

**Submission
No 14**

INQUIRY INTO 2024 REVIEW OF THE DUST DISEASES SCHEME

Organisation: The Australian Workers' Union

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NSW Legislative Council Standing Committee on Law and Justice: 2024 Review of the Dust Diseases Scheme

Submission of The Australian Workers' Union

October 2024

Introduction

The Australian Workers' Union (AWU) is one of Australia's largest unions. We represent around 20,000 workers in New South Wales and over 76,000 nationally. This includes tens of thousands of members in tunnelling, quarrying, cement work, mining and civil construction. These workers are among those at greatest risk from exposure to hazardous dust in the workplace. The AWU therefore welcomes the Standing Committee on Law and Justice's review of the NSW dust diseases scheme.

The dust diseases scheme is a no-fault compensation system for NSW workers who have developed dust diseases from occupational exposure to hazardous dust. The scheme covers serious conditions such as asbestosis, silicosis, mesothelioma, and lung cancer, and provides benefits including medical treatment, rehabilitation, income support, and, in cases of death, family compensation. Workers do not need to prove employer fault in relation to their exposure; They are only required to demonstrate that their disease resulted from workplace exposure. The scheme aims for workers to receive necessary support for both healthcare and financial needs caused by their disease.

In recognition that many tunnelling workers face particularly acute risk of prolonged exposure to silica dust, this submission is focused largely on tunnelling. This does not suggest diminished concern for workers in other industries where dust hazards are also prevalent; The AWU's goal is to ensure that all workers have access to the safest working conditions, and robust support mechanisms should they fall victim to from dust-related diseases. We appreciate the committee's attention to these issues and look forward to contributing further to improvements across all industries.

Our submission focuses on the large number of informational barriers faced by workers, their representatives and others with an interest in ensuring that all workers that require support under the dust diseases scheme are able to attain it. We recommend:

- Enhancing the rights of union officials with workplace entry permits to collect evidence on WHS risk.
- Requiring governing agencies with important data on RCS exposure to publish it; and
- Conducting a special commission of inquiry into NSW tunnelling projects.

These recommendations and related issues are explored in detail below.

Overview: September WHS reforms

On 1 September 2024, new Work Health and Safety (WHS) regulations concerning crystalline silica exposure in the workplace were introduced in NSW. These reforms are an important win for workers, and vindication for the AWU's campaign for legislation protecting all workers exposed to respirable crystalline silica (RCS), launched in 2019. The changes affect workers across most industries dealing with materials containing at least 1% crystalline silica - a substance found in sand, concrete, granite, brick, rock and many other natural substances. The reforms thus impact a large number of industries. Concerning, the mining industry in most states will not have these protections.

Under the new laws, all workers exposed to RCS dust can demand multiple safety control measures, including PPE, water suppression, on-tool extraction systems and local exhaust ventilation systems. If the relevant work is considered high risk, workers have the right to request a silica risk control plan from their employer. Where such a plan is in place, work is required work to stop if the plan not followed.

The reforms also introduce new training requirements for workers at high risk of RCS exposure. These changes require that an employer provides all workers undertaking a high-risk crystalline silica process, or others likely to be exposed to risks associated with such a process, with training accredited or approved by SafeWork NSW.

The reforms must complement a well-functioning dust diseases scheme - reflecting, as they do, the ongoing and serious RCS exposure risk for tens of thousands of workers in NSW.

Ideally, they would represent two sides of the same coin: While the dust diseases scheme approaches RCS exposure from a remediative standpoint, the September reforms are preventative.

Tunnelling workers and RCS

The AWU represents Australia's tunnelling workforce. These workers face significant risk of occupational illness and disease from prolonged exposure to RCS¹ - in all jurisdictions but especially in NSW. Experts have found that tunnel workers endure the highest measured exposures to silica, compounded by carcinogenic diesel exhaust. This places them at elevated risk of developing associated diseases.²

In Sydney, a predominance of sandstone and shale in the local geology provides significant benefits for tunnel construction. But these advantages also come with severe risks, as the high quartz content in these rocks produces silica dust when disturbed by cutting, crushing, hammering, or sawing. This places tunnelling workers at acute risks (though the danger extends to other construction workers and, at times, the wider community). Indeed, silicosis has been a recurrent problem for sandstone workers in Australia, with recorded epidemics in the early 1900s, the 1920s and 1930s, and again in the 1950s and 1960s. These episodes are part of Australia's dark industrial history of occupational disease due to high levels of silica dust exposure during construction.³

The recent boom in Australian tunnelling, the largest in two decades, began in 2013. It peaked in 2018, when seven major tunnelling projects were initiated over the course of a single year. Each of these employed approximately 4,000 workers,⁴ and almost two thirds were located in Sydney. Many other tunnel projects are also under construction or have been constructed in NSW over the last decade (see table below).

¹ Workplace Health and Safety Queensland (2023), *'Occupational dust and silica conditions in some Queensland construction and related industries'*, State of Queensland

² Cole, K. (2016), *'Investigating best practice to prevent illness and disease in tunnel construction workers'*, Winston Churchill Memorial Trust of Australia, p. 7. Available at: <https://apo.org.au/sites/default/files/resource-files/2017-07/apo-nid100921.pdf>

³ Ibid, p. 3

⁴ Ibid, p.6

NSW tunnelling projects: 2014-present

Project	Principal contractor	Status
Sydney Metro West Project Eastern Tunnelling Package	John Holland CPB Contractors Ghella Joint Venture	Under construction
Sydney Metro West Project Central Tunnelling Package	Acciona Ferrovial Joint Venture	Under construction
Sydney Metro West Project Western Tunnelling Package	Gamuda Australia Laing O'Rourke Consortium Joint Venture	Under construction
Sydney Metro Western Sydney Airport Project Station Boxes and Tunnelling Package	CPB Ghella Joint Venture	Under construction
Western Harbour Tunnel Project Stage 1	John Holland CPB Contractors Joint Venture	Under construction
Western Harbour Tunnel Project Stage 2	Acciona	Under construction
M6 Stage 1 Project	CPB Contractors UGL Ghella Joint Venture	Under construction
Coffs Harbour Bypass Project	Ferrovial and Gamuda Australia Joint Venture	Under construction
Snowy 2.0	Future Generation Joint Venture	Under construction
Sydney Metro City & Southwest Tunnel & Station Excavation Package	John Holland, CPB, Ghella Joint Venture	Complete
Sydney Metro Northwest	CPB, John Holland, Dragados Joint Venture	Complete
Rozelle Interchange Project	John Holland CPB Contractors Joint Venture	Complete
NorthConnex Project	Lendlease Bouygues Joint Venture	Complete
WestConnex M4 East Project	CPB Contractors Samsung John Holland Joint Venture	Complete
WestConnex New M5 Project	CPB Contractors Dragados Samsung Joint Venture	Complete
M4-M5 Link Project	Acciona Samsung Bouygues Joint Venture	Complete

Obstacles to AWU monitoring and evidence collection

AWU organisers representing tunnelling workers harbour serious concerns around poor air quality, and particularly the presence of RCS, at job sites. Publicly available information on how effectively RCS exposure is controlled in Australia remains scarce.

The AWU has thus utilised provisions of the *Work Health and Safety Act 2011* (NSW), specifically Section 120, to obtain dust monitoring data from companies operating these projects. The information retrieved has often been alarming - both for what it shows and for the data that many companies fail to collect.

These findings have also prompted the AWU to attempt independent dust monitoring during safety visits to tunnelling projects. But organisers performing this work have commonly faced obstacles, including being denied access to sites entirely. This, clearly, impedes their ability to assess and address risks adequately.

This broad lack of transparency on air quality data raises significant concerns about the WHS practices and accountability of companies managing tunnelling projects. It suggests a systemic issue where companies might withhold crucial health and safety data, obscuring the true scale of RCS-related health risks.

The challenges of collecting and accessing corporate data on RCS exposure highlights a need for reform of the *Work Health and Safety Act 2011*. Affording 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, would significantly enhance their ability to identify issues. This would empower workers and their representatives to conduct thorough and effective monitoring, and ensure that health risks are managed with the urgency and seriousness they require. These provisions are already in place for multiple other states.

Recommendation: The NSW Government should update the *Work Health and Safety Act 2011* to expressly allow permit holders to take measurements, photos and videos for the purpose of investigating a suspected contravention of the Act.

Dust diseases and freedom of information

In light of its ongoing and serious transparency concerns, the AWU has, since early 2024, sought information held by SafeWork NSW and Transport for NSW (TfNSW) regarding RCS exposure risks in NSW Government tunnelling projects. To this end, it has relied on the *Government Information (Public Access) Act 2009 (NSW)* ('the GIPA Act').

The process of acquiring this information has often been characterised by frustration and delay, borne of differing interpretations of and approaches to the GIPA Act in the NSW Public Service. For its part, TfNSW has deemed it in the public interest to release information. The data disclosed has revealed extremely concerning levels of RCS exposure among workers.⁵ TfNSW's transparency, despite the implications of the data it has provided, should be commended.

However, SafeWork NSW has adopted a much less cooperative approach, withholding information requested by the AWU. Its decision⁶ cites concerns over potential negative impact on companies including CPB Contractors Pty Limited (CPB) and its associated entities. According to SafeWork NSW, releasing the information requested would adversely affect CPB's reputation and its ability to secure and retain clients in a competitive industry.

The AWU has deep concerns regarding the conduct of SafeWork NSW in this matter. Such an adversarial and obfuscatory approach to this issue is not befitting of the regulator tasked with safeguarding the state's workforce. SafeWork should be a firm ally of unions and others concerned with dust disease risk in the workplace. At the very least, avoiding reputational risk

⁵ See Attachment 2

⁶ See Attachment 1

for employers wherever possible should not be foremost among its concerns. Yet SafeWork appears to be placing a disproportionate emphasis on protecting business interests over worker safety and public health.

This withholding of such information not only impedes those advocating for safe workplaces and raises serious questions around the regulator. It also hinders the dust diseases scheme by preventing public scrutiny of the program's coverage and efficacy. To uphold the objectives of the dust diseases scheme and ensure it continues to be effective, it is imperative that regulatory bodies release information concerning RCS exposure. A more transparent approach to information sharing would enhance the scheme's ability to serve affected workers comprehensively and promptly.

In light of these concerns and their implications for tunnelling workers and the dust diseases scheme itself, it is appropriate that NSW Parliament step in. The Legislative Council should use its powers to require the production of key information relating to RCS exposure held by SafeWork and other relevant agencies. To ensure disclosure occurs prospectively, the NSW Government should also require relevant agencies to periodically publish information on RCS dust monitoring.

Recommendation: The Legislative Council should utilise Standing Order 52 to order the production of all documents held by NSW Government agencies containing information on respirable dust and/or RCS air concentrations (including Health Risk Assessments, Exposure Monitoring Communication Reports, and Occupational Hygiene Exposure Assessment Reports).

Recommendation: The NSW Government should require agencies that hold information on RCS dust monitoring to periodically publish that data.

Summary of data provided by TfNSW

Much of the data provided to the AWU via its GIPA request to TfNSW was highly concerning. RCS exposure is irreversible: Once exposure occurs, workers have RCS in their lungs. Yet workers on many TfNSW tunnelling projects have been exposed to very high levels of RCS.

Sydney Metro shared information⁷ showing that workers building metro tunnels were consistently exposed to RCS above legislative limits. On Metro West's eastern tunnelling package project, one worker was exposed to more than 50 times the workplace exposure standard (WES) as recently as November last year. A wide cohort of workers has been exposed to RCS in high concentrations - sufficient to increase the risk of developing silicosis. While some contractors flagged and investigated such incidents, the information provided that workers such as roadheader operators were exposed repeatedly over time.

The AWU is extremely concerned by these findings. It is also unclear whether each affected worker knows about their exposure, or whether they have been given the medical screening and support that they require.

The information shows different levels of exposure to RCS across different tunnel projects. The highest levels of RCS exposure occurred on projects delivered by John Holland, CPB Contractors and Ghella. More recent tunnel projects for Sydney Metro West show less results exceeding the WES. They also reported fewer instances of workers being exposed to RCS where not protected, relative to Sydney Metro City & Southwest (CSW) projects. These recent projects are all being delivered by different principal contractors than earlier Metro tunnels. These contractors may have different systems and processes in place to protect workers' health (or results may vary as the projects progress). Regardless of the explanation, the data further evinces the need to allow entry permit holders to take measurements, as it appears practices are highly variable across the tunnelling industry.

⁷ See Attachment 2

We note also that very high exposure risk occurs when workers are performing mined tunnelling - for instance, using roadheaders. Tunnelling on Sydney Metro is mainly performed by tunnel boring machines, with only a small amount of mined tunnelling. No information has been provided by TfNSW or SafeWork NSW on tunnel projects that use mined tunnelling as their primary construction method. But numerous NSW Government projects - including NorthConnex, the M6 Stage 1, WestConnex and the Western Harbour Tunnel - do rely principally on mined tunnelling. This gives rise to further concerns around RCS exposure on projects for which the NSW Government has not provided data.

Summary: TfNSW tunnel project air monitoring data

Tunnel project	Principal Contractor	Number of air monitoring measurements for RCS	Percentage of air monitoring results greater than WES	Percentage of air monitoring results greater than WES where workers not protected	Highest unprotected RCS exposure
Sydney Metro CSW	John Holland, CPB Contractors, Ghella Joint Venture	948	34%	8%	10.4 mg/m ³
Sydney Metro West – ETP	John Holland, CPB Contractors, Ghella Joint Venture	226	15%	3%	2.12 mg/m ³
Sydney Metro West - CTP	Acciona, Ferrovial Joint Venture	582	17%	2%	0.09 mg/m ³
Sydney Metro West - WTP	Gamuda Australia, Laing O'Rourke Joint Venture	390	12%	<1%	0.06 mg/m ³

TfNSW data: Sydney Metro City & Southwest

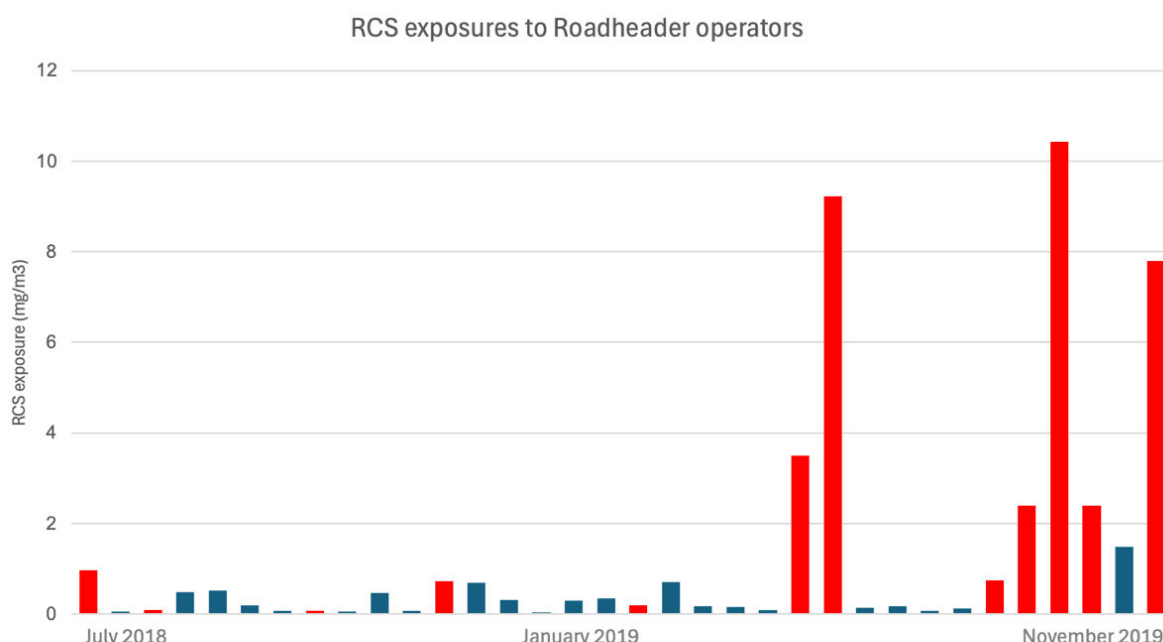
The data for Sydney Metro CSW showed that of 1,718 air monitoring measurements, 26% (457 measurement) were above the WES (0.1 mg/m³ at the time). It showed further that 8% (132) were both above the WES and workers were not protected from that exposure⁸.

The AWU was also provided with RCS exposure data for different types of workers building Sydney Metro CSW. This showed that many different work groups were exposed to high or very high levels of RCS without protection. This list includes roadheader operators (up to 10.4

⁸ A finding that a worker was not protected from exposure can have several explanations, including: the worker did not have respiratory protection; the respiratory protection was insufficient to provide adequate protection; the respiratory protection was not fit-tested; and/or the worker was not clean shaven.

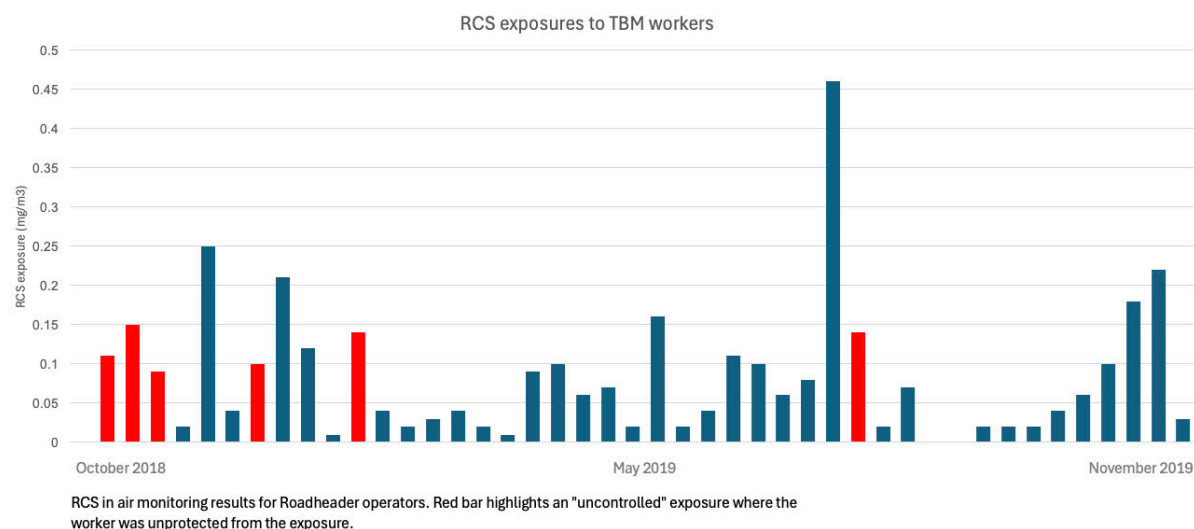
mg/m³); plant operators (up to 7.2 mg/m³); surveyors (up to 1.89 mg/m³); tunnellers (up to 1.79 mg/m³); anchor bolters (up to 1.19 mg/m³); labourers (up to 1.12 mg/m³); supervisors (up to 1.1 mg/m³); electricians (up to 1.1 mg/m³); fitters (up to 0.32 mg/m³); and tunnel boring machine workers (up to 0.15 mg/m³).

Sydney Metro stated that where exposure was found to be above the WES and workers were not protected (i.e in 132 of 1,718 measurements) a report was created and an investigation occurred. Yet despite such investigations, the data suggested that many workers were likely exposed to RCS on repeated occasions. The chart below shows RCS exposures for roadheader operators on the project. The red bars indicate unprotected exposure.



RCS in air monitoring results for Roadheader operators. Red bar highlights an "uncontrolled" exposure where the worker was unprotected from the exposure.

The following shows exposures for tunnel boring machine workers:



TfNSW data: Sydney Metro West

There are three tunnelling projects underway for Sydney Metro West: the 'eastern tunnelling package', 'central tunnelling package', and 'western tunnelling package'. The AWU was provided RCS exposure data for each.

Eastern package: Of 226 RCS air monitoring measurements taken to March 2024, 15% (35 measurements) were above the WES, and 1% (6) were both above the WES and workers were not protected from that exposure. Uncontrolled exposure occurred for two work groups: piling crews (up to 1.68 mg/m³ in October 2023) and general labourers (up to 2.12 mg/m³ in November 2023). No data was provided for tunnel boring machine workers as tunnelling had not started during the period for which data was requested.

Central package: Of 582 RCS air monitoring measurements to March 2024, 17% (100 measurement) were above the WES, and 2% (10) were both above the WES and workers were not protected from that exposure. Uncontrolled exposure occurred mainly for workers performing construction activities. The highest unprotected exposure was 0.09 mg/m³ - a very low measure relative to the highest measurements recorded in other tunnel projects.

Western package: Of 390 RCS air monitoring measurements to March 2024, 12% (45 measurement) were above the WES, and less than 1% (2) were both above the WES and workers were not protected from that exposure. Uncontrolled exposure occurred for a heavy plant operator and a steel fixer, at maximum of 0.06 mg/m³ - also very low relative to the highest recorded levels in other projects.

TfNSW data: Other tunnel projects

TfNSW did not provide data for Sydney Metro Western Sydney Airport, the Western Harbour Tunnelling Project, the Coffs Harbour Bypass, the M6 Stage 1, NorthConnex or WestConnex.

TfNSW data: Conclusion and implications

The levels of RCS that tunnel workers on many NSW Government projects have been exposed to is grossly unacceptable: to WHS requirements, to community expectations and to the most basic regard for workplace safety. Yet deeply troubling as it is, the TfNSW dataset is far from a complete record of dust disease exposure faced by our state's tunnelling workforce. The AWU thus submits that a special commission of inquiry is not only warranted but necessary. The commission should have the power to compel companies involved in tunnelling projects in NSW to provide evidence - including, crucially, all air monitoring data in their possession. Only a dedicated commission with strong investigative powers can provide workers and their representatives with real transparency as to just how great a risk of dust disease and illness they are exposed to.

Recommendation: The NSW Government should conduct a special commission of inquiry into RCS exposure in tunnelling projects. This should afford particular priority to procuring air monitoring data for all tunnelling projects underway or recently completed in NSW.

More information

The AWU is resolutely committed to workplace safety and justice for tunnelling workers and all other workers at risk of RCS exposure. We would welcome the opportunity to engage further with the Inquiry.

Please contact Chris Donovan, Assistant National Secretary, at