees, <https://www.comcare.gov.au/scheme-legislation/self-insured-licensees>; Answers to questions on notice, Mr Stuart Farquharson, Interim CEO, iCare, 30 January 2025, p 13.

³⁵⁸ Answers to questions on notice, Mr Farquharson, icare, 30 January 2025, p 13.

- 4.116** When asked what the motivation might be for a corporation self-insuring through Comcare, Mr Stuart Farquharson, Interim Chief Executive Officer, icare, commented that it may be an 'attractive option for eligible employers operating in more than two states or territories who wish to consolidate their workers compensation operations'.³⁵⁹
- 4.117** SafeWork NSW advised that it had recently engaged Comcare on a proactive basis to ensure a consistent regulatory approach to tunnelling. It outlined that:
- [p]rior to 2009 there was a Memorandum of Understanding (MOU) in place between WorkCover NSW and Comcare. In 2012, this was superseded by a MOU between the Heads of Workplace Safety Authorities Members (HWSA) of which both SafeWork NSW and Comcare are members. This MOU formalises the cooperative working relationships between work health and safety regulators across the Australian and New Zealand jurisdictions and provides for investigations and the sharing of information regarding cross-jurisdictional matters. In 2023, the MOU was revised and is currently with HWSA members for consideration.³⁶⁰
- 4.118** Both the CFMEU and Unions NSW gave evidence on the regulatory impact of workplaces covered by Comcare, noting John Holland as an example in this space, a corporation responsible for some of the big tunnelling projects in New South Wales, including the Rozelle interchange.³⁶¹
- 4.119** The CFMEU highlighted that SafeWork's jurisdiction is derived from the WHS Act and thus when it comes to construction its jurisdiction does not extend to PCBU who hold a Comcare licence.³⁶² However, the CFMEU argued that:
- This does not mean that SafeWork NSW can abrogate its responsibilities for other subcontractors engaged on those projects. Workers in NSW have a right expect that SafeWork NSW is doing all it can to regulate the sector even if that means working in tandem with the ComCare inspectorate.³⁶³
- 4.120** In their submission, Unions NSW expressed the view that they and affiliate unions 'do not believe Comcare has the resources to effectively regulate the extensive amount of work being undertaken currently in NSW'.³⁶⁴ In addition, they put forward the view that reports from the AWU suggest 'Comcare, much like SafeWork, doesn't seem to want to work to prioritise worker safety':

Like SafeWork NSW, when inspectors enter a worksite they do not seek out the elected Health and Safety Representative (HSR), who has a right to speak with and follow an inspector undertaking a safety inspection, instead seeking out the PCBU for what appears to be a short conversation. Workers are not privy to any discussions and work conditions if poor do not change.³⁶⁵

³⁵⁹ Answers to questions on notice, Mr Farquharson, icare, 30 January 2025, p 13.

³⁶⁰ Answers to questions on notice, Mr Curtin, 6 January 2025, p 7.

³⁶¹ Submission 15, CFMEU Construction and General Division NSW Branch, pp 12-13; Submission 16, Unions NSW, p 4.

³⁶² Submission 15, CFMEU Construction and General Division NSW Branch, pp 12-13.

³⁶³ Submission 15, CFMEU Construction and General Division NSW Branch, pp 12-13.

³⁶⁴ Submission 16, Unions NSW, p 4.

³⁶⁵ Submission 16, Unions NSW, p 4.

- 4.121** At a hearing, Ms Sherri Hayward, Senior Legal Officer, Construction and General Division, NSW Divisional Branch, Construction, Forestry and Maritime Employees Union, asserted that SafeWork NSW is in a 'much better position to be dealing with this issue than Comcare' and it would be the union's preference that SafeWork 'takes the lead and reports to Comcare on what they've been doing'.³⁶⁶
- 4.122** Ms Hayward also commented on joint venture tunnelling projects, where for example John Holland will have its Comcare licence and whoever its joint venture partner is would have a SafeWork licence. Ms Hayward noted that the primary entity in the joint venture is 'not always super clear' so having more clarity about how the two agencies are working together can assist workers in determining who to contact if there is a problem.³⁶⁷
- 4.123** In giving evidence, Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW, stated SafeWork NSW has 'an ongoing relationship with them [Comcare]' and that at times the two bodies 'co-regulate' tunnelling projects where there are federally regulated entities working alongside state based entities.³⁶⁸
- 4.124** When asked whether 'co-regulate' means that SafeWork inspectors are able to exercise powers under the Commonwealth Act, Mr Curtin responded in the negative:
- No... If we're working on a project with a PCBU that is under the Commonwealth regulatory framework, we do not have jurisdiction over those organisations. But we do have jurisdiction over the workers in the subcontractors, for example, that are under the New South Wales regulatory framework.³⁶⁹
- 4.125** In relation to whether there is any capacity to effectively have SafeWork NSW inspectors exercise that kind of authority by agreement with Comcare, Mr Curtin indicated that based on his understanding this would be possible but would need to be delegated under the Comcare arrangements.³⁷⁰

Committee comment

- 4.126** During the inquiry the committee heard evidence on the adequacy of safety measures in controlling and minimising exposure to dust in the tunnelling industry to prevent dust-related diseases in industry workers. In particular, we heard about the use of engineering controls and the effectiveness of personal protective equipment (PPE). It is evident that engineering controls, such as ventilation and dust suppression systems, are important safety measures for managing and minimising dust exposure in the tunnelling industry.
- 4.127** We note that personal protective equipment (PPE) such as masks is considered a low order form of control, with several stakeholders advising that other high control measures such as elimination, ventilation and dust suppression should be prioritised. Stakeholders also raised concerns regarding the quality and frequency of fit testing for personal protective equipment

³⁶⁶ Evidence, Ms Hayward, 29 November 2024, pp 11-12.

³⁶⁷ Evidence, Ms Hayward, 29 November 2024, pp 13-14.

³⁶⁸ Evidence, Mr Curtin, 29 November 2024, p 59.

³⁶⁹ Evidence, Mr Curtin, 29 November 2024, p 59.

³⁷⁰ Evidence, Mr Curtin, 29 November 2024, pp 59-60.

(PPE). Based on the evidence, there is an increasing trend to use Powered Air Purifying Respirators (PAPRs) in the tunnelling industry which provide a higher degree of protection. However, we note these masks are not currently available to all tunnelling workers. Therefore, the committee recommends that SafeWork NSW update the *Code of Practice for Tunnels Under Construction* to include the mandatory use of Powered Air Purifying Respirators in all tunnelling projects.

Recommendation 14

That SafeWork NSW update the *Code of Practice for Tunnels Under Construction* to include the mandatory use of Powered Air Purifying Respirators in all tunnelling projects.

- 4.128** Based on the evidence, the committee is of the view that the safety measures used to manage exposure to respirable crystalline silica (RCS) in the tunnelling industry are not consistent across NSW Government projects. Therefore, the committee recommends that the NSW Government consider developing a consistent safety standard on the management of respirable crystalline silica for NSW Government funded tunnelling projects. In addition, we recommend that the standard should be no lower than has been adopted on any NSW Government funded tunnel project to date, should include best practice risk assessment, control, review, reporting and investigation requirements, and there should be a mandatory compliance element for tunnelling contractors.

Recommendation 15

That the NSW Government consider developing a consistent safety standard on the management of respirable crystalline silica for NSW Government funded tunnelling projects. The standard should:

- not be lower than has been adopted on any NSW Government funded tunnel project to date
 - include best practice risk assessment, control, review, reporting and investigation requirements
 - be a mandatory compliance element for tunnelling contractors.
-

- 4.129** Given this the committee also examined whether the workplace exposure standard (WES) should be reduced. We note the current workplace exposure standard (WES) for respirable crystalline silica is 0.05 mg/m³ (eight-hour time weighted average). The Silica National Strategic Plan 2024-2030, discussed in chapter 1, aims to eliminate silica-related diseases in Australia and acknowledges that the current workplace exposure standard may not be sufficient to fully protect workers from adverse health effects.

- 4.130** During this inquiry, several stakeholders indicated the current measure may not be protective of adverse health effects for workers and recommended reducing the WES. We note that based on the evidence heard there has been significant progress made in relation to the technology available to detect lower workplace exposure standards. It is clear that the continuous improvement of technology can enhance detection and disease diagnosis, leading to better

health outcomes for workers in the tunneling industry. The committee is of the view that being up-to-date with, if not ahead of, new and emerging technology, higher standards and best practices being used in tunnelling operations both in Australia and internationally, is crucial in ensuring the highest level of the safety and health of workers in the industry.

- 4.131** Based on the evidence, the committee is of the view that the workplace exposure standard (WES) for respirable crystalline silica should be lowered to 0.025 mg/m³ to improve and reduce the rate of exposure to workers, particularly in the tunneling industry. Therefore, the committee urges the NSW Government to consider lowering the workplace exposure standard for respirable crystalline silica to 0.025 mg/m³ in the tunnelling industry to better protect workers.

Recommendation 16

That the NSW Government consider lowering the workplace exposure standard for respirable crystalline silica to 0.025 mg/m³ in the tunnelling industry to better protect workers.

- 4.132** It is clear to the committee that adequate air monitoring on tunnelling worksites is critical to ensuring the safety of workers and regulation compliance as it helps to identify potential risks, assess worker exposure, and ensure control measures are effective. We note there are three main methods used for air monitoring for respirable crystalline silica and that personal exposure monitoring is the only method that can be used to demonstrate compliance with the workplace exposure standard (WES).
- 4.133** Throughout the inquiry, several stakeholders gave evidence on the adequacy of air monitoring on tunnelling worksites and noted there are 'gaps' in the existing framework around controls. The use of real time air monitoring and the frequency of air monitoring in tunnelling projects were considered by the committee. We heard evidence that whilst real time monitoring supports personal exposure monitoring, it does not replace it but can help to understand if there is an exposure issue in the workplace. In addition, some stakeholders raised concerns about the absence of a code of practice and minimum frequencies standards for air monitoring. The committee sees merit in setting minimum standards for air monitoring in tunnelling projects to ensure greater consistency and effectiveness of air quality control measures, leading to more reliable data and better management of air quality.
- 4.134** The committee acknowledges that SafeWork NSW is currently reviewing the *Code of Practice for Tunnels Under Construction* to make sure it is relevant and supports current and emerging work practices and technologies in the tunnelling industry. We recommend that SafeWork NSW takes measures to include specific requirements for air monitoring for respirable crystalline silica in the *Code of Practice for Tunnels Under Construction* to ensure greater consistency and effectiveness of air quality control measures, leading to more reliable data and better management of air quality.

Recommendation 17

That SafeWork NSW takes measures to include specific requirements for air monitoring for respirable crystalline silica in the *Code of Practice for Tunnels Under Construction* to ensure greater consistency and effectiveness of air quality control measures, leading to more reliable data and better management of air quality.

- 4.135** Given the technical and complex nature of the tunnelling environment, the competency of the persons responsible for air monitoring was also explored in relation to the adequacy of air monitoring on tunnelling worksites. The committee notes there are no minimum mandated competency levels for persons conducting respirable crystalline silica air monitoring and heard that persons engaged do not always hold a relevant competency. To enhance accountability and the adequacy of air monitoring, the committee agrees with stakeholders who suggested requiring all air monitoring for respirable crystalline silica be done under the governance of a certified occupational hygienist. The committee recommends that the NSW Government consider introducing statutory roles for certified occupational hygienists and ventilation officers for tunnelling projects to ensure accountability and authority in relation to air monitoring and ventilation.
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Recommendation 18

That the NSW Government consider introducing statutory roles for certified occupational hygienists and ventilation officers for tunnelling projects to ensure accountability and authority in relation to air monitoring and ventilation.

- 4.136** The committee understands that the adequacy of screening practices for workers, including whether all workers should have access to CT scanning and be screened by icare is a concern among stakeholders. Some inquiry participants called for increased screening of workers for dust diseases using CT scanning, in particular respirable crystalline silica, noting that this could help in the prevention of occupational lung diseases. We note that currently there is no requirement or mandate for tunnel workers to receive CT scans. However, the evidence indicates that CT scanning is more effective at detecting potential dust diseases in workers, as distinct from lung testing and chest X-rays.
- 4.137** In addition, we recognise the challenges posed by the use of private medical providers to screen workers for exposure to respirable crystalline silica. We acknowledge the observations made by several stakeholders in relation to the use of private clinics, including the impact this has on access to workers' health records and data and the lack of follow up mechanisms for regular screening. During the inquiry, several participants recommended that health monitoring for crystalline silica be done by icare rather than private medical providers to ensure that information regarding diagnosis and the screened population is more readily available, thereby enabling a greater understanding of the prevalence of silica-related disease. The committee views this as being of great importance given the number of tunnelling projects funded by the NSW Government as part of the infrastructure boom. Therefore, the committee recommends that the NSW Government consider requiring all tunnelling projects receiving NSW Government funding to use the services of icare for screening workers and monitoring health related to respirable crystalline silica exposure. Further, the committee acknowledges the value of the
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information held by private medical providers in relation to their screening of workers for exposure to respirable crystalline silica and recommends that the NSW Government consider mechanisms through which that information can be made readily available to icare.

Recommendation 19

That the NSW Government consider requiring all tunnelling projects receiving NSW Government funding to use the services of icare for screening workers and monitoring health related to respirable crystalline silica exposure.

Recommendation 20

That the NSW Government consider mechanisms through which information held by private medical providers in relation to their screening of workers for exposure to respirable crystalline silica can be made readily available to icare.

- 4.138** Finally, the committee acknowledges that SafeWork NSW plays a crucial role in ensuring the safety of tunnelling workers in New South Wales by regulating and enforcing work health and safety laws and monitoring compliance. We also appreciate that SafeWork NSW currently undertakes regular proactive tunnel inspections to monitor high risk activities and controls including management of respirable crystalline silica. However, we note that as of 30 June 2025 the additional funding provided by the NSW Government in the 2024-25 Budget to support compliance with the engineered stone ban and strengthen silica regulations will cease. Given the evidence heard during this inquiry regarding ongoing gaps in worker protection and exposure to respirable crystalline silica, the committee recommends that the NSW Government consider allocating dedicated funding for a compliance team within SafeWork NSW to continue enforcing strengthened silica regulations for a further two years.

Recommendation 21

That the NSW Government consider allocating dedicated funding for a compliance team within SafeWork NSW to continue enforcing strengthened silica regulations for a further two years.

- 4.139** However, the committee appreciates the concerns of stakeholders about effective regulation and the role of SafeWork NSW in exercising their legislative role under the *Work Health and Safety Act 2011* (WHS Act), in particular in relation to enforcement.
- 4.140** The committee also heard about the jurisdictional relationship between Comcare and SafeWork NSW as it relates to tunnelling workplaces. We understand that SafeWork's jurisdiction is derived from the *Work Health and Safety Act 2011* (WHS Act) and therefore when it comes to construction its jurisdiction does not extend to contractors who hold a Comcare licence. This is even more complicated for joint venture tunnelling projects which can present a particular jurisdictional challenge as it is not always clear who the primary entity is. However, the committee understands there may be scope to come to an agreement with Comcare for

SafeWork NSW inspectors to exercise authority with PCBU's that are under the Commonwealth regulatory framework. Given the evidence heard, the committee recommends that the NSW Government consider establishing a formal agreement between SafeWork NSW and Comcare to grant SafeWork NSW jurisdiction over tunnelling projects funded by the NSW Government.

Recommendation 22

That the NSW Government consider establishing a formal agreement between SafeWork NSW and Comcare to grant SafeWork NSW jurisdiction over tunnelling projects funded by the NSW Government.

Chapter 5 Other issues in the scheme

This chapter explores other issues relating to the Dust Diseases Scheme, outside of the two inquiry focus areas, that were raised in evidence. First, it considers issues for workers who have been exposed to dust in multiple states. Then it looks at whether the list of diseases under the scheme should be expanded. Finally, it examines emerging challenges in the use and operation of the National Occupational Respiratory Disease Registry.

Issues for workers exposed to dust in multiple states

- 5.1** Compensation under the Dust Diseases Scheme (the scheme) is only provided for dust exposure that occurred in New South Wales. If a worker has been exposed to dust in multiple states, the compensation they receive under the scheme is proportionate with the amount of dust exposure that occurred in New South Wales. For example, if 40 per cent of the worker's total dust exposure occurred in New South Wales (and 60 per cent occurred in another state, like Victoria), they will be entitled to 40 per cent of the relevant compensation amount.³⁷¹
- 5.2** Maurice Blackburn Lawyers told the committee that it is very common for workers in industries like tunnelling to work across a number of projects in different states during their career.³⁷² It said that if the worker is diagnosed with a work-related respiratory illness, it is usually 'a result of the cumulative effect of that worker's exposure over his/her entire working life'.³⁷³
- 5.3** Exposure occurring in other states may be compensated by the relevant state's statutory compensation scheme.³⁷⁴ However, the committee was advised that it can be difficult for a worker to lodge a separate claim in every jurisdiction in which they were exposed to dust.³⁷⁵ icare said that workers must 'navigate a labyrinth of legal systems and regulations':

Accordingly, as a result of the individual requirements of each state and territory workers' compensation scheme (including NSW), in order for workers with dust diseases to lodge and pursue their legitimate common law damages, they must navigate a labyrinth of legal systems and regulations, often resulting in excessive legal cost and time, all of which these workers can ill afford. Indeed, at the time of being told about a diagnosis of silicosis, and the attended fear and emotion that such a diagnosis entails, a worker is then required to make a very important decision about where to lodge his/her workers' compensation claim and commence the process of navigating a complex intersection of multiple schemes in order to be adequately compensated.³⁷⁶

³⁷¹ Submission 7, Maurice Blackburn Lawyers, pp 7-8; Evidence, Mr Timothy McGinley, Senior Member, Dust Diseases Special Interest Group, Australian Lawyers Alliance, and Senior Associate, Maurice Blackburn Lawyers, 29 November 2024, p 29.

³⁷² Submission 7, Maurice Blackburn Lawyers, p 8.

³⁷³ Submission 7, Maurice Blackburn Lawyers, pp 7-8.

³⁷⁴ Submission 7, Maurice Blackburn Lawyers, p 8.

³⁷⁵ Submission 7, Maurice Blackburn Lawyers, p 9, Evidence, Mr McGinley, 29 November 2024, p 29.

³⁷⁶ Submission 7, Maurice Blackburn Lawyers, p 9.

- 5.4 icare commented on how, because of this, it can be 'hard, complex, costly and time consuming' for workers to access benefits to which they are entitled. It called for better cooperation and coordination between jurisdictions to bring about a more satisfactory outcome.³⁷⁷
- 5.5 Maurice Blackburn Lawyers recommended, as an alternative, that all workers who have been exposed to dust in New South Wales be entitled to their full rate of compensation, regardless of whether they have also been exposed in other states or territories.³⁷⁸

Whether the list of diseases covered by the scheme should be expanded

- 5.6 As outlined in Chapter 1, to be eligible for the scheme, a worker must have a medical diagnosis of a dust disease covered by the scheme, evidence that the exposure to harmful dust occurred in New South Wales, and a level of disability as a result of the dust disease.³⁷⁹ There are currently 19 diseases covered by the scheme:

Table 4 Diseases covered by the Dust Diseases Scheme³⁸⁰

1.	Aluminosis	11.	Hard metal pneumoconiosis
2.	Asbestosis	12.	Hypersensitivity pneumonitis
3.	Asbestos induced carcinoma	13.	Mesothelioma
4.	Asbestos related pleural diseases	14.	Pneumoconiosis (any form)
5.	Bagassosis	15.	Silica-induced carcinoma of the lung
6.	Berylliosis	16.	Silicosis
7.	Byssinosis	17.	Silico-tuberculosis
8.	Coal dust pneumoconiosis	18.	Systemic sclerosis
9.	Diffuse dust-related pulmonary fibrosis	19.	Talcosis
10.	Farmers' lung		

- 5.7 Some inquiry participants argued that this list should be expanded to add auto-immune diseases including autoimmune myositis, Graves' disease, mixed connective tissue disease, psoriasis, rheumatoid arthritis, sarcoidosis, scleroderma, systemic lupus, and ANCA-associated

³⁷⁷ Submission 7, Maurice Blackburn Lawyers, p 9.

³⁷⁸ Submission 7, Maurice Blackburn Lawyers, p 8.

³⁷⁹ icare, *Who we Care For* (2025), <https://www.icare.nsw.gov.au/injured-or-ill-people/work-related-dust-disease/who-we-care-for>.

³⁸⁰ *Workers' Compensation (Dust Diseases) Act 1942* Sch 1.

vasculitis.³⁸¹ It was also suggested that other pulmonary diseases, including chronic obstructive pulmonary disease, tuberculosis, emphysema, chronic bronchitis and asthma should be added to the schedule, as well as chronic renal disease.³⁸²

Evidence of the link between dust exposure and other diseases

- 5.8** Several witnesses provided evidence about the link between silica exposure and autoimmune diseases.³⁸³ For example, the Thoracic Society of Australia and New Zealand said that there is 'growing consensus' that certain autoimmune disorders such as scleroderma and rheumatoid arthritis 'are linked to occupational silica exposure and this relationship has been accepted by several international agencies (e.g. ANSES)'.³⁸⁴ The Royal Australasian College of Physicians said 'there is an association between silica inhalational exposure and autoimmune disease, particularly in the context of intense exposure'.³⁸⁵
- 5.9** However, it was noted that it can be difficult to establish a *causative* relationship between autoimmune diseases and dust exposure, given that many of these diseases can have multiple causes. Dr Tim Driscoll, Member, Royal Australasian College of Physicians, Fellow of the Australasian Faculty of Occupational and Environmental Medicine, and Fellow of the Australasian Faculty of Public Health Medicine, said that medical perspectives differ on the relationship between dust exposure and auto-immune diseases; that 'there are some clinicians who would say that it is very clear there is a connection and others who would more say that the evidence so far shows an association rather than really demonstrates a causal connection'.³⁸⁶

³⁸¹ Submission 1, Australian Institute of Occupational Hygienists, p 6; Submission 2, Australian Lawyers Alliance, pp 5-6; Submission 3, Slater and Gordon Lawyers, pp 2-3; Answers to questions on notice, Mr Timothy McGinley, Senior Member, Dust Diseases Special Interest Group, Australian Lawyers Alliance, 17 January 2025, p 10; Answers to questions on notice, Mr Mark Brooke, Chief Executive Officer, Lung Foundation Australia, 6 January 2025, p 6; Answers to questions on notice, Mrs Joanne Wade, Head of National Asbestos and Dust Diseases, Slater and Gordon Lawyers, 16 January 2025, pp 5-6; Answers to questions on notice, Dr Jane Muir, Member, Royal Australasian College of Physicians and Fellow of the Australasian Faculty of Occupational and Environmental Medicine, 10 January 2025, pp 1 and 5.

³⁸² Submission 1, Australian Institute of Occupational Hygienists, p 6; Submission 2, Australian Lawyers Alliance, pp 5-6; Submission 3, Slater and Gordon Lawyers, pp 3-4; Answers to questions on notice, Mr McGinley, 17 January 2025, p 10; Answers to questions on notice, Mr Brooke, 6 January 2025, p 6; Answers to questions on notice, Mrs Wade, 16 January 2025, pp 5-6; Answers to questions on notice, Dr Muir, 10 January 2025, pp 1 and 5.

³⁸³ Answers to questions on notice, Mr Brooke, 6 January 2025, p 6; Answers to questions on notice, Dr Muir, 10 January 2025, pp 1 and 5; Answers to supplementary questions, Dr Hayley See, Head of Public Affairs, Research and Operations, The Thoracic Society of Australia and New Zealand and Adjunct Lecturer, School of Medicine and Public Health, College of Health, Medicine and Wellbeing, University of Newcastle, 22 January 2025, p 5.

³⁸⁴ Answers to supplementary questions, Dr See, 22 January 2025, p 5. ANSES is the French Agency for Food, Environmental and Occupational Health and Safety.

³⁸⁵ Answers to questions on notice, Dr Muir, 10 January 2025, p 5.

³⁸⁶ Evidence, Dr Tim Driscoll, Member, Royal Australasian College of Physicians, Fellow of the Australasian Faculty of Occupational and Environmental Medicine, and Fellow of the Australasian Faculty of Public Health Medicine, 29 November 2024, p 42.

- 5.10** The Royal Australasian College of Physicians said that, further, while there is 'a growing body of evidence to support a causal relationship between respirable silica dust exposure and non-lung diseases', there is 'no definitive way to establish if a worker's autoimmune or renal disease is because of their work and/or associated exposures, or if they would have developed this disease outside their work or exposure'.³⁸⁷
- 5.11** The College added that the best way to ascertain causality is through a 'thorough clinical assessment by specialist practitioners (Consultant Physicians in Occupational and Environmental Medicine) who are trained to assess and diagnosis, on the balance of probabilities (Bradford-Hill factors) and causation'.³⁸⁸
- 5.12** Mr Mark Brooke, Chief Executive Officer, Lung Foundation Australia, said that part of the problem is that there is still insufficient research on this issue. He explained that as there is no requirement to register diagnoses of these diseases as 'we don't have the data points necessary in some cases that would enable us to make informed conversations about causality and/or whether it should be included in the scheme'.³⁸⁹

Challenges for participants if new diseases are not added

- 5.13** The committee heard that presently, it can be difficult for workers who have diseases that both are and are not included in the scheme (for example, silicosis and rheumatoid arthritis) to access compensation. As they are only entitled for compensation for one of the diseases under the Dust Diseases Scheme, if they want compensation for the other disease, they need to make a separate claim to the Workers' Compensation Scheme.³⁹⁰ Australian Lawyers Alliance noted that the requirements under that scheme are stricter, so there is a higher chance of a claim being rejected. The Alliance also noted that this is a New South Wales-specific issue, as other states and territories only have one workers' compensation scheme.³⁹¹
- 5.14** It argued that, noting these challenges, the Dust Diseases Scheme should include the additional diseases:
- It is our view that the icare Scheme should be all encompassing of these additional diseases, to assist these workers with silica induced dust diseases to leave the industry and the dusty environments aggravating their conditions and simplify an already stressful and challenging time in their lives. They are after all suffering from "dust diseases".³⁹²
- 5.15** Ms Sherri Hayward, Senior Legal Officer, Construction and General Division, NSW Divisional Branch, Construction, Forestry and Maritime Employees Union similarly called for the list of diseases to be expanded, saying 'we're learning more about what silica exposure can do to the

³⁸⁷ Answers to questions on notice, Dr Muir, 10 January 2025, p 1.

³⁸⁸ Answers to questions on notice, Dr Muir, 10 January 2025, p 1.

³⁸⁹ Evidence, Mr Mark Brooke, Chief Executive Officer, Lung Foundation Australia, 29 November 2024, p 43.

³⁹⁰ Answers to questions on notice, Mr McGinley, 17 January 2025, p 10.

³⁹¹ Answers to questions on notice, Mr McGinley, 17 January 2025, p 10.

³⁹² Answers to questions on notice, Mr McGinley, 17 January 2025, p 10.

body, and we may not be ready for whatever comes next ... expanding the definition is the only way we can futureproof the scheme'.³⁹³

- 5.16 Dr Driscoll suggested that the decision about whether to add more diseases to the schedule is a question of 'the philosophy of the scheme'.³⁹⁴ He said it depends whether the intention is to ensure that everyone is covered by the scheme, even if this catches people whose diseases were not caused by dust exposure; and having a 'stricter definition', which may result in excluding people with genuine dust-caused illnesses.³⁹⁵

Issues in the operation of the National Occupational Respiratory Disease Registry

- 5.17 As outlined in Chapter 1, the National Occupational Respiratory Registry came into operation on 22 May 2024.
- 5.18 The Registry is a record of all new silicosis diagnoses. It may also record diagnosis of other occupational respiratory diseases, at the discretion of a physician and with the patient's consent.³⁹⁶ Prior to the commencement of the Registry, physicians in New South Wales were required to notify new silicosis diagnoses to NSW Health. This requirement no longer applies.³⁹⁷
- 5.19 While there was some general support for the Registry among inquiry participants, specific issues were identified in its operation and purpose.

Difficulties in using the registry

- 5.20 Some participants suggested that the Registry is more difficult for physicians to use than the previous system of reporting diagnoses to NSW Health, and that there had not been an adequate transition between the two.
- 5.21 The Thoracic Society of Australia and New Zealand said that the decision to remove the requirement to report diagnoses to NSW Health once the Registry commenced was 'premature'.³⁹⁸ It said that as not all physicians may have registered with the Registry, some cases might be missed as they transition over. It suggested that 'icare and other respiratory surveillance bodies continue to register cases with NSW Health to ensure that no new diagnoses are missed', saying 'over-notification is unlikely but is preferable to missed notifications'.³⁹⁹

³⁹³ Evidence, Ms Sherri Hayward, Senior Legal Officer, Construction and General Division, NSW Divisional Branch, Construction, Forestry and Maritime Employees Union, 29 November 2024, p 10.

³⁹⁴ Evidence, Dr Driscoll, 29 November 2024, pp 42-43.

³⁹⁵ Evidence, Dr Driscoll, 29 November 2024, pp 42-43.

³⁹⁶ Department of Health and Aged Care, Australian Government, *Occupational respiratory diseases* (4 September 2024), <https://www.health.gov.au/our-work/nordr/diseases>.

³⁹⁷ Department of Health and Aged Care, Australian Government, *Occupational respiratory diseases* (4 September 2024), <https://www.health.gov.au/our-work/nordr/diseases>.

³⁹⁸ Submission 9, The Thoracic Society of Australia and New Zealand, p 3.

³⁹⁹ Submission 9, The Thoracic Society of Australia and New Zealand, p 3.

- 5.22** Dr Aruvi Thiruvardchelvan, Consultant Respiratory and Sleep Physician concurred, saying in November 2024, 'we received an email a few months ago saying that the registry was up and running and that we no longer needed to inform SafeWork NSW, which I thought was a little bit premature. There should surely be a little bit of an overlap while clinicians acclimatise with the new process'.⁴⁰⁰
- 5.23** Dr Thiruvardchelvan also said that the Registry is more difficult to use than the previous system:
- Previously I would just fill out a paper form when I saw the patient or immediately afterwards and give it to our administrative staff to send on the requisite fax or email address. Now I would need [to] log on to that and go through the process online. And before I even get to that stage, I would need to register. So it makes it a little bit harder to do with the patient in the room.⁴⁰¹
- 5.24** Dr Driscoll pointed out that there is no recompense for physicians for updating the register. He argued 'either the resources need to be put in at the register end to support people providing the information or there needs to be some incentive for those people to have the time to put the information in'.⁴⁰²
- 5.25** Similarly, Mr Mark Brooke, Chief Executive Officer, Lung Foundation Australia argued that 'our clinical colleagues—my healthcare professional colleagues—have been given an impost, which they will complete because they're acting in the best interests of the patients, but it would have been good had that come with some form of MBS item or other reimbursement'.⁴⁰³

The use of Registry data

- 5.26** Some stakeholders suggested that at present, the Registry does not record enough data to be a useful tool for research or forecasting.
- 5.27** The Australian Institute of Occupational Hygienists said that the usefulness of the Registry for calculating prevalence is 'limited', because it does not record diagnoses of all dust diseases, it does not include information on the number of persons screened, and it has not publicly reported since it became operational.⁴⁰⁴
- 5.28** It was suggested that the data fields captured by the Registry could be expanded. Lung Foundation Australia and Royal Australasian College of Physicians were of the view that it should record all occupational respiratory diseases, not just silicosis.⁴⁰⁵ Dr Driscoll also argued that the Registry should require recording of the 'exposure circumstances' relating to the diagnosis.⁴⁰⁶

⁴⁰⁰ Evidence, Dr Aruvi Thiruvardchelvan, Consultant Respiratory and Sleep Physician, 29 November 2024, p 45.

⁴⁰¹ Evidence, Dr Thiruvardchelvan, 29 November 2024, p 46.

⁴⁰² Evidence, Dr Driscoll, 29 November 2024, p 46.

⁴⁰³ Evidence, Mr Brooke, 29 November 2024, pp 45-46.

⁴⁰⁴ Submission 1, Australian Institute of Occupational Hygienists, p 9.

⁴⁰⁵ Submission 10, Lung Foundation Australia, p 5; Evidence, Dr Driscoll, 29 November 2024, p 46.

⁴⁰⁶ Evidence, Dr Driscoll, 29 November 2024, p 46.

- 5.29** Lung Foundation Australia suggested the Registry had unused potential as a health surveillance tool. It noted the challenges in long-term monitoring of workers due to 'workforce mobility, which results in individuals being lost to care, impacting health behaviours, and being absent from monitoring and follow-up'.⁴⁰⁷ It suggested that if the scope and functionality of the Registry were expanded, it could be used 'to ensure ongoing, effective surveillance'.⁴⁰⁸

Committee comment

- 5.30** Based on the evidence received, the committee understands that workers face many challenges when attempting to lodge claims and access benefits for dust exposure gained across different jurisdictions during their careers. It is impractical to expect workers to lodge multiple claims in different jurisdictions.
- 5.31** As a result, the committee sees merit in the recommendation put forward by Maurice Blackburn Lawyers that all workers who have been exposed to dust in New South Wales be entitled to their full rate of compensation, regardless of whether they have also been exposed in other states or territories. To address this issue, the committee recommends that the NSW Government consider amending the *Workers' Compensation (Dust Diseases) Act 1942* to provide full compensation to any worker who has been exposed in New South Wales, regardless of whether they were also exposed in other states.

Recommendation 23

That the NSW Government consider amending the *Workers' Compensation (Dust Diseases) Act 1942* to provide full compensation to any worker who has been exposed in New South Wales, regardless of whether they were also exposed in other states.

- 5.32** The question of whether the list of dust diseases in Schedule 1 of the *Workers' Compensation (Dust Diseases) Act 1942* should be expanded to include auto-immune diseases, other pulmonary diseases, and chronic renal disease proved to be divisive among inquiry participants. While some inquiry participants agreed that the list should be expanded to be more inclusive and remove difficulties in accessing compensation, based on the view that there is a causative relationship between auto-immune diseases and dust exposure, others were not as supportive arguing that that there is no clear evidence to substantiate these claims.
- 5.33** The committee also heard that workers who have more than one dust disease are only entitled to compensation for one disease under the Dust Diseases Scheme, and if they want compensation for the other disease, they need to make a separate claim to the Workers' Compensation Scheme. However, many of these claims are rejected due to stricter requirements. This is not the case in other states and territories where only one compensation scheme is in operation.

⁴⁰⁷ Answers to questions on notice, Mr Mark Brooke, Chief Executive Officer, Lung Foundation Australia, 6 January 2025, p 8.

⁴⁰⁸ Answers to questions on notice, Mr Brooke, 6 January 2025, p 8.

- 5.34** Given this, the committee supports the call to consider expanding the list of diseases under the Dust Diseases Scheme, as a means of futureproofing the scheme as more evidence becomes available as to the effects of silica exposure. The committee recommends that the NSW Government engage an expert panel to review the list of diseases in the Dust Diseases Scheme, with a view to expanding the types of diseases included in Schedule 1 of the *Workers' Compensation (Dust Diseases) Act 1942*.

Recommendation 24

That the NSW Government engage an expert panel to review the list of diseases in the Dust Diseases Scheme, with a view to expanding the types of diseases included in Schedule 1 of the *Workers' Compensation (Dust Diseases) Act 1942*.

- 5.35** Regarding the National Occupational Respiratory Disease Registry, the committee is concerned by evidence that the registry is difficult to use, that there was an inadequate transition phase and that there is no incentive for physicians to use the registry. If the registry is not being used as intended, then the committee questions its value and effectiveness in recording all new silicosis diagnoses, and more generally the diagnoses of all dust diseases. Without accurate and timely reporting, the committee views the registry as being inept.
- 5.36** Given this, the committee recognises that some form of compensation to physicians to enter data into the registry is required to ensure uptake and usage of the registry. The committee recommends that the NSW Government explore ways to adequately compensate physicians who make and update records on the National Occupational Respiratory Disease Registry.
- 5.37** Similarly, the committee notes the concerns of inquiry participants about the usefulness of the Registry given it apparently does not record enough data for research or forecasting purposes nor does it record diagnoses of all dust diseases. The committee supports the proposals put forward by inquiry participants that the scope and functionality of the registry should be expanded to include all dust disease diagnoses and be used as a health surveillance tool. The committee recommends that the Minister for Work Health and Safety consider writing to the Australian Minister for Health and Aged Care seeking an amendment to the *National Occupational Respiratory Disease Registry Act 2023* (Cth) to expand the scope and functionality of the National Occupational Respiratory Disease Registry:
- to include all diseases covered by the Dust Diseases Scheme, not just silicosis,
 - to be used as a health surveillance tool.

Recommendation 25

That the NSW Government explore ways to adequately compensate physicians who make and update records on the National Occupational Respiratory Disease Registry.

Recommendation 26

That the Minister for Work Health and Safety consider writing to the Australian Minister for Health and Aged Care seeking an amendment to the *National Occupational Respiratory Disease Registry Act 2023* (Cth) to expand the scope and functionality of the National Occupational Respiratory Disease Registry:

- to include all diseases covered by the Dust Diseases Scheme, not just silicosis,
 - to be used as a health surveillance tool.
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Appendix 1 Orders for papers 20 November 2024

1881

Legislative Council Minutes No. 84—Wednesday 20 November 2024

39 ORDER FOR PAPERS—RESPIRABLE CRYSTALLINE SILICA AIR MONITORING

Mr Banasiak, by leave, amended private members' business item no. 1599 by omitting "21 days" and inserting instead "28 days".

Mr Banasiak moved, according to notice, as by leave amended: That, under standing order 52, there be laid upon the table of the House within 28 days of the date of passing of this resolution the following documents created since 30 June 2017 in the possession, custody or control of the Minister for Transport, the Minister for Industrial Relations and Minister for Work Health and Safety, Transport for NSW, Sydney Metro or the Department of Customer Service relating to respirable crystalline silica (RCS) air monitoring:

- (a) all documents relating to occupational hygiene exposure assessment reports, exposure monitoring communications reports, or health risk assessments regarding respirable dust or respirable crystalline silica (RCS) in air concentrations, including all reports and spreadsheets containing data, for the following tunnel projects:
 - (i) NorthConnex,
 - (ii) WestConnex Stage 1B, M4 East,
 - (iii) WestConnex Stage 2, New M5,
 - (iv) WestConnex Stage 3A, M4-M5 Link,
 - (v) WestConnex Stage 3B, Rozelle Interchange,
 - (vi) Sydney Metro City & Southwest, Tunnel and Station Excavation Package,
 - (vii) Sydney Metro West, Eastern Tunnelling Package,
 - (viii) Sydney Metro West, Central Tunnelling Package,
 - (ix) Sydney Metro West, Western Tunnelling Package,
 - (x) Sydney Metro Western Sydney Airport, Station Boxes and Tunnels Package,
 - (xi) Western Harbour Tunnel, Stage 1 Southern Tunnelling Works,
 - (xii) Western Harbour Tunnel, Stage 2 North Driven tunnels,
 - (xiii) M6 Stage 1,
 - (xiv) Coffs Harbour Bypass,
 - (xv) Snowy 2.0,
- (b) all of the following documents issued by SafeWork NSW to any person conducting a business or undertaking regarding any matter related to RCS on the tunnel projects listed in paragraph (a):
 - (i) warning letters,
 - (ii) improvement notices,
 - (iii) directions,
 - (iv) prohibition notices,
 - (v) penalty notices,
 - (vi) enforceable undertakings entered into by SafeWork NSW and a person conducting a business or undertaking,
- (c) all documents relating to checklists for Crystalline Silica – Construction (Tunnelling) for the tunnel projects listed in paragraph (a):
- (d) all of the following documents which analyse or describe the range, magnitude, and variability of RCS exposure among tunnel construction workers in New South Wales for the projects listed in paragraph (a):
 - (i) incident reports, including action taken,
 - (ii) notice of direction,
 - (iii) all documents that summarise the information received and describe the actions taken, and
- (e) any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.

Debate ensued.

Question put and passed.

Appendix 2 Media scrutiny of tunnelling projects in Sydney and SafeWork NSW

Deadly dust warnings ignored by regulator

By State political reporter

The Sydney Morning Herald

Thursday 27th March 2025

822 words

Page 3,10 | Section: General

481cm on the page



Deadly dust warnings ignored by regulator

EXCLUSIVE

Max Maddison

State political reporter

A major construction company gave the safety regulator a detailed plan to eliminate the threat of deadly silica dust to tunnelling workers, but warned it would be expensive and lead to project delays.

Nearly five years later, the plan provided to SafeWork in May 2020 is sitting unused, despite NSW Premier Chris Minns declaring the health and safety of tunnelling workers on multibillion-dollar public transport infrastructure works was “more important to us than the project”.

Thousands of workers tunnel-

ling through Sydney’s sandstone heart have been repeatedly exposed to dangerously high levels of deadly silica dust. Fears of a latent public health disaster compounded after the *Herald* revealed 13 workers, including a 32-year-old, on the M6 Stage 1 had been diagnosed with the incurable lung disease silicosis since the project commenced in late 2021.

A SafeWork investigation into the employer, construction firm CPB Contractors, is continuing. But the regulator has been criticised by the Australian Workers’ Union for failing to take meaningful action despite knowing about hazardous levels of silica dust for several years. A 2023 investigation

by the *Herald* and *60 Minutes* exposed serious health risks for tradespeople working with engineered stone, prompting bans on manufactured stone benchtops, panels and slabs containing at least 1 per cent silica.

Curtin University research from 2022 forecast up to 103,000 Australians would develop silicosis after exposure to the dust at work.

John Holland’s May 2020 presentation had a five-stage hazard management plan. It urged reducing the reliance on personal protective equipment, which sat at the bottom of the risk management pyramid and offered the “lowest level of protection” for workers.

The elimination of silica dust

was described as “the goal to aim for”. The presentation contained four suggested methods, including reducing worker shifts from 12 hours to eight, and upgrading the tunnel ventilation system.

Adopting the approach, however, would have negative impacts on productivity, costs and ultimately project delivery, the presentation warned. Stopping concurrent excavation activities, another strategy suggested, would have “significant adverse overall project program impact”.

The presentation said the associated costs of reducing silica exposure should be incorporated into the tender for “future projects”.

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The second tier of the risk management strategy was substituting more dangerous tunnelling methods for safer ones. It urged the mandated use of gigantic machines known as tunnel boring machines (TBMs) in favour of mined tunnelling, which relies on cheaper-to-run but hazardous road headers. In a submission to a parliamentary inquiry in October, the AWU identified NorthConnex, the M6 Stage 1, WestConnex and the Western Harbour Tunnel as being reliant on road header machines.

As he announced the completion of a key stage of the Western Harbour Tunnel on Monday, Minns said he was unaware of any cases of silicosis on this particular project but said the safety of tunnel workers would have the “highest priority in the government”.

“There has been [diagnoses of silicosis] on the M6 and that’s a major, major concern for us. I want to make it clear that the health and safety of the workforce on these major public transport projects is

more important to us than the project,” he said. “We want to make sure that people can work on these projects [and] get home safely to their loved ones.”

Despite the comprehensive safety plan, in October 2020, internal correspondence revealed air quality testing results on the WestConnex Haberfield site, managed by John Holland, had “grossly exceeded” the Workplace Exposure Standard by “factors of 13 and 14”.

The email questioned why “operations persisted in the absence” of effective safety controls.

“The results validate your decision during the inspection, specifically to expedite staff from the work area due to the impact of RCS dust generated by road header operations in the adjacent tunnel,” the email stated.

Unions NSW secretary Mark Morey said the presentation demonstrated contracting companies were prioritising “profit over safety”.

“For some of these companies, they factor workers getting diag-

nosed with silicosis as the cost of business,” Morey said.

Work Health and Safety Minister Sophie Cotsis did not respond to questions regarding whether she was aware of the risk management plan, if the government had explored implementing any of the elimination or substitution strategies outlined in the presentation or had been briefed on the costs of introducing the safety

measures. Instead, she took aim at the former Coalition government, saying their neglect of the safety regulator was a “disgrace”, and said SafeWork “needs to be more proactive and a tougher cop on the beat when it comes to protecting workers from silica exposure”.

SafeWork NSW acting deputy secretary Trent Curtin said the regulator “encourages industry” to share safety practices to improve the standard across industry. “[Companies engaged in tunnelling projects] hold responsibility for determining the most appropriate methods for providing safety systems on each project.”

Silica dust plan for tunnel workers ignored by regulator

Silicosis triggers probe of M6 firm

By Max Maddison

The Sun-Herald

Sunday 16th March 2025

1011 words

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673cm on the page



Silicosis triggers probe of M6 firm

EXCLUSIVE

Max Maddison

State political reporter

A 32-year-old man is among 13 tunnel workers on the M6 Stage 1 roadway to have been diagnosed with silicosis, sparking an investigation into their employer, construction firm CPB Contractors.

Revelations contained in thousands of documents released under a parliamentary order have led the Australian Workers' Union to accuse SafeWork NSW of failing to take action and colluding with multi-billion-dollar tunnelling companies.

The documents show the regulator has been aware of workers' frequent exposure to high levels of deadly silica dust – well above safety limits known as the Workplace Exposure Standard – since early 2018. The *Herald* has previously revealed the frequency and severity of workers' silica dust exposure across Sydney's tunnelling projects.

Thousands of workers are employed on Australia's tunnelling projects, including 2500 employed by North Sydney-based CPB, which is involved in nine mega-projects in NSW.

A 2023 investigation by the *Herald*, *The Age* and *60 Minutes* exposed serious health risks for tradespeople working with engineered stone, prompting bans on manufactured stone benchtops, panels and slabs containing at least 1 per cent silica.

Curtin University research published in 2022 has forecast up to 103,000 Australians will develop silicosis after being exposed to the deadly dust at work.

The new documents include a submission to SafeWork's investigation decision-making panel that details how the regulator discovered 13 CPB employees had been diagnosed with silicosis.

While investigating an initial

Silicosis triggers probe of M6 firm

From Page 1

diagnosis identified by NSW Health in October 2023, an inspector discovered CPB had "failed to notify the regulator of 12 other workers diagnosed with silicosis".

All 13 had worked on the M6 Stage 1 project since it began in late 2021, the submission said. On May 23, 2024, a SafeWork inspector approved a full investigation into their exposure to silica dust.

"Multiple workers that have shared common employers have been identified, with the youngest worker being identified as 32 years old. The responding inspector believes that an investigation would be the expectation of the public," the submission, dated May 24, 2024, said.

"[SafeWork] holds data for [silica dust] exposures across some of the projects that the various identified workers have worked on during their career with CPB. This data demonstrates that exceedances of the Workplace Exposure Standard have occurred on many occasions."

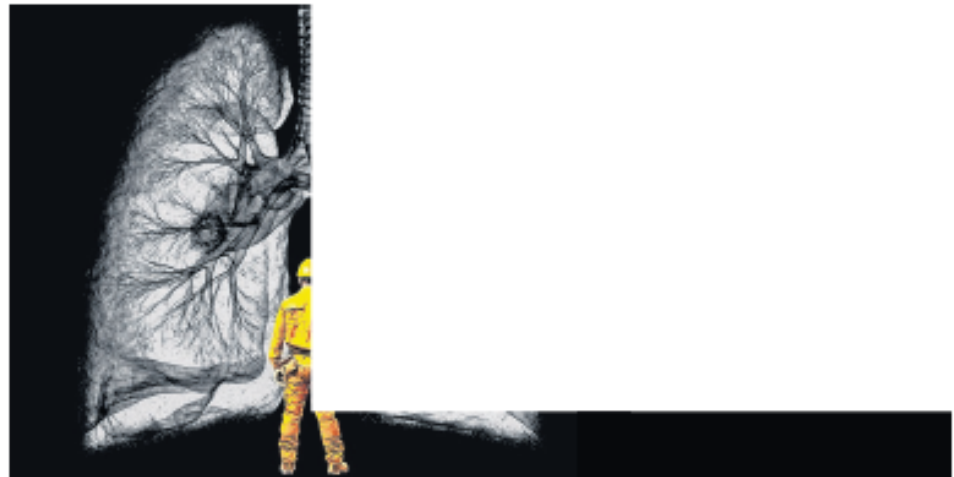
A CPB spokeswoman said: "While these employees received a confirmed diagnosis, this does not mean they contracted it while working for CPB Contractors. Throughout a tunneller's career, workers are employed across many projects, for multiple industries and companies."

The company said a 14th worker had also been diagnosed but did not specify which projects they had worked on.

Documentation relating to the ongoing investigation into CPB has been stamped "privileged" by parliament, keeping dozens of documents from the public.

A SafeWork spokesman said: "The investigation into CPB Contractors is ongoing and, as such, no further comment can be made."

Sources with knowledge of the investigation not authorised to speak publicly said CPB employees were interviewed in the second half of 2024. Investigators were focused on the Rozelle interchange



and M6 Arneliffe extension, two sites sources described as "hideously dusty and unsafe".

'It's absolutely disgusting'

AWU assistant national secretary Chris Donovan said the scale of the "health disaster is staggering", accusing the regulator of colluding with tunnelling companies.

"What makes this situation even more appalling is that both the companies and SafeWork NSW knew about dangerous silica dust levels since 2017 yet failed to take meaningful action. Giving companies a week's notice before safety inspections isn't regulation - it's collusion," he said.

Donovan contrasted emails showing SafeWork informing one tunnelling company of a site inspection one week before the visit with the regulator's failure to bring compliance action against companies despite repeated breaches of the exposure standard.

"The fact that not a single prosecution has been brought against a tunnelling company, yet we have case after case of silicosis, tells you everything you need to know about the cavalier attitude of tunnelling companies and the lack of regulation of this industry, it's absolutely disgusting," he said.

While the *Herald* has detailed the regulator's awareness of workers' exposure to "high levels" of silica dust for at least seven years, responses provided to an ongoing upper house inquiry reveal SafeWork has issued four warnings related to airborne hazards across all tunnelling companies since 2019.

There has been no compliance action taken by the regulator relating to exceedances of the exposure standard for silica dust.

This is despite minutes from an April 2018 meeting, obtained by the *Herald*, showing SafeWork warned representatives from CPB and Lendlease Bouygues that it would take compliance action if unacceptable exposures continued to occur.

"There are high exposures happening, therefore something must be done about it. As a regulator, change needs to be seen and evident," the minutes said.

Air quality testing data obtained under freedom-of-information laws show standards were exceeded in 34 per cent of 948 tests undertaken in the City and Southwest Metro tunnels, including 8 per cent where workers were unprotected.

A SafeWork spokesman said a single exceedance did not consti-

tute a breach, and compliance action was pursued where evidence demonstrated companies "failed to establish systems of work to prevent exposure".

"While a Workplace Exposure Standard exceedance may indicate a potential risk of exposure, a person's level of exposure depends on other factors, such as effective use of respiratory protective equipment and other controls," the spokesman said.

In response to the AWU's allegation of collusion, the spokesman said the regulator may conduct "planned and unplanned" inspections at any time, saying that the former was necessary to provide inspectors with access to sites and staff.

Work Health and Safety Minister Sophie Cotsis said she had "zero tolerance" for workers' exposure to unsafe levels of silica and expected SafeWork to "strongly enforce legislation to protect workers".

"The Minns Labor government has inherited a neglected safety system, but since then has taken a methodical approach to address concerns around silica," she said, referencing the establishment of a silica tunnelling taskforce and compliance team.

Appendix 3 Submissions

No.	Author
1	Australian Institute of Occupational Hygienists, Inc.
2	Australian Lawyers Alliance
2a	Australian Lawyers Alliance
3	Slater and Gordon Lawyers
4	State Insurance Regulatory Authority (SIRA)
5	NSW Self Insurers Association
6	Mrs Kate Cole
7	Maurice Blackburn Lawyers
8	Australian Manufacturing Workers' Union
9	The Thoracic Society of Australia and New Zealand
10	Lung Foundation Australia
11	Name suppressed
12	icare
13	SafeWork NSW
14	The Australian Workers' Union
15	CFMEU Construction and General Division NSW Branch
16	Unions NSW
17	PSA (Public Service Association of NSW)
18	Asbestos Diseases Research Foundation

Appendix 4 Witnesses

29 November 2024

Macquarie Room, Parliament House, Sydney, NSW

Witness	Position and Organisation
Mr Shay Deguara	National Industrial and Research Officer, Community and Public Sector Union (CPSU)
Mrs Kate Cole OAM	Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, Inc.
Mr Chris Donovan	Assistant National Secretary, 'The Australian Workers' Union
Ms Natasha Flores	Industrial Officer Work Health and Safety, Workers Compensation, Unions NSW
Ms Sherri Hayward	Senior Legal Officer, CFMEU Construction and General Division NSW Branch
Mrs Kate Cole OAM	PhD candidate, The University of Sydney
Ms Nicole Valenti	Senior Member, Dust Diseases Special Interest Group, Australian Lawyers Alliance
Mr Timothy McGinley	Senior Member, Dust Diseases Special Interest Group, Australian Lawyers Alliance and Senior Associate, Maurice Blackburn Lawyers
Mrs Joanne Wade	Head of National Asbestos and Dust Diseases, Slater and Gordon Lawyers
Dr Aruvi Thiruvarduchelvan	Consultant Respiratory & Sleep Physician
Mr Trent Curtin	Acting Deputy Secretary, SafeWork NSW
Mr Aklesh Nand	Manager, Occupational Health & Environment Team (Specialist Harm Prevention Directorate), SafeWork NSW
Dr Tim Driscoll	Member, Royal Australasian College of Physicians, Fellow of the Australasian Faculty of Occupational and Environmental Medicine, Fellow of the Australasian Faculty of Public Health Medicine
Dr Jane Muir	Member, Royal Australasian College of Physicians and Fellow of the Australasian Faculty of Occupational and Environmental Medicine
Mr Mark Brooke	Chief Executive Officer, Lung Foundation Australia
Dr Hayley See	Head of Public Affairs, Research and Operations, The Thoracic Society of Australia and New Zealand, and Adjunct Lecturer, School of Medicine and Public Health, College of Health, Medicine and Wellbeing, University of Newcastle

11 December 2024**Jubilee Room, Parliament House, Sydney, NSW**

Witness	Position and Organisation
Mr Stuart Farquharson	Interim Chief Executive Officer, icare
Mr Rohit Mandanna	General Manager, Lifetime & Workers Care, icare
Ms Mandy Young	Chief Executive, State Insurance Regulatory Authority (SIRA)
Ms Camilla Drover	Deputy Secretary Infrastructure, Projects and Engineering, Transport for NSW
Mr David Mullins	Director Health & Safety (Eastern Harbour), Transport for NSW

2 May 2025**Macquarie Room, Parliament House, Sydney, NSW**

Witness	Position and Organisation
Mr Martin Smith	Group General Manager Health, Sustainability and Climate, John Holland
Mrs Kate Cole OAM	PhD candidate, The University of Sydney
Mr Chris Donovan	Assistant National Secretary, The Australian Workers' Union
Mr Trent Curtin	Acting Deputy Secretary, SafeWork NSW
Ms Yasmin Cox	Executive Director Regulatory Capability and Harm Prevention, SafeWork NSW
Ms Camilla Drover	Deputy Secretary Infrastructure, Projects and Engineering, Transport for NSW
Mr David Mullins	Director Health & Safety (Eastern Harbour), Transport for NSW
Mr Graeme Silvester	General Manager Safety, Health, Environment, Quality, Sustainability & Rail Safety, CPB Contractors
Mr Glyn Edwards	General Manager, Tunnelling and Major Projects, CPB Contractors
Mr Cornelius De Buitendag	Health and Safety Manager, Ghella

30 May 2025**Jubilee Room, Parliament House, Sydney, NSW**

Witness	Position and Organisation
Mr Andrew Marsonet	Project Director, Western Harbour Tunnel Project, Acciona Construction Australia Pty Ltd

Appendix 5 Minutes

Minutes no. 8

Thursday 8 August 2024

Standing Committee on Law and Justice

Room 814, Parliament House, 1.31 pm

1. Members present

Mr Donnelly, *Chair*

Mr Rath, *Deputy Chair*

Ms Boyd

Mrs Carter

Mr D'Adam

Mr Lawrence

Mr Roberts

2. Apologies

Mr Nanva

3. Previous minutes

Resolved, on the motion of Mr D'Adam: That draft minutes no. 7 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 24 July 2024 – Email from the Office of Hon. Daniel Mookhey MLC, Treasurer, to the secretariat, acknowledging receipt of correspondence from the Chair dated 23 July 2024
- 24 July 2024 – Email from the Office of Hon. Anoulack Chanthivong MP, Minister for Better Regulation and Fair Trading, to the secretariat, acknowledging receipt of correspondence from the Chair dated 23 July 2024 and noting that this correspondence has been referred to Minister Sophie Cotsis, as the Minister with portfolio responsibility for icare
- 25 July 2024 – Email from Mr Mitchell Robinson, Senior Investigation Officer, NSW Ombudsman, attaching a letter from Ms Jacqueline Fredman, Deputy Ombudsman, NSW Ombudsman, to the Chair, regarding the referral of a public interest disclosure to the committee
- 1 August 2024 – Email from Ms Sue Higginson MLC, to the secretariat, advising that Ms Abigail Boyd MLC will be substituting for her for the duration of the inquiry.

Sent

- 15 July 2024 – Letter from the Chair, to Ms Jacqueline Fredman, Deputy Ombudsman, NSW Ombudsman, regarding the committee's consideration of the referral of a voluntary public interest disclosure from the NSW Ombudsman
- 23 July 2024 – Letter from the Chair, to the Hon. Daniel Mookhey MLC, Treasurer, regarding the receipt of correspondence from the NSW Ombudsman, referring a voluntary public interest disclosure from the Department of Customer Service (DCS) about Insurance and Care NSW (iCare) to the committee
- 23 July 2024 – Letter from the Chair, to the Hon. Sophie Cotsis MP, Minister for Work, Health and Safety, regarding the receipt of correspondence from the NSW Ombudsman, referring a voluntary public interest disclosure from the Department of Customer Service (DCS) about Insurance and Care NSW (iCare) to the committee
- 23 July 2024 – Letter from the Chair, to the Hon. Anoulack Chanthivong MP, Minister for Better Regulation and Fair Trading, regarding the receipt of correspondence from the NSW Ombudsman,

referring a voluntary public interest disclosure from the Department of Customer Service (DCS) about Insurance and Care NSW (iCare) to the committee.

Resolved, on the motion of Mrs Carter: That the Chair write to the Department of Customer Service (DCS) to request that the committee be kept apprised of the outcome of any further investigation conducted by DCS into allegations made against the Insurance and Care NSW.

5. 2024 Review of the Dust Diseases Scheme

Resolved, on the motion of Mr Roberts: That the 2024 review of the Dust Diseases Scheme focus on two key areas:

Firstly, the support available to younger workers within the Scheme, including:

- How younger workers can readily access appropriate supports to maintain or extend their working life in suitable duties,
- When this is not possible due to dust disease, how the Scheme can provide financial supports commensurate to their situation in flexible ways, and
- Related medical, care and treatment supports for them, and when appropriate, their families.

Secondly, other risk areas for silicosis, including, but not limited to, tunnelling and quarrying.

5.1 Proposed timeline

Resolved, on the motion of Ms Boyd: That the committee adopt the following timeline for the administration of the inquiry:

- Submissions close – Friday 4 October 2024
- Hearings on the support available to younger workers – Two days in November 2024
- Hearings on the other risk areas for silicosis – Two days in February 2025
- Report deliberative – March 2025
- Report tabling – Late March 2025.

5.2 Stakeholder list

Resolved, on the motion of Mr D'Adam: That:

- the secretariat circulate to members the Chair's proposed list of stakeholders to be invited to make a submission
- members have two days from when the Chair's proposed list is circulated to make amendments or nominate additional stakeholders
- the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

5.3 Approach to submissions

Resolved, on the motion of Mr Rath: That, to enable significant efficiencies for members and the secretariat while maintaining the integrity of how submissions are treated, in the event that 50 or more individual submissions are received, the committee may adopt the following approach to processing short submissions:

- All submissions from individuals 250 words or less in length will:
 - have an individual submission number, and be published with the author's name or as name suppressed, or kept confidential, according to the author's request
 - be reviewed by the secretariat for adverse mention and sensitive/identifying information, in accordance with practice
 - be channelled into one single document to be published on the inquiry website
- All other submissions will be processed and published as normal.

6. Adjournment

The committee adjourned at 1.51 pm, *sine die*.

Laura Ismay
Committee Clerk

Minutes no. 9

Friday 29 November 2024

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney at 8.56 am

1. Members present

Mr Donnelly, *Chair*

Mr Rath, *Deputy Chair* (until 11.15 am, then from 1.45 pm)

Ms Boyd

Mrs Carter (from 9.01 am)

Mr D'Adam

Mr Roberts

2. Previous minutes

Resolved, on the motion of Mr Roberts: That draft minutes no. 8 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 27 August 2024 – Letter from Mr Hayden Berg, Acting Director, Investigations and Corruption Prevention, Department of Customer Service to Chair, regarding voluntary public interest disclosure - icare
- 2 October 2024 – Email from Ms Ma'Rianne La Rose to secretariat, seeking assistance regarding workers compensation matter
- 25 November 2024 – Email from Mr Peter List, Senior Business Partner, Parliament and Cabinet, Executive and Ministerial Services, NSW Health to secretariat, declining invitation to give evidence at hearing on 29 November 2024
- 26 November 2024 – Email from Ms Amanda de Vries, Executive Assistant to Executive Director, Master Builders Association to secretariat, declining invitation to give evidence at hearing on 29 November 2024
- 27 November 2024 – Email from Ms Natasha Flores, Industrial Officer Work Health & Safety, Workers Compensation, Unions NSW to secretariat, advising the Australian Manufacturing Workers' Union will be unable to attend the hearing on 29 November 2024 due to illness.

Sent

- 20 August 2024 – Letter from Chair to Ms Nic Cook, Director, Investigations and Corruption Prevention, Department of Customer Service, regarding voluntary public interest disclosure referred by the NSW Ombudsman
- 2 October 2024 – Email from secretariat to Ms Ma'Rianne La Rose to secretariat, advising the committee is unable to investigate or review individual workers compensation claims.

4. 2024 Review of the Dust Diseases scheme**4.1 Public submissions**

The committee noted the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-5, 7-10, 12-18.

4.2 Partially confidential submissions

Resolved, on the motion of Mr D'Adam: That the committee keep the following information confidential, as per the request of the author: names and/or identifying and sensitive information in submission no. 11.

Resolved, on the motion of Mr D'Adam: That the committee authorise the publication of submission no. 6, with the exception of sensitive information which is to remain confidential, as per the request of the author.

4.3 Attachments to submissions

Resolved, on the motion of Mr D'Adam: That the committee authorise the publication of attachments to submission no. 14.

4.4 Witness for hearing on 11 December

Resolved, on the motion of Mr Roberts: That the committee invite iCare and the State Insurance Regulatory Authority (SIRA) to appear separately at the hearing on 11 December 2024.

4.5 Public hearing

Sequence of questions

Resolved, on the motion of Ms Boyd: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Sherri Hayward, Senior Legal Officer, Construction & General Division, NSW Divisional Branch, Construction, Forestry and Maritime Employees Union
- Ms Natasha Flores, Industrial Officer, Work Health & Safety, Workers Compensation, Unions NSW
- Mr Shay Deguara, National Industrial and Research Officer, Community and Public Sector Union (via videoconference).

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Chris Donovan, Assistant National Secretary, The Australian Workers' Union
- Mrs Kate Cole OAM, Doctor of Philosophy (PhD) Candidate at The University of Sydney.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Nicole Valenti, Senior Member, Dust Diseases Special Interest Group, Australian Lawyers Alliance
- Mr Timothy McGinley, Senior Member, Dust Diseases Special Interest Group, Australian Lawyers Alliance and Senior Associate, Maurice Blackburn Lawyers
- Mrs Joanne Wade, Head of National Asbestos and Dust Diseases, Slater and Gordon Lawyers.

The evidence concluded and the witnesses withdrew.

The following witness was examined on her former oath: Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Dr Aruvi Thiruvardhchelvan, Consultant Respiratory & Sleep Physician
- Dr Hayley See, Head of Public Affairs, Research and Operations, The Thoracic Society of Australia and New Zealand and Adjunct Lecturer, School of Medicine and Public Health, College of Health, Medicine and Wellbeing, University of Newcastle (via videoconference)
- Mr Mark Brooke, Chief Executive Officer, Lung Foundation Australia (via videoconference)

- Dr Tim Driscoll, Member, Royal Australasian College of Physicians, Fellow of the Australasian Faculty of Occupational and Environmental Medicine, Fellow of the Australasian Faculty of Public Health Medicine (via videoconference)
- Dr Jane Muir, Member, Royal Australasian College of Physicians, Fellow of the Australasian Faculty of Occupational and Environmental Medicine.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Trent Curtin, A/Deputy Secretary, SafeWork NSW
- Mr Aklesh Nand, Manager – Occupational Health & Environment Team (Specialist Harm Prevention Directorate), SafeWork NSW.

The public hearing concluded at 4.42 pm. The public and the media withdrew.

5. Adjournment

The committee adjourned at 4.46 pm until Wednesday 11 December 2024, Jubilee Room, Parliament House (public hearing - 2024 Review of the Dust Diseases scheme).

Arizona Hart

Committee Clerk

Minutes no. 10

Wednesday 11 December 2024

Standing Committee on Law and Justice

Jubilee Room, Parliament House, Sydney at 9.18 am

1. Members present

Mr Donnelly, *Chair*

Mr Rath, *Deputy Chair* (until 11.00 am)

Ms Boyd

Mr Buttigieg (substituting for Mr Lawrence) (until 9.58 am, then from 11.19 am to 12.00 pm, then from 12.32 pm)

Mr D'Adam (via videoconference) (until 11.00 am, then from 12.26 pm)

Mrs MacDonald (substituting for Mrs Carter) (until 9.44 am, then from 11.15 am)

Mr Nanva (until 11.00 am, then from 11.21 am)

Mr Roberts

2. Previous minutes

Resolved, on the motion of Mr Roberts: That draft minutes no. 9 be confirmed.

3. 2024 Review of the Dust Diseases Scheme

3.1 Reserve hearing date

The committee noted that a reserve hearing date has been confirmed for Monday 10 February 2025.

3.2 Public hearing

Sequence of questions

Resolved, on the motion of Mrs MacDonald: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Stuart Farquharson, Interim CEO, iCare
- Mr Rohit Mandanna, General Manager, Lifetime & Workers Care, iCare.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined: Ms Mandy Young, Chief Executive, State Insurance Regulatory Authority.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Camilla Drover, Deputy Secretary Infrastructure, Projects and Engineering, Transport for NSW
- Mr David Mullins, Director Health & Safety (Eastern Harbour), Transport for NSW.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 1.18 pm. The public and the media withdrew.

4. Adjournment

The committee adjourned at 1.20 pm, *sine die*.

Arizona Hart

Committee Clerk

Minutes no. 11

Wednesday 12 February 2025

Standing Committee on Law and Justice

Members Lounge, Parliament House, Sydney at 12.33 pm

1. Members present

Mr Donnelly, *Chair*

Mr Rath, *Deputy Chair* (from 12.36 pm)

Ms Boyd

Mrs Carter

Mr D'Adam

Mr Lawrence

Mr Roberts

2. Previous minutes

Resolved, on the motion of Mr Roberts: That draft minutes no. 10 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 6 January 2024 – Letter from Mr Trent Curtin, A/Deputy Secretary, SafeWork NSW to Chair, clarifying evidence given on 29 November 2024 and providing further information for the committee
- 21 January 2025 – Email from Chris Baker, private individual to committee, regarding deficiencies in the Legal Profession Uniform Law.

Resolved, on the motion of Mrs Carter: That:

- the Chair forward the correspondence from Chris Baker, dated 21 January 2025, to the Attorney General, asking him to respond and to copy in the committee in that response; and
- the Chair reply to Chris Baker, advising that their correspondence has been forwarded to the Attorney General for response.

4. 2024 Review of the Dust Diseases Scheme

4.1 Answers to questions on notice and supplementary questions – previously published

The committee noted the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to supplementary questions from Ms Sherri Hayward, Senior Legal Officer, Construction & General Division, NSW Divisional Branch, Construction, Forestry and Maritime Employees Union, received 24 January 2025
- answers to supplementary questions from Ms Natasha Flores, Industrial Officer Work Health & Safety, Workers Compensation, Unions NSW, received 31 January 2025
- answers to supplementary questions from Mr Shay Deguara, National Industrial and Research Officer, Community and Public Sector Union, received 28 January 2025
- answers to questions on notice and supplementary questions from Mr Chris Donovan, Assistant National Secretary, The Australian Workers' Union, received 22 January 2025
- answers to supplementary questions from Mrs Kate Cole OAM, Doctor of Philosophy (PhD) Candidate at The University of Sydney, received 30 December 2024
- answers to supplementary questions from Mr Timothy McGinley, Senior Member, Dust Diseases Special Interest Group, Australian Lawyers Alliance, received 17 January 2025
- answers to supplementary questions from Mrs Joanne Wade, Head of National Asbestos and Dust Diseases, Slater and Gordon Lawyers, received 16 January 2025
- answers to questions on notice from Mrs Kate Cole OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, received 20 December 2024
- answers to questions on notice and supplementary questions from Dr Hayley See, Head of Public Affairs, Research and Operations, The Thoracic Society of Australia and New Zealand and Adjunct Lecturer, School of Medicine and Public Health, College of Health, Medicine and Wellbeing, University of Newcastle, received 22 January 2025
- answers to supplementary questions from Mr Mark Brooke, Chief Executive Officer, Lung Foundation Australia, received 6 January 2025
- answers to questions on notice and supplementary questions from Dr Jane Muir, Member, Royal Australasian College of Physicians and Fellow of the Australasian Faculty of Occupational and Environmental Medicine, received 10 January 2025
- answers to supplementary questions from Mr Trent Curtin, A/Deputy Secretary, SafeWork NSW, received 6 January 2025
- answers to questions on notice and supplementary questions from Mr Stuart Farquharson, Interim CEO, iCare, received 30 January 2025
- answers to questions on notice and supplementary questions from Ms Mandy Young, Chief Executive, State Insurance Regulatory Authority, received 30 January 2025
- answers to questions on notice and supplementary questions from Ms Camilla Drover, Deputy Secretary Infrastructure, Projects and Engineering, Transport for NSW, received 24 January 2025.

4.2 Answers to questions on notice and supplementary questions – to be published

Resolved, on the motion of Mr Lawrence: That the committee authorise the publication of answers to questions on notice from Mr Trent Curtin, A/Deputy Secretary, SafeWork NSW, received 6 January 2025, with the exception of sensitive information which is to remain confidential, as per the request of the author.

4.3 Transcript clarification – SafeWork NSW

The committee noted the request from Mr Trent Curtin, A/Deputy Secretary, SafeWork NSW to clarify his evidence given at the hearing on 29 November 2024.

Resolved, on the motion of Ms Boyd: That the committee authorise:

- the publication of Mr Curtin's letter clarifying his evidence; and
- the insertion of footnote/s to the relevant paragraphs within the hearing transcript for 29 November 2024, as requested by the witness.

4.4 Future inquiry activities

Resolved, on the motion of Mr Rath: That the committee hold a further hearing in April and/or May 2025, with the date to be determined by the Chair after consulting with members regarding their availability.

5. Adjournment

The committee adjourned at 1.02 pm, *sine die*.

Arizona Hart

Committee Clerk

Minutes no. 12

Tuesday, 29 April 2025

Standing Committee on Law and Justice

Room 813, Parliament House, Sydney, 9.37 am

1. Members present

Mr Donnelly, *Chair*

Mr Rath, *Deputy Chair* (via videoconference)

Mr Banasiak (via videoconference, participating)

Mrs Carter (via videoconference)

Mr Nanva (via videoconference)

Mr Roberts (via videoconference)

2. Apologies

Ms Boyd

Mr D'Adam

3. Correspondence

The committee noted the following items of correspondence:

Received

- 23 April 2025 – Email from Mr Banasiak, to Chair, requesting to participate at the hearing of the Dust Diseases inquiry on 2 May 2025
- 28 April 2025 – Email from Mr Jonathan Harrison, Group General Counsel, Acciona Infrastructure, to secretariat, advising that Acciona finds it difficult to identify who within their organisation is best placed to answer questions, and requesting a list of questions for preparation of written responses
- 28 April 2025 - Email from Mr Jonathan Harrison, Group General Counsel, Acciona Infrastructure, to secretariat, suggesting that the committee invite Jon Davies, CEO, Australian Constructors Association, which represents many 'Tier 1 contractors', to the hearing.

Sent

- 23 April 2025 – Email from Director to Mr Johnathan Harrison, Group General Counsel, Acciona Infrastructure, asking to reconsider the invitation to attend the public hearing on 2 May 2025

- 28 April 2025 – Email from secretariat to Mr Johnathan Harrison, Group General Counsel, Acciona Infrastructure, advising that Ghella, CPB Contractors and John Holland, members of the Australian Constructors Association, will be appearing at the hearing on 2 May.

4. 2024 Review of the Dust Diseases Scheme

4.1 Invitation to Acciona Infrastructure Australia Pty Ltd

The committee discussed next steps with regard to securing the appearance of representatives of Acciona at a hearing.

Resolved, on the motion of Mr Roberts: That the committee defer the decision about requesting the attendance of Acciona Infrastructure Australia Pty Ltd at a hearing for the 2024 Review of the Dust Diseases Scheme.

5. Adjournment

The committee adjourned at 9.54 am until Friday, 2 May 2025, Macquarie Room, public hearing of the 2024 Review of the Dust Diseases Scheme.

Emma Rogerson
Committee Clerk

Minutes no. 13

Friday 2 May 2025

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney at 8.46 am

1. Members present

Mr Donnelly, *Chair*
Mr Rath, *Deputy Chair*
Mr Banasiak (participating)
Ms Boyd
Mrs Carter
Mr D'Adam
Mr Lawrence (via videoconference)
Mr Nanva (via videoconference until 8.51 am)
Mr Roberts

2. Previous minutes

Resolved, on the motion of Mr Roberts: That draft minutes nos. 11 and 12 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 28 March and 2 April 2025 – Emails from Mr George Fulmen to the committee, forwarding complaints of alleged procedural misconduct of icare regarding disability benefit payments
- 21 April 2025 – Email from an individual to the committee, raising concerns about the Spent Convictions Scheme in New South Wales.

Sent

- 5 March 2025 – Letter from Chair to Hon Michael Daley MP, Attorney General, enclosing correspondence from Chris Baker regarding the Legal Profession Uniform Law

- 5 March 2025 – Email from secretariat to Chris Baker, private individual, advising their correspondence dated 21 January 2025 has been forwarded to the Attorney General for response.

Resolved, on the motion of Mr D'Adam: That the committee keep confidential the correspondence from:

- Mr George Fulmen, dated 28 February and 2 April 2025, as it contains sensitive/identifying information, as per the recommendation of the secretariat
- an individual, dated 21 April 2025, as it does not relate to any current inquiry of the committee.

4. 2024 Review of the Dust Diseases Scheme

4.1 Report timeline

Resolved, on the motion of Mr Rath: That the committee hold a report deliberative on 17 June 2025.

4.2 Public hearing

Sequence of questions

Resolved, on the motion of Mr D'Adam: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Martin Smith, Group General Manager Health, Sustainability and Climate, John Holland.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Graeme Silvester, General Manager Safety, Health, Environment, Quality, Sustainability & Rail Safety, CPB Contractors
- Mr Glyn Edwards, General Manager - Tunnelling, CPB Contractors.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Cornelius Buitendag, Health and Safety Manager, Ghella.

The evidence concluded and the witness withdrew.

The following witnesses were examined on their former oath:

- Mrs Kate Cole OAM, PhD candidate, The University of Sydney
- Mr Chris Donovan, Assistant National Secretary, The Australian Workers' Union.

The evidence concluded and the witnesses withdrew.

The following witness was examined on their former oath:

- Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW.

The following witness was sworn and examined:

- Ms Yasmin Cox, Executive Director Regulatory Capability and Harm Prevention, SafeWork NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were examined on their former oath:

- Ms Camilla Drover, Deputy Secretary Infrastructure, Projects and Engineering, Transport for NSW
- Mr David Mullins, Director Health & Safety (Eastern Harbour), Transport for NSW.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.14 pm. The public and the media withdrew.

4.3 Invitation to Acciona Infrastructure Australia Pty Ltd

The committee considered next steps with regard to securing the appearance of representatives from Acciona Infrastructure Australia Pty Ltd at a hearing.

Resolved, on the motion of Mr Roberts: That the Chair write to Acciona Infrastructure Australia Pty Ltd, with a copy of the transcript from today's hearing, to again invite representatives from Acciona Infrastructure to appear at a hearing via videoconference, on a date to be determined, noting:

- representatives from other contractors John Holland, CPB Contractors and Ghella were able to attend the hearing on 2 May 2025 to give evidence
- evidence from Transport for NSW representatives on 2 May 2025 identified several position holders from Acciona Infrastructure located in New South Wales
- the committee may resolve to issue a summons under the *Parliamentary Evidence Act 1901* should Acciona Infrastructure fail to nominate a representative to appear voluntarily.

5. Adjournment

The committee adjourned at 4.20 pm, *sine die*.

Amanda Assoum
Committee Clerk

Minutes no. 17

Friday 30 May 2025

Standing Committee on Law and Justice

Jubilee Room, Parliament House, Sydney at 10.46 am

1. Members present

Mr Donnelly, *Chair*
Mr Rath, *Deputy Chair*
Ms Boyd
Mrs Carter
Mr D'Adam
Mr Nanva (via videoconference)
Mr Roberts

2. Apologies

Mr Lawrence

3. Previous minutes

Resolved, on the motion of Mr D'Adam: That draft minutes no. 13 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 15 May 2025 – Email from Mr Jonathan Harrison, Group General Counsel, Acciona Infrastructure, confirming Mr Andrew Marsonet, Project Director, Western Harbour Tunnel Project, will be available to appear before the committee on behalf of Acciona Construction Australia Pty Ltd for the 2024 Review of the Dust Diseases Scheme inquiry

- 16 May 2025 – Email from Mr Jonathan Harrison, Group General Counsel, Acciona Infrastructure, advising Mr Andrew Marsonet is unavailable on 26 May 2025 and requesting alternative dates for Mr Marsonet to appear as a witness for the 2024 Review of the Dust Diseases Scheme inquiry.

Sent

- 12 May 2025 – Letter from the Chair to Mr Jonathan Harrison, Group General Counsel, Acciona Infrastructure, advising of the committee's resolution to invite representatives of Acciona to appear at a hearing on a date to be determined for the 2024 Review of the Dust Diseases Scheme inquiry, and requesting that Acciona advise a suitable representative
- 16 May 2025 – Email from the secretariat to Mr Jonathan Harrison, Group General Counsel, Acciona Infrastructure, inviting Mr Andrew Marsonet, Project Director, Western Harbour Tunnel Project, on behalf of Acciona Construction Pty Ltd, to appear at a one hour hearing for the 2024 Review of the Dust Diseases Scheme inquiry on 26 May 2025.

5. 2024 Review of the Dust Diseases Scheme**5.1 Timeframes for supplementary questions and post hearing responses**

Resolved, on the motion of Mr D'Adam: That:

- members provide any supplementary questions with the committee clerk within 24 hours of receiving the transcript of evidence for today's hearing
- witnesses be required to provide answers to questions on notice and supplementary questions within 2 business days upon receipt of the transcript.

5.2 Public hearing***Sequence of questions***

Resolved, on the motion of Mr Rath: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Andrew Marsonet, Project Director, Western Harbour Tunnel Project, Acciona Construction Australia Pty Ltd.

The evidence concluded and the witness withdrew.

The public hearing concluded at 12.01 pm. The public and the media withdrew.

5.3 Tabled documents

Resolved, on the motion of Mr Rath: That the committee accept and publish the following documents tabled during the hearing:

- Transport for NSW, Fact sheet - tunnelling from Birchgrove to Waverton, Western Harbour Tunnel, February 2025, tabled by Ms Boyd
- Transport for NSW, Fact sheet - Tunnelling Cammeray to Waverton, Western Harbour Tunnel Stage 2, April 2024, tabled by Ms Boyd.

5.4 Letter to Transport for NSW

Resolved, on the motion of Ms Boyd: That the Chair write to Transport for NSW, with a copy of the transcript from today's hearing, to clarify their evidence on 11 December 2024 relating to the use of Versaflo technology on the Western Harbour Tunnel project.

6. Adjournment

The committee adjourned at 12.04 pm, until Tuesday 17 June 2025, 10.00 am, Room 1136 (dust diseases scheme report deliberative).

Amanda Assoum

Committee Clerk

Draft minutes no. 18

Tuesday 17 June 2025

Standing Committee on Law and Justice

Room 1136, Parliament House, Sydney at 10.02 am

1. Members present

Mr Donnelly, *Chair*

Mr Rath, *Deputy Chair* (via videoconference)

Mrs Carter

Mr D'Adam (via videoconference)

Mr Lawrence (via videoconference)

Mr Murphy (substituting for Mr Nanva)

2. Apologies

Ms Boyd

Mr Roberts

3. Previous minutes

Resolved, on the motion of Mr D'Adam: That draft minutes nos. 16 and 17 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 30 January 2025 – Email from Bree McFadden, icare, requesting a transcript clarification to the evidence of Mr Rohit Mandan, General Manager, Lifetime & Workers Care, iCare, from the hearing on 11 December 2025 for the 2024 Review of the Dust Diseases Scheme
- 3 June 2025 – Emails from individual to committee, forwarding complaint about serious failure of oversight by NSW law enforcement accountability bodies
- 11 June 2025 – Letter from Ms Camilla Drover, Deputy Secretary Infrastructure, Projects and Engineering, Transport for NSW, clarifying the evidence given on 11 December 2025 for the 2024 Review of the Dust Diseases Scheme.

Sent

- 4 June 2025 – Letter from the Chair to Ms Camilla Drover, Deputy Secretary Infrastructure, Projects and Engineering, Transport for NSW, seeking clarification to transcript of evidence dated 11 December 2024 for the 2024 Review of the Dust Diseases Scheme.

Resolved, on the motion of Mr Murphy: That the committee authorise the publication of the letter from Ms Camilla Drover, Deputy Secretary Infrastructure, Projects and Engineering, Transport for NSW, clarifying the evidence given on 11 December 2025.

5. 2024 Review of the Dust Diseases Scheme

5.1 Answers to questions on notice

The committee noted that the following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Mrs Kate Cole OAM, PhD candidate at The University of Sydney, received on 14 May 2025
- Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW, received on 26 May 2025
- Transport for NSW, received 29 May 2025
- Mr Lachlan McKenzie, Group Manager – Government & Stakeholder Relations, John Holland, received 29 May 2025
- Mr Graeme Silvester, General Manager, Safety, Health, Environment, Quality, Sustainability & Rail Safety, CPB Contractors, received 29 May 2025
- Mr Cornelius Buitendag, Health and Safety Manager, Ghella, received 29 May 2025
- Mr Chris Donovan, Assistant National Secretary, The Australian Workers' Union, received 3 June 2025
- Mr Andrew Marsonet, Project Director, Western Harbour Tunnel, Acciona Construction Australia Pty Ltd, received 6 June 2025.

5.2 Transcript clarification

Resolved, on the motion of Mr Murphy: That the committee authorise the publication of correspondence from Bree McFadden, icare, to the committee providing a transcript clarification, received 30 January 2025, and the insertion of a footnote on the transcript from the 11 December 2025 hearing, clarifying the evidence of Mr Rohit Mandan, General Manager, Lifetime & Workers Care, icare, as per the correspondence received 30 January 2025.

5.3 Supplementary submission

Resolved, on the motion of Mr Murphy: That the committee authorise the publication of supplementary submission no. 2a.

5.4 Oversight reviews and timeframes

The committee noted its requirement to report on the Motor Accidents Scheme and the Motor Accidents (Lifetime Care and Support) Scheme under the resolution establishing the committee at least once every Parliament, and will consider the timeline in due course.

5.5 Consideration of the Chair's draft report

The Chair submitted his draft report entitled '*2024 Review of the Dust Diseases Scheme*', which, having been previously circulated, was taken as being read.

Chapter 2

Resolved, on the motion of Mr D'Adam: That the following committee comment and recommendation be inserted after paragraph 2.57:

'Committee comment

The committee was concerned that many workers who have contracted a dust disease may be incentivised to stay in unsafe occupations, particularly where they have been initially assessed with a low or notional level of impairment. The committee is of the view that the type of retraining supports available and the accompanying income supports need to be examined in order to address this perverse incentive. Accordingly, the committee is recommending that within six months of this report, icare convene a working group of stakeholders to develop a program of re-education, retraining and vocational programs to support workers transitioning away from dust related working environments. The working group should also examine issues relating to barriers to accessing support including eligibility and levels of income support. The working group should consist of:

- union representatives from unions who cover high risk industries such as mining, construction and tunnelling
- employer groups who cover employers in high-risk industries

- support organisations who assist dust sufferers
- any other party that the Minister deems fit to appoint.

The working group is to develop a paper outlining the proposed program, no later than 12 months from its first meeting.

Recommendation X

That, within six months of this report, icare convene a working group of stakeholders to develop a program of re-education, retraining and vocational programs to support workers transitioning away from dust related working environments. The working group should also examine issues relating to barriers to accessing support including eligibility and levels of income support. The working group should consist of:

- union representatives from unions who cover high risk industries such as mining, construction and tunnelling
- employer groups who cover employers in high-risk industries
- support organisations who assist dust sufferers
- any other party that the Minister deems fit to appoint.

The working group is to develop a paper outlining the proposed program, no later than 12 months from its first meeting.'

Chapter 3

Resolved, on the motion of Mrs Carter: That Recommendation 12 be amended by inserting 'to the extent that it is consistent with the principle of premiums reflecting risk' before 'consider increasing'.

Chapter 4

Resolved, on the motion of Mr D'Adam: That the following new paragraph be inserted after paragraph 4.22:

'In correspondence to the committee, Transport for NSW advised that whilst Versaflo masks had been introduced, they are not mandatory on the M6 and Western Harbour Tunnel projects. They also advised that contractors are shifting towards Versaflo as better practice, but in some instances P2 masks are still used and preferred by workers.'

[FOOTNOTE: Correspondence, Ms Camilla Drover, Deputy Secretary Infrastructure, Projects and Engineering, Transport for NSW, 11 June 2025, p 1]

Resolved, on the motion of Mr Murphy (on behalf of Ms Boyd): That:

- paragraph 4.136 be amended by inserting at the end: 'Further, the committee acknowledges the value of the information held by private medical providers in relation to their screening of workers for exposure to respirable crystalline silica (RCS) and recommends that the NSW Government consider mechanisms through which that information can be made readily available to icare.'
- the following new recommendation be inserted before paragraph 4.137:

'Recommendation X

That the NSW Government consider mechanisms through which information held by private medical providers in relation to their screening of workers for exposure to respirable crystalline silica can be made readily available to icare.

Resolved, on the motion of Mr Murphy: That:

The draft report as amended be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, tabled documents, submissions, correspondence and answers to questions taken on notice and supplementary questions relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished transcripts of evidence, tabled documents, submissions, correspondence and answers to questions taken on notice and supplementary questions relating to the inquiry be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

The secretariat is tabling the report on Friday 20 June 2025;

The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

6. Adjournment

The committee adjourned at 10.27 am, *sine die*.

Amanda Assoum

Committee Clerk

