

**Submission
No 16**

INQUIRY INTO 2024 REVIEW OF THE DUST DISEASES SCHEME

Organisation: Unions NSW
Date Received: 1 November 2024



Legislative Council Standing Committee on Law and Justice Review into the Dust Diseases Scheme 2024

Submission by:
Unions NSW
Level 8, 377 Sussex Street
Sydney NSW 2000
T: 9881 5999

Support Available to Younger Workers Within the Scheme, and Other Risk Areas for Silicosis Such as Tunnelling and Quarrying

NB: The committee is also looking to examine the support available to younger workers under the dust disease scheme. This will include how younger workers can access support to maintain or extend their working life, when possible; how they can access financial support in flexible ways; and what medical and other care is available for younger workers and their families.

Introduction

Unions NSW welcomes the opportunity to make a submission to the Standing Committee on Law and Justice Review into the Dust Diseases Scheme 2024.

Unions NSW supports the submissions of our affiliate unions.

Unions NSW is the peak body for NSW Unions. Unions NSW represents approximately 60 affiliated unions comprising over 600 000 members. The unions represent a diverse range of workers from both blue and white-collar industries.

The terms of reference of this review are focused on the NSW Workers Compensation (Dust Diseases) Scheme (the scheme), a no-fault compensation scheme for NSW workers who have acquired dust diseases due to exposure through their work to a hazardous dust such as asbestos or silica. A worker does not need to prove employer fault. They must demonstrate their disease arose due to workplace exposure.

The support available through this scheme is essential both practically and morally but along with this governments must always act to ensure that workers do not acquire a dust disease. Control measures should always be high. Where control measures are used effectively dust diseases can be prevented and eliminated. Prevention is always possible when hazards are controlled effectively. Throughout Australia's industrial history there have been recorded epidemics of silicosis during increased periods of construction, quarrying and tunnelling but we have seen the elimination of diseases such as black lung through effective control measures. It is unfortunate that diseases thought eradicated are now making a comeback.

Workplace exposures from our industrial past are returning to haunt Australia as occupational lung diseases (OLDs) once thought eradicated are reappearing, according to a new report by researchers at the Monash Centre for Occupational and Environmental Health ([MonCOEH](https://www.monash.edu/medicine/news/latest/2020-articles/black-lung-and-silicosis-old-olds-making-a-resurgence-in-australia)).¹

Unions NSW holds concerns that workers are currently exposed to unsafe levels of silica dust through their work in tunneling and quarrying and that this exposure is prolonged, unchecked and rarely controlled in accordance with the requirements of the *Work Health and Safety Act 2011* (the WHS Act) and the *Work Health and Safety Regulations 2017* (the Regulations).

Unions NSW supports the Work Health and Safety Amendment (Crystalline Silica Substances) Regulation 2024 however we believe SafeWork NSW (the Regulator) will need to be closely monitored to ensure it is effectively enforcing these regulations in the industries involved in tunnelling and quarrying.

¹ <https://www.monash.edu/medicine/news/latest/2020-articles/black-lung-and-silicosis-old-olds-making-a-resurgence-in-australia>

This submission will discuss concerns held around current worker exposure to unsafe levels of silica and the work health and safety measures that need to be in place to prevent workers from developing a dust disease, as well as changes that could be made to the compensation scheme under the *Workers Compensation (Dust Diseases) Act 1942* [NSW] (Dust Act), to ensure it adequately covers the needs of the likely younger cohort of workers who will present with a dust disease, most likely silicosis, over the next decades as a result of the increased work in tunnelling projects across NSW in the last 10 years.

Work Health and Safety

As noted in the Legislative Council media release, a national ban on the use, supply and manufacture of engineered stone was announced last year after the last two reviews of the committee focused on the heightened exposure of workers to diseases, in particular silicosis, after exposure to the dust created by this deadly product.² Unions NSW acknowledges the valuable work undertaken by the Law and Justice Committee (the Committee), leading to a ban on manufactured stone. Australia is a leader the global fight to prevent dust diseases, and this Committee sits at the forefront of that fight. It is therefore imperative that the Committee act expediently on information provided by unions representing the workers who work every day in tunnels and quarries. A failure to act to protect workers in the tunnelling and quarrying industry who are currently being exposed to extremely unsafe levels of respirable crystalline silica (RCS) will result in an avalanche of silicosis over the next couple of decades. The Auditor- General report found that SafeWork NSW took too long to actively and sufficiently respond to the emerging risk of silica in manufactured stone.³ Disappointing given the work of this Committee.

SafeWork NSW (the Regulator), has a responsibility under the *Work Health and Safety Act 2011* (NSW) (the WHS Act) to ensure that workplaces in NSW are aware of their work health and safety duties and obligations and to ensure that workplaces either eliminate risks or introduce control measures to minimize the risk to workers. Prevention is paramount. This in turn should reduce the number of workers relying on the scheme, saving both money and lives. For some time now unions have reported difficulties working collaboratively with SafeWork NSW to work towards the objects of the WHS Act as set out below.⁴

3 Object

- (1) The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by—
 - (a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from specified types of substances or plant, and
 - (b) providing for fair and effective workplace representation, consultation, co-operation and issue resolution in relation to work health and safety, and

² Hon Greg Donnelly MLC '2024 Review of the Dust Diseases scheme' (Media Release, Thursday 1 August 2024) p1.

³ New South Wales Auditor- General, 'Effectiveness of SafeWork NSW in exercising its compliance functions' (Performance Report, 27 February 2024).

⁴ *Work Health and Safety Act 2001* (NSW) Objects

- (c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment, and
 - (d) promoting the provision of advice, information, education and training in relation to work health and safety, and
 - (e) securing compliance with this Act through effective and appropriate compliance and enforcement measures, and
 - (f) ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act, and
 - (g) providing a framework for continuous improvement and progressively higher standards of work health and safety, and
 - (h) maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in this jurisdiction.
- (2) In furthering subsection (1) (a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work or from specified types of substances or plant as is reasonably practicable.

In particular s(1)(c) which encourages unions and employer groups to work together with the Person Conducting a Business or undertaking (PCBU), towards achieving a healthier and safer workplace. There is no doubt that under the current Labor Government improvements in this area have been seen and we commend the Minister the Honourable Sophie Cotsis for her efforts in changing this, and for her commitment to safety in all workplaces in NSW. We understand it will take time to reverse a culture within the Regulator that by all accounts appeared to place business before safety. A 'business first at whatever cost' seemed to be the approach of the Regulator.

Many of the current projects are run by John Holland. John Holland holds a ComCare licence, so SafeWork's jurisdiction does not extend to these projects. Unions NSW and affiliate unions do not believe ComCare has the resources to effectively regulate the extensive amount of work being undertaken currently in NSW. 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.

Given ComCare goes beyond this Government's jurisdiction the Committee may look at putting in place a formal arrangement for information sharing between the two Regulators, SafeWork NSW and ComCare, to ensure information on tunnelling projects is transparent.

Dust Disease Scheme

Young workers who contract dust disease are unlikely to be aware that a dust disease scheme exists, and support is available to them. They may find out through their general practitioner or specialist but to make the scheme more widely known all apprentices should be made aware of the scheme during their training. All trade qualifications where exposure to hazardous dust is possible should include information about the scheme. Apprentices should be provided with information about organisations providing support for sufferers of dust diseases within NSW such as the Asbestos and Dust Diseases Research Institute (ADDRI) and Asbestos Diseases Foundation of Australia Inc. (ADFA). Information about the regulator SafeWork NSW should be provided. Where possible apprentices should be addressed directly by speakers from these organisations and should hear from people with a lived experience of dust disease. Information about the scheme, organisations aimed at helping those with a dust disease, along with exposure to people with lived experience of a dust disease, should be embedded into the curriculum being taught to all apprentices and students who may be exposed to hazardous dust through their work. This should include art courses where pottery and ceramics is studied. If young people had an understanding of the results of exposure to hazardous dust they would understand the catastrophic effects and the need for high level safety control measures throughout their career. The onus for implementing control measures does not lie with the worker, however apprentices and students should know of their right to cease work where conditions are dangerous and not sufficiently controlled. The Person Controlling the Business and Undertaking (PCBU) section 19 duty of care places the responsibility for this on the employer, however workers must know this from the day they begin work.

Therefore, it is vital that apprentices and students be made aware of the duties of the PCBU and the rights of a worker to a safe workplace. A basic introduction to the Act, Regulations, Codes of Practice and Standards should also be embedded in the curriculum. This should be implemented through the relevant education authority.

Icare has advised the Committee that it has discretionary powers to provide funding for rehabilitation and training but that this is discretionary as it is dependent on the assets of the scheme.⁵ These payments should be a part of the scheme and not discretionary. A worker who has a dust disease cannot continue to work in the industry they have come from and so re-training is vital.

Section 64B of the *Workers Compensation Act 1987* (the WC Act) requires a pre-injury employer to pay compensation for the cost of work assistance to assist the worker to return to work with a new employer up to \$1000. This includes education or training, transport, childcare, clothing, equipment or any similar service or assistance. This is not tied to CPI and therefore the amount allocated is not fit for purpose.

Section 53 of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) (1998 WIM Act) allows SIRA to institute, administer or co-ordinate vocational re-education and rehabilitation schemes for injured workers allowing SIRA to draw funds from the Operational Fund to fund such programs.

⁵ Standing Committee on Law and Justice, *2019 Review of the dust Diseases Scheme* (Report no 73, March 2020) 41.

These programs and financial incentives are available to finance and fund retraining and job search to assist injured workers to find alternative employment. These programs are only available to workers who are no longer employed by their pre-injury employer. These programs should be available to injured workers to lift return to work rates and to place injured workers in meaningful work.

We know that workers are already ignoring symptoms of dust diseases as a diagnosis will usually bring an end to their career. Alternative employment without appropriate re-training is unlikely to be well paid employment and so workers avoid medical testing until it is unavoidable.

Unions NSW would like to see these programs extended to cover workers who are still attached to their pre-injury employer and these programs should also be indexed to ensure they keep up with the cost of living. These programs should be available to all who access the dust diseases scheme and should be indexed to increase in line with CPI.

Workers who lodge a claim under the Dust Act will still have their benefits subject to the 26 week step down in accordance with the pre-2012 *Workers Compensation Act 1987* (NSW). For most claimants this means lodging a claim will result in a significant financial disadvantage and this will act as a deterrent to workers making timely claims. Given it is likely claimants are likely to be younger given that silicosis does not have the latency period of some other dust diseases this needs to be addressed to ensure the worker is not financially penalised for making a claim.

Conclusion

Unions NSW holds grave concerns for workers currently working in the tunnelling and quarrying industries. The safety regulators do not appear to be advocating for the safety of workers in these industries, but rather appear to be supporting the PCBUs who are breaching their duty. This will result in an avalanche of claimants, many of whom will die young, leaving young families who will need the long-term support of the scheme. We urge the Committee to act immediately to protect these workers. Unions and HSR's must be supported in doing their job, which is to advocate for worker safety, and the Regulators must support unions and HSRs in investigating these workplaces without imposing delays, red tape, disputation and blockages, so unions can take any actions required to collect evidence and to enforce the appropriate control measures to prevent injury to workers.

We would like to thank the Committee for their ongoing commitment to supporting workers in NSW and we look forward to any future opportunities to support the work of the Committee in giving evidence.