

REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

2024 REVIEW OF THE DUST DISEASES SCHEME

At Macquarie Room, Parliament House, Sydney on Friday 29 November 2024

The Committee met at 9:05.

PRESENT

The Hon. Greg Donnelly (Chair)
Ms Abigail Boyd
The Hon. Susan Carter
The Hon. Anthony D'Adam
The Hon. Stephen Lawrence
The Hon. Bob Nanva
The Hon. Chris Rath (Deputy Chair)
The Hon. Rod Roberts

* Please note:

[inaudible] is used when audio words cannot be deciphered.

[audio malfunction] is used when words are lost due to a technical malfunction.

[disorder] is used when members or witnesses speak over one another.

The CHAIR: Welcome to the first hearing of the Committee's 2024 Review of the Dust Diseases Scheme. I commence by acknowledging the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us today, either with us in the room or joining us over the internet.

My name is Greg Donnelly. I ask everyone in the room, if they have not done so already, to please turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they provide to the inquiry. However, it does not apply to what witnesses say outside a hearing. I urge witnesses to be careful about making comments to the media or to others after completing their evidence before the inquiry. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage Committee members and witnesses to be mindful of the procedures. I welcome our witnesses and thank them for making themselves available today.

Ms NATASHA FLORES, Industrial Officer Work Health and Safety, Workers Compensation, Unions NSW, affirmed and examined

Ms SHERRI HAYWARD, Senior Legal Officer, Construction and General Division, NSW Divisional Branch, Construction, Forestry and Maritime Employees Union, affirmed and examined

Mr SHAY DEGUARA, National Industrial and Research Officer, Community and Public Sector Union, before the Committee via videoconference, affirmed and examined

SHAY DEGUARA: I am appearing on behalf of the Public Service Association.

The CHAIR: I might commence by inviting an opening statement from the witnesses. I just note, if I could, that with respect to your submissions from each of the organisations being represented here this morning, they've been received and processed and they stand as submissions to the inquiry. They're all very good submissions. The CFMEU Construction and General Division NSW Branch's submission is No. 15, Unions NSW stands as No. 16 and NSW PSA stands as No. 17. Take them as read. We will start with the opening statement of Ms Flores.

NATASHA FLORES: Good morning, and thank you for the opportunity to address the Committee today. Unions NSW has held concerns about the unsafe levels of silica that workers have been exposed to in tunnelling projects for quite some time now. Under the previous Liberal-Nationals Government, myself, the Secretary of Unions NSW, Mark Morey, and representatives from the Australian Workers' Union met with the then Minister responsible for WH in New South Wales, the Hon. Matt Kean, to share our concerns about the amount of dust workers were being exposed to. We provided the Minister with photos that had been secretly taken by a worker in the NorthConnex tunnelling project. I say secretly because any worker who complained about the unsafe working conditions would usually find themselves punished for raising any concerns. Often this meant assigning them work above ground, which was paid far less than work below ground. For this reason, most workers were reluctant to complain about the conditions underground.

The photos this worker provided showed dust so thick, it was difficult to see anything but dust in the photo. The Minister showed concern and handed these photos to representatives from SafeWork NSW. I believe one of these representatives may have been Mr Tony Williams. As Mr Williams was handed the photos, the Minister said words to the effect of "Please do something about this." The Minister assured us that he took the safety of the workers very seriously and would address our concerns. We left the meeting confident of the Minister's commitment to eliminating this deadly hazard. However, we did hold concerns about SafeWork NSW's commitment to ensuring these workers would be protected from this hazard. The article by journalist Max Maddison, released on Tuesday this week by *The Sydney Morning Herald*, along with a submission by the Australian Workers' Union, would suggest our concerns were justified.

For years now, workers have been exposed to unsafe levels of silica, and the sad reality is that many of these workers will contract dust disease. While silica may be named the new asbestos, the risk from asbestos has not disappeared. Given the age of much of the asbestos that remains in our buildings, it is now showing signs of deterioration and will continue to do so. This legacy asbestos will be a hazard for decades to come. The dust diseases scheme will remain relevant for many years to come as a younger cohort of workers with young families seek access to the scheme, and people continue to develop asbestos-related diseases and silica-related diseases. For this reason, this review is extremely timely and relevant.

SHERRI HAYWARD: The CFMEU has always been a vocal advocate in the dust diseases space, offering our members a voice at the table to ensure they're protected from dust exposure and supported into the future. Our highly successful campaign to ban engineered stone has helped to prevent some exposure, but there's still more to do in this space to protect workers in New South Wales. The CFMEU has and continues to raise concerns about the effectiveness of SafeWork NSW in exercising their legislative role under the Work Health and Safety Act. As regulator and educator, SafeWork has and continues to fall short of community standards and expectations. Their 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.

At the most basic level, even the SafeWork website fails as an effective education tool, with important information hidden several pages deep, few references to legislative provisions and no reference to relevant case law. Given SafeWork's failures, workers need a dust diseases scheme that is flexible and reflects the needs of the workers of New South Wales. The CFMEU and its members would like to see a dust disease scheme that provides appropriate financial support, provides retraining and rehabilitation programs which support a career change into skilled industries and a scheme that relieves some of the administrative burdens on dependants of deceased

workers. A peek over at the workers compensation laws might assist in developing a benefits regime that adequately supports younger workers and older workers.

We would also welcome an expansion of the diseases covered by the Act, which include dust-related respiratory diseases, dust-related auto-immune conditions, dust-related inflammatory diseases and dust-related renal disease. Just recently, two of our members were diagnosed with both silicosis and scleroderma, a rheumatic disease. It is common for our members to present with both these conditions following their exposure to silica dust, but the way the Act is set out makes it difficult for them to claim for the scleroderma at a time when they are just trying to get the support that they need. Workers in New South Wales deserve a proactive, well-resourced and committed safety regulator, as well as a scheme that can provide them adequate support, and appropriate retraining, to incentivise workers to get screened and tested early in their working lives.

The CHAIR: Thank you very much for that very precise and clear opening statement. We'll move now to you, Mr Deguara. Would you like to make an opening statement?

SHAY DEGUARA: We'll mostly rely on our submission, but I just wanted to say that we actually had a very well-resourced and proactive dust diseases scheme when we had the Dust Diseases Authority. It worked well in the 90s to, basically, have a feedback loop with what was WorkCover at the time. They were sort of embedded with each other, but they were separately structured. That has gone to the wayside to a degree. It's now starting to improve again, but there was a really good feedback loop. With the workers compensation and with the dust diseases scheme—I know it's out of scope, but if we'd actually look at where injuries were happening, and disease, and feed that back into the safety systems, then the safety system would then regulate safety properly.

If we could have that model come back, that closes the loop and that would be a good thing to happen. Bringing it into icare made dust diseases a secondary or tertiary concern, when you've got big issues like the scheme's viability, the Nominal Insurer, et cetera, and even the TMF. Always, the dust diseases scheme seemed to be run really well as a tripartite body. Its capitalisation, which really worried some governments, was on track prior to its merging into icare as well.

Ms ABIGAIL BOYD: Thank you to our witnesses for your really detailed submissions and for appearing. Perhaps I'll start with you, Ms Hayward. This comes back, as well, to this story that came out in the SMH about the tunnelling. I understand that there are rights for workers to request data onsite about air quality. What are the practicalities around actually doing that? I'll also come to you, Ms Flores, because I know you talked about the fears of punishment. Can you talk us through the reality of what it is like to call out air pollution?

SHERRI HAYWARD: It's a very difficult thing because tunnelling is such a high-paying industry because of the risks associated with it. There is a lot of fear from workers on the ground about how far they go in requesting information. Even HSRs. There is a requirement under the Act for the PCBU to consult with all of its workers about any hazards and about how they might manage those hazards. The point of the Act is that the workers and the employer work together to manage safety in the workplace, because we have safer workplaces when everybody is working together. What really happens is the HSRs will contact their union. The unions have rights under the Work Health and Safety Act to enter into a workplace to investigate suspected contraventions of the Act. As part of exercising those rights, they're entitled to request documentation about the hazard.

Air monitoring reports would squarely fall within that category of documents that would be related to a suspected contravention. Unfortunately, when you try to request those records, the PCBU claims that they're legal professional privilege. Even though they wouldn't ordinarily fall within the gamut of what is legal professional privilege, in order to enforce the right to have access to those documents, you would have to look at bringing proceedings, and you'd need those documents at the time, not three, four or five months down the line. We've seen other cases in the work health and safety space go to the IRC to get your hands on those documents. It's a very lengthy, protracted legal process. It is extraordinarily difficult to get your hands on any reports that would be relevant to tracking exposure.

Ms ABIGAIL BOYD: That's incredibly useful. I think we have a situation, then, where the Act is implying that it's quite easy to get this data when, in reality, it seems to be incredibly hard. What could we do from a regulation perspective to ensure that data is more readily available?

SHERRI HAYWARD: 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. If you are doing air monitoring, which you should be doing, you should be putting it up in the training rooms. You should be putting it up in the lunch rooms. You need to make it available to workers so that they know, "There's a problem here; maybe we have got a solution for how we can fix it," and to ensure that those workers know they have a right to consultation as well.

Ms ABIGAIL BOYD: There are two things: There's having the data readily available for people to see, but then also people need to understand it as well. Is there any regulation around that? I imagined it would be some sort of flashing board or something when the air quality got so bad. From what you're saying, it's more about sticking something up, like a piece of paper.

SHERRI HAYWARD: The air monitoring devices are getting better about how quickly you can get the data and how accessible that data is. There is a requirement for silica awareness training. I know that a lot of enterprise agreements—particularly CFMEU agreements, but I believe others as well—require an employer to undergo or to provide silica awareness training. I would think that part of that training would be understanding what you're looking at, particularly in terms of the workplace exposure standard, so that the workers can go, "Hang on a minute. That's a problem." But we're not even at that point. The reports aren't even being made available, let alone whether workers know how to read them.

Ms ABIGAIL BOYD: If there was a problem, there are then those issues about how do you raise it without consequences and then, if you raise it with the union, how do they get the information et cetera.

SHERRI HAYWARD: Yes.

The Hon. CHRIS RATH: Following on from Abigail's questioning, why couldn't the air monitoring data be published in real time? Why couldn't it be on boards or on screens in the staff cafeteria or in the staffroom or something like that so that people can see it in real time? Why is it so opaque?

SHERRI HAYWARD: To be honest, that would be everything that we could ever want—to make it that readily available. That is a question that you, with respect, might need to check with SafeWork and the employers. I suspect the answer is going to come back as money. But if there was a way that workers could see that in real time—I mean, one avenue we do see it is methane in the air in some mines since the Pike River disaster in New Zealand. You can get those real-time reports. There is no reason we can't be doing it for dust as well.

The Hon. ROD ROBERTS: Thank you both for appearing. I have no experience in tunnelling whatsoever and I don't want to profess that I do. Following on from Chris's question—the old canary in the coalmine type thing—is there equipment available, in terms of air monitoring, that would flash a red light, for example, if certain dangerous levels were reached? In other words, rather than appearing in real time in the cafeteria or in the staffroom, what about in the actual workplace, for want of a better word, and in the actual tunnelling area itself or the quarry, or wherever it is where we're at, if the dust level reaches a dangerous level and an alert sounds immediately and people are aware of it? Does that type of equipment exist at all?

SHERRI HAYWARD: I'm not aware of it, but I would think the occupational hygienist might be able to answer that question.

NATASHA FLORES: Can I add something? To your question, Abigail, unfortunately, from the photos that I saw, you didn't need a dust monitor to see that those levels of dust were exceptionally dangerous. You couldn't see your hand if you held your hand up in front of you. These workers were working almost blind in the dust. We're at, in some cases, such an incredibly hazardous stage that it's even beyond just reading the levels. We know the levels are catastrophically high. What I was told at the time was that the management of that hazard was very much dependent on, perhaps, the site manager at the time on the shift. Sometimes that site manager would take the time to put all the correct measures in place to clear the space and put in the filtration systems, and the workers need properly fitted equipment et cetera.

What I heard was you could have a good shift or you could have a bad shift. If it was a bad shift, it was a shift where things needed to be done really quickly and you were on a time schedule so there was pressure to get things done—"We've got to get this much done in this time so we don't have time to worry about the dust. We've just got to tunnel through." You would have to ask my colleague who I believe will be appearing after us from the Australian Workers' Union but, if you saw those photos, you don't need a monitor to see that those conditions are incredibly hazardous. You will ask Mr Donovan questions about that and he will be able to give you information. I'm not an expert in any of this; I'm not an occupational hygienist. But I looked at those photos and was horrified.

Knowing that people have been in that condition for some time, you will have a dust disease. Any thoracic specialist will tell you that nothing other than oxygen is appropriate for your lungs. Even when we're looking at minimum levels, we're being generous because the only thing our lungs like is oxygen. We really want to eliminate

it as much as possible. In this case, these workers were just coated in it. It was extremely hazardous and I don't know that it has changed a lot. I hope it has. I hope it's not as bad as what I saw, but it was horrendously bad.

Ms ABIGAIL BOYD: You mentioned the properly fitted equipment. What are members telling you about that?

NATASHA FLORES: I think Mr Donovan can give you more information about that. Again, we hear that it comes down to time and money. Obviously, to get the right equipment, it can be expensive. People need to be properly fitted for their own body and face, clean-shaven et cetera. That comes down to making sure that the workers are clean-shaven et cetera because, if you've got a big beard, that will affect the mask. So, time and money, I believe.

SHERRI HAYWARD: We have a lot of disagreements with PCBUs about fit testing. It is one thing to provide the PPE, but if it's not fit tested, it's not going to work.

The Hon. CHRIS RATH: Is there also an issue of not enough air monitoring being done at the moment, or is it more an issue of the opaque nature of the data, or is it a bit of both?

SHERRI HAYWARD: It's a bit of both. I think we've seen in previous inquiries just how unclear the legislation is about the requirements around air monitoring and when it needs to be done. In fact, this Committee, differently constituted, has twice made recommendations that those provisions be made clearer. There's always a disagreement about whether or not air monitoring should have happened in the first place. The new regulations that were inserted for the crystalline silica go to manufactured stone workplaces and not necessarily tunnels. It's not as mandatory as we would probably like it to be. Whether or not it's being done, I think you can see from the AWU's submission that it is very unclear because that data is not released to anybody. We couldn't sit here, hand on heart, and say it's not being done, the same as we couldn't say it is being done.

The Hon. CHRIS RATH: In your submission, you spoke about portable air monitoring devices and that you can use your electronic devices or mobile phones or something. Can you run through that with us a bit more in terms of what you're recommending or suggesting?

SHERRI HAYWARD: There's been a bit of a disagreement in some of the tunnels from some PCBUs in relation to right of entry—the ability to go on and investigate. Some organisers have personal air monitoring devices. They're not perfect, but they might give you some indication that there's something more you need to be looking at. There has been an argument from those PCBUs that the Work Health and Safety Act does not permit those devices being used when you're investigating a suspected contravention. It is the same argument they have about mobile phones and whether or not taking pictures or videos is permitted under the Act.

The argument from the PCBUs is because it is not explicitly stated you can do those things, therefore you can't. We don't necessarily agree, but to the extent that that is true, the legislation needs to be amended to take that 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 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.

NATASHA FLORES: Can I add to that? In around 2018, Unions NSW tried to work with SafeWork NSW with a memorandum of understanding that would assist union officials with their right of entry. Unfortunately, we weren't able to reach agreement with that. SafeWork would not really commit to anything beyond the wording of the Act. We had requested that they would assist us in facilitating right of entry where there was a suspected breach but, unfortunately, that didn't occur. Anything that could be done in the legislation to make that more solid would be very helpful.

The Hon. ANTHONY D'ADAM: Can I just ask about that? It seems extraordinary, I have to say, that a PCBU could say that you can't use a particular tool to conduct an investigation. Arguably, pen and paper is a tool. Can they say, "You can't use that"? Has this question been litigated in any way?

NATASHA FLORES: There have been situations where union officials have been sat on a chair with literally tape around them and told that's as far as they can go. We had that argument with SafeWork during COVID, where we couldn't get access to a particular abattoir. The union official who went in to conduct an investigation was taken to a chair with a bit of tape around that chair and told, "Sit there; do not move." So that's the reality.

SHERRI HAYWARD: As I understand it, the AWU had sought to bring proceedings in relation to the personal air monitoring devices. I'm not sure where that got to. It's one of those situations where, as a union, you need to consider what are the consequences if you're wrong, and so a lot of thought goes into bringing

right-of-entry proceedings—about how sure are we about what the legislation says and what is the prejudicial outcome if we're wrong. I think it's one of those areas where there's a lot of reluctance. I know, as somebody who runs a lot of right-of-entry litigation, there's a lot of reluctance to push that point. We'd rather have the discussion with the PCBU on the ground and try to come to some arrangement, but it is an area that probably needs to be spelt out a lot clearer.

The Hon. ANTHONY D'ADAM: Is this something that could be remedied through immediate regulatory action, or is this something that would require legislative change?

SHERRI HAYWARD: No, it would require legislative reform. It would need a change to section 118 to explicitly allow for things that are necessary to conduct the investigation, so you would have to explicitly call it out. That's what the ACT did in their legislation.

The Hon. ANTHONY D'ADAM: Can I come back to this question about legal privilege on air monitoring results. Can you just explain—I don't really understand how air monitoring results can be the subject of legal privilege.

SHERRI HAYWARD: You and me both.

The Hon. ANTHONY D'ADAM: It just seems like a bit of a stretch.

SHERRI HAYWARD: This is the subject of many letters I write on a regular basis. The purpose of acquiring the air monitoring report is not for the purpose of litigation; therefore, legal professional privilege should not attach to that report. These are arguments I have on a regular basis with PCBUs. Unfortunately, SafeWork is of little assistance in that space. Again, it's one of those things that you would have to consider litigating. Litigation is not cheap and it is not quick.

The Hon. ANTHONY D'ADAM: Surely the HSR has a right to that information.

SHERRI HAYWARD: It's the same thing—they'll claim legal professional privilege over it as well. In saying that, under the Work Health and Safety Act, legal professional privilege is not a reason to withhold information.

NATASHA FLORES: The purpose of the Act is to fix the situation and to create better, safer environments. I don't believe the Act was ever written to be something that was litigated heavily and argued over. It was meant to keep workers safe, and the objects of the Act clearly state that all parties should be working for continuous improvement in safety. But, unfortunately, PCBUs get extremely defensive and worried. We get locked out and told to go and sit on a chair in the corner.

The Hon. ANTHONY D'ADAM: As I understand it, there is a specific capacity for HSRs to access information about the safety arrangements in a workplace.

SHERRI HAYWARD: Yes.

The Hon. ANTHONY D'ADAM: How much more specific can we get, to overcome a problem like this? When does it become obstruction?

SHERRI HAYWARD: That's the thing. This is why I think—the way that we talk about SafeWork's role under the Act, everything is facilitation. If there's an issue on the site and they're called out to help with the issue, it's just facilitation. They don't issue decisions. They can't say to a PCBU, "You must do this". All they can do is educate them. It's then up to you to enforce the legislation. If I were sure that SafeWork would go and enforce the legislation on these smaller things, then we'd be in a different situation. But they really only go after the big fish, when they should really be looking after all the aspects of the Act. I'd like to see SafeWork prosecuting for lack of consultation. I'd like to see SafeWork prosecuting PCBUs for hindering union officials in the exercise of their duties. It shouldn't be up to the CFMEU to prosecute builders for their failure to comply with the Act.

The Hon. ANTHONY D'ADAM: You've been very critical, over a long period of time, of the regulator. Obviously the Government's making changes to the structure of the regulator. What more needs to be done? What would you recommend that the Committee recommend, coming out of this inquiry, in terms of measures that need to be taken to make SafeWork a more effective regulator?

NATASHA FLORES: I think there are cultural issues. I believe that the core purpose of any safety regulator is to keep workers safe. Under the previous Government there was a heavy focus on education but, unfortunately, that didn't work. As far as we saw, that didn't change things. It didn't improve safety. As Ms Hayward said, 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 that that could be helpful because there were unions—and I was in one—that used that regularly. We were looking at outworkers in clothing factories where there were horrendous trip hazards and backyard factories and garage factories and things like that. Quick prosecutions were easy and you could rectify a situation quickly.

SHERRI HAYWARD: From our perspective, I will give some credit to the acting deputy secretary. He is actually starting to have discussions. We've at least had a discussion with him about the relationships between unions and SafeWork, but it's more fundamental than that. We've got individual inspectors deciding which sites they're going to go to and which ones they're going to look at. I've got inspectors that are too close to the PCBUs and, because they're providing them with advice on Monday, they don't want to do anything when they do the wrong thing on Tuesday because there's a perception then that, "Did I tell them to do that, because I can't give them a notice if their defence is going to be 'You told me to'?" The one area that I think SafeWork should be focusing a lot more on is enforcing the consultation requirements. The entire purpose of the Work Health and Safety Act is for consultation. It is for the workers and the PCBUs to work together to make a safe workplace.

If SafeWork is not forcing the PCBU to talk to the workers about their safety hazards or how they might resolve those safety hazards, they're failing in upholding the fundamental principle of the Work Health and Safety Act. You should be prosecuting these particular assets. Yes, we should be prosecuting fatalities. Yes, we should be prosecuting serious safety issues. But we wouldn't be at that point if the consultation was fixed first. We've had a few issues up in the Hunter Valley in a particular site up there. I've specifically requested SafeWork to help facilitate consultation on that project. We're heading in that direction and we're getting there slowly but, for me, the fundamental issues on that project are the consultation between the three entities. If SafeWork enforced consultation, we'd be in a much better position.

NATASHA FLORES: Strangely, as a person who has trained health and safety representatives and is a qualified trainer under SafeWork, a large part of the training that you deliver to health and safety representatives is about the Act being all about consultation and the HSR's pivotal role in consultation. You have an HSR to assist in facilitating consultation. That's a very important point. This Act was built upon that. It was built so that we all work together harmoniously to create safer workplaces, not to fight constantly—dispute and dispute and dispute—and find loopholes. This seems to be where we've got to. But, really, the objects say we work together for continuous improvement of health and safety.

The Hon. SUSAN CARTER: Thank you both for being here. Ms Hayward, if I can I can go back to the legal professional privilege argument, I believe you said that it was possible to get an IRC order. I'm just wondering what timeline and costs are involved in that.

SHERRI HAYWARD: Section 142 of the Work Health and Safety Act allows a person to bring a dispute about a right-of-entry matter to the Industrial Relations Commission. There was a particular nurses matter where the litigation was drawn out quite significantly. The hospital in that matter had engaged a very large law firm to help draw out the matter before it. I think it took more than 12 months in order for a resolution. There are no costs in filing at the IRC itself. There are time factors. You might want to engage legal counsel to assist with that matter. If your public hospital is engaging a very large law firm, you might also want to consider getting somebody who has a speciality in that area to do it as well. It can be quite prohibitive, when you should be spending your members' money on other things, just to get access to a document.

The Hon. SUSAN CARTER: Is that just for right of entry, or would that be for air quality monitoring reports?

SHERRI HAYWARD: If you're requesting them under right of entry.

The Hon. SUSAN CARTER: Given that there seems to be this attitude that they are privileged documents, is that what would be standing in the way of making them publicly available in canteens and other areas for workers?

SHERRI HAYWARD: That's the excuse we've been given, yes.

The Hon. SUSAN CARTER: Has that ever been tested?

SHERRI HAYWARD: It hasn't. Sometimes a nasty letter can get a long way. A lot of communication backwards and forwards—eventually the PCBU might relent, or it might be that SafeWork comes on after a number of weeks and gets it that way. Again, it's one of those things where you've got to think about what the consequences are if you're wrong, because right of entry is a difficult process. It can be quite an argumentative

process. Any court decision can severely restrict the rights of a permit holder when all we're trying to do is keep workers safe. It's always a cost-benefit analysis when we're looking at bringing right-of-entry matters.

The Hon. SUSAN CARTER: The legal professional privilege claim—is this a new issue, or has this been longstanding?

SHERRI HAYWARD: It's been this way, basically, since the tunnels started.

The Hon. SUSAN CARTER: Is it a specific tunnelling issue rather than other areas?

SHERRI HAYWARD: It's not just a tunnelling issue. I've had that issue in other places as well. It is more pronounced in the tunnels, though.

The Hon. SUSAN CARTER: Is there any other safety documentation about which these claims of legal professional privilege are made?

SHERRI HAYWARD: Any report that might be damning. I've had reports around E. coli exposure that have been legal professional privilege. I've had engineering reports, in relation to the building of buildings, that have been said to be legal professional privilege. Hygienist reports, in general, on any construction site—I've had builders say that they're legal professional privilege. I've had assessments over whether an emergency response plan is sufficient be deemed legal professional privilege. It really depends on who's educating the PCBU and who's been engaged to assist with the matter. It comes up in the context of right of entry for us. There are a lot of law firms in New South Wales that think they know right of entry very well. They don't, and they try and use legal professional privilege as a way of preventing union officials from exercising their lawful rights.

The Hon. SUSAN CARTER: So a document like an E. coli report, has it been prepared by a lawyer?

SHERRI HAYWARD: No.

The Hon. SUSAN CARTER: And there's no ongoing litigation in respect to that matter?

SHERRI HAYWARD: No.

The Hon. SUSAN CARTER: It's not being requested after a letter of demand or some initiating process has been sent?

SHERRI HAYWARD: No.

The Hon. SUSAN CARTER: That's very interesting. I find that surprising.

SHERRI HAYWARD: It's very frustrating.

The CHAIR: This Committee, under the chairmanship of the Hon. Chris Rath, dealt with the manufactured stone issue, which has been addressed—although not absolutely, but we know what's happened and we don't need to go through that. An observation could be made—and people might have different views—that, on a State-by-State basis, or jurisdictional below the Commonwealth, different States were doing different things and it was patchwork. It really wasn't until at the national level, to use the vernacular, they started to get their act together on this it moved what seemed to be relatively quickly to get to the banning situation, although the banning matter had been raised and prosecuted over a period of time. I might be wrong, but it seemed to require that sort of movement nationally. Obviously, that was the consensus that was achieved by the States and Territories of the Commonwealth to deal with it, but that took some time. Surely there is a fear, potentially, that that same plan follows. The States are doing different things and eventually the Commonwealth will get the States into a room and they'll come to a consensus position and then some of these things may fall into place.

None of us has a crystal ball, but do you have any insights into what's happening at the national level that you might be able to share with us and can you explain to us where that might be, or are we still in a situation where we've got the States—you referred to the ACT and other jurisdictions—doing their own thing and we're looking at something we might get to years down the track, which, of course, would be something we'd be very concerned about?

SHERRI HAYWARD: The problem we've got in New South Wales is that we've got the most tunnelling infrastructure compared to any other State, so it's not really an issue that every other State is looking at as an emerging crisis for them.

The CHAIR: As a distinction, yes.

SHERRI HAYWARD: Yes, and I think that's why. It is being raised, I'm aware, because Comcare has jurisdiction over a particular PCBU who does tunnelling work. I'm aware that they are doing investigations into

the tunnels—I think I put some of that data in my submission—but whether or not it's on a national agenda for tunnelling in general, because it's seen to be a New South Wales issue—

The CHAIR: Particularly, yes.

SHERRI HAYWARD: —with the amount of tunnelling we're doing. There's nothing to prevent New South Wales going alone. In fact, we've seen today the Queensland Government has just brought in a new bill to change work health and safety laws, so there's no reason we can't be looking at this issue separately. But it's not going to be dealt with nationally because it's not seen as a national problem.

The CHAIR: It's principally New South Wales, with some Queensland and Victoria probably added in there.

NATASHA FLORES: On that too, tunnelling is something that comes and goes. An ex-colleague who was a tunnelling specialist many, many years ago, who has since retired from the Australian Workers' Union, said that there had been quite a lapse in time since we'd had such a large number of tunnels built.

The CHAIR: Acceleration, yes.

NATASHA FLORES: We had a generation of workers who were quite experienced in tunnelling and controlling the hazards in tunnelling who were no longer in the industry. The workers who are in the industry now are a newer generation of workers, so that knowledge from the previous generation who tunnelled throughout Sydney has disappeared and not been passed on. It comes in fits and starts. The Government will say, "Let's build lots of tunnels", which is what's happening now, hence this issue and, I guess, why we're here today.

SHERRI HAYWARD: Also, New South Wales—its geology is unique. We've got the sandstone. It creates—

The CHAIR: It's ideal.

SHERRI HAYWARD: Yes. I think we're on our own in dealing with this problem.

The CHAIR: I have one quick final question. PCBUs have been referred to throughout the evidence. For the unions, when they have members on a site beneath the ground in tunnels and they're endeavouring to deal with matters, do they find themselves dealing with one or multiple PCBUs in endeavouring to deal with the issue itself? In other words, is it the typical situation that there is one key contractor that has the work—a large construction company—and they're the ones that they deal with? Or, for the purposes of the dust issue, could there be multiple subcontractors working with the primary contractor and, therefore, that's an added complication to get all those ducks in a row?

SHERRI HAYWARD: It's the latter. Construction is built that way. There are just too many people.

The CHAIR: Multiple people, yes.

SHERRI HAYWARD: One example was when the Haberfield hall was being dug to start the construction there. We had some crane operators who had raised with their employer the dust exposure and whether or not it was safe for them. While it is an employer's job as well as the builder's job to ensure the health and safety, we had a situation where for four months the employer was saying, "No, it's the builder's job", and the builder was saying, "No, you're the employer." Then we had a dispute about who was going to pay for the screening for the workers, because it's employer-subsidised screening in New South Wales. This went on for three to four months while these workers were just trying to get the PPE, just to get screened so that they had that peace of mind.

NATASHA FLORES: In that case, I think the community also got involved.

SHERRI HAYWARD: The community did get involved, yes.

The CHAIR: Yes, I remember that.

SHERRI HAYWARD: It is a bit of a hierarchy problem, but everybody has a responsibility.

The CHAIR: Yes. I wasn't testing that point. I'm trying to understand the complexity.

NATASHA FLORES: It's very complex.

The CHAIR: Indeed, as I expected that it would be.

NATASHA FLORES: You would have a lot of trades. You've got electricians; you've got plumbers. You've got quite a network of different trades that need to be there at different stages. Obviously you've got the people tunnelling through, but you've got electricity, plumbing, engineers.

The CHAIR: Myriad.

NATASHA FLORES: Lots.

Ms ABIGAIL BOYD: Just looking at the other focus area of the inquiry, I think you've both mentioned—and there has been a lot of submissions that have been talking about our new understanding that these dust diseases are not just lung based but a myriad of other types of diseases as well that currently aren't covered. Can you talk to us a little bit more about that? From the evidence we're hearing in relation to the tunnelling, is there going to be this new generation of workers who are going to present with these illnesses?

SHERRI HAYWARD: Absolutely there will be.

Ms ABIGAIL BOYD: Are we not prepared for that?

SHERRI HAYWARD: We're not prepared. The system was built for asbestos. It was built for older workers. It was built for those who are ageing out of the workforce. Icare can get you the correct statistic, but the average age of the person in the scheme is about 80 years old. But we are seeing these people in their thirties and their forties starting to come through. It's not just from the manufactured stone. It's also from the tunnelling. What we've learned is that silicosis can evolve. Yes, you might have silicosis but, in a lot of examples, you're also going to have something else. As I said in my opening, two workers in the last week have got scleroderma as well, which is a rheumatic disease.

NATASHA FLORES: It's a fatal disease too, I believe.

SHERRI HAYWARD: Then there is a discussion about what is covered by the Act and what isn't covered by the Act, what incapacity is related to silicosis and what incapacity is related to the scleroderma. It becomes quite a stressful process for people. Having had the privilege to sit on a medical panel looking at some cases, I know that one of the things they were looking at was whether you can find a connection between rheumatoid arthritis and silica exposure. As medical treatment moves forward, as we learn more about these illnesses, we start to see that they do evolve in these other ways into autoimmune diseases and inflammatory diseases. I know that ADDRI is also doing some research in this space to work out is it more likely that you're going to end up with these illnesses as well.

The scheme's not built for that. At the moment, you can do some tricky word play with it to see if you can get it in there. You've got to have the silicosis first in order to bring these other things in, but even then it's still a fight. I think we're at the stage where we're learning more about what silica exposure can do to the body, and we may not be ready for whatever comes next. That's why I think, looking at the recommendations from some of the lawyers that have made submissions to this inquiry, expanding the definition is the only way we can futureproof the scheme.

Ms ABIGAIL BOYD: Then, from the perspective of the modelling that SIRA is presumably doing in relation to—

SHERRI HAYWARD: SIRA doesn't have control of the dust scheme. They have a very limited role. They only collect the levy. The dust scheme is administered by icare.

Ms ABIGAIL BOYD: Does icare then model—

SHERRI HAYWARD: Yes.

Ms ABIGAIL BOYD: So it's them who would need to increase the levy if they thought that—

SHERRI HAYWARD: They would need to apply to have the levy increased, yes. I will say the dust scheme is doing significantly better, financially, than the Nominal Insurer is. So we're not talking about, if we're expanding it, we're going to suddenly run out of money. That doesn't mean the levy may not need to go up, but it is already a small proportion of the money that is being collected. It's not going to be a big hit if it does increase a little bit.

The Hon. CHRIS RATH: What's the relationship between the dust scheme and workers compensation? I assume there would be workers that would traverse between the two, depending on—

SHERRI HAYWARD: Until you get an award, as I understand it. Look, it's not my specialty area. The dust Act piggybacks off the workers comp Act in some respects, the pre-2012 Act. But if you've got a diagnosed condition, I think—and don't quote me on this; you might need to check with others more expert—you jump over to the dust scheme.

NATASHA FLORES: That's my understanding.

SHERRI HAYWARD: The benefits are different as well, because there are no time frames in the dust scheme.

The Hon. CHRIS RATH: More generous in the dust disease scheme than the—

SHERRI HAYWARD: Well, not financially.

NATASHA FLORES: No.

SHERRI HAYWARD: The weekly benefit amounts are based on the pre-2012 provisions, so you have the 26-week step-down to the statutory rate, which is, I think, about \$590 a week; whereas over in workers comp, the maximum you can receive is \$2,523 a week. So from a weekly benefits perspective, yes, you will have access to benefits for longer, but what you're receiving each week is about two grand less than what you'd get if you were under the workers comp scheme. For those workers in particular who work 50 hours a week and are almost always hitting the cap in workers comp, this is why they don't make claims: If you're going from \$2,500 to \$593, you're thinking about your family and you're not going to take that hit.

NATASHA FLORES: It's a loss of employment, essentially, and your income. My understanding, too, is there should be less disputation in that model, because once you have a dust disease, that shouldn't be disputed. But, unfortunately, there are still disputes and they happen, still, literally on people's deathbeds as to whether they are entitled to compensation. That's one of the jobs of—one of the things I do know the organisation ADFA does is it advocates for patients who are dying.

The Hon. ROD ROBERTS: I might just back-pedal a little bit. To your knowledge, has SafeWork ever launched any prosecutions in relation to exposure in tunnelling?

SHERRI HAYWARD: Not in tunnelling. They have only just recently done manufactured stone, given their eight-year lag in dealing with it. Not in tunnelling that I'm aware of. There is that jurisdictional issue between them and Comcare and who would be responsible, given that there is one tunnelling employer that does a lot of tunnelling who has a Comcare licence.

The Hon. SUSAN CARTER: Could I just take you to the submissions? I think both of your submissions raised the issue of jurisdictional conflict between Comcare—so Commonwealth and State—and when you've got different workers. Would it be desirable if, for example, Comcare took responsibility for all workers on the one site, or that's not possible?

SHERRI HAYWARD: That would not be our preference.

The Hon. SUSAN CARTER: Because?

NATASHA FLORES: It's not a very good scheme.

SHERRI HAYWARD: First of all, it's not a good scheme but, secondly, they're not resourced to do it. SafeWork already has limited resources. As I understand it, Comcare has a small team of tunnelling experts, but to get to every State to do this is just not something—I think maybe seven at most. It's just not possible for them to do it.

NATASHA FLORES: I don't think it was a scheme that was designed for that sort of environment either. It was a public sector coverage and probably largely office work based, so it's very limited in its resources. And you do, as was discussed, have multiple PCBUs who may not be covered by Comcare.

SHERRI HAYWARD: Our preference would definitely be for SafeWork because of the amount of subcontractors on the site. It would just make sense: This subcontractor's used to dealing with SafeWork, and 95 per cent of the PCBUs on this project would be under the State-based legislation. It's just that one half of the joint venture has a Comcare licence.

The Hon. SUSAN CARTER: But is there any way—and I'm just thinking aloud here because it's not an area with which I'm particularly familiar—of that joint venture partner coming under SafeWork NSW so there's one umbrella organisation looking after safety?

SHERRI HAYWARD: That would certainly be what we would like, but that I don't believe is the key. I think the benefit of having a Comcare licence is you're out of the New South Wales system. It is the same thing. Our employers are used to dealing with SafeWork, and this employer is used to dealing with Comcare. If that was the case, it would be absolutely great. I can't believe I'm saying this, of all people, but SafeWork is in a much better position to be—

The CHAIR: Don't worry, it's only in *Hansard*. It won't be repeated.

SHERRI HAYWARD: They're in a much better position to be dealing with this issue than Comcare. It would be our preference that SafeWork takes the lead and reports to Comcare on what they've been doing. I don't

know what the memorandum of understanding is between the two agencies at the moment, but that's how we would like it—to keep that relationship: New South Wales employers dealing with the New South Wales regulator.

The Hon. SUSAN CARTER: Is it just an administrative issue with some people reporting to one regulator and others reporting to another, or does it impact on the safety of workers?

NATASHA FLORES: It could potentially, but I don't believe that's the main barrier. SafeWork could go in there tomorrow and enforce safety, if they chose to. There are enough subcontractors in those projects that are covered by SafeWork for SafeWork to walk in the door and measure the levels of dust and say, "This isn't appropriate. You need to fix this." It's not an ideal situation having the two regulators, but I think it isn't our main issue of concern, if I'm correct.

SHERRI HAYWARD: A little bit more transparency about how the two of them are operating in conjunction would be good because we already have delays with responses to notifiable incidents. If the person is notifying the wrong entity, how quickly does the inspector come out? Given they've only got a small team, if the Comcare inspector is not available, does that then fall to SafeWork or are we waiting three days for Comcare to come out?

I think that's why I put it in my submission. It just would be nice to have a little bit more transparency around how they work together in the tunnelling environment, because not all tunnels have that particular PCBU; we've got others. Obviously, the Snowy Hydro tunnel doesn't—it's a SafeWork project—and there are other ones in which that PCBU is not involved. Given it is a New South Wales problem, the New South Wales regulator should be dealing with it.

The Hon. SUSAN CARTER: To summarise, it's a Federal issue, we're used to dealing with these, but it doesn't directly impact on safety of workers, so it's a second-order issue.

SHERRI HAYWARD: Yes, I'd say that's probably correct.

Ms ABIGAIL BOYD: Another aspect that's come out in a lot of the submissions is that workers who have been diagnosed are not leaving the environments they are continuing to be exposed in. They are not doing what is best for their health because they cannot then return to work in another well-paid position. Can you talk to us about that? It is a bit counterintuitive. One would think there would be encouragement under the scheme to—

NATASHA FLORES: People are reluctant to come forward and get tested to begin with because they don't want to know, because if they do know it's a terrifying thing to have a disease like that, for a start, but it also will end their career. It's a twofold situation where "I don't really want to face the fact that I might have a disease that's going to kill me and I won't have an income as well." It's often not until that worker has to get tested because they can't breathe and the symptoms have reached such a point that they can't ignore it any more. That's my understanding. And I think we had a similar situation, and probably still do, in the manufactured stone industry, where we had workers who just didn't want to know because it would end their career.

We have to have a system that can move people, as Ms Hayward said, into meaningful, well-paid work and can assist them in training, education, whatever it is that they need to do that. Obviously, we want to prevent them in the first place from getting these illnesses and diseases, but we also have to make sure that we move them into work that is safe for them but is meaningful and also well paid. If they've been in a well-paid industry, they shouldn't have to go and work in something that's not well paid. They've obviously developed skills in that industry, that are required for that industry, that give them that pay, so why should they be punished on another level?

SHERRI HAYWARD: I struggle to convince my workers to make a workers comp claim, let alone a dust diseases claim, because of the financial hit they're taking even in the workers comp space. To know that you're going to be paid maybe a quarter of your wage, that sits over people. I get a lot of phone calls where people are trying to decide whether or not they're going to make a claim, and no matter how many times you tell them, "It's about your family. It's about your health into the future. It's about being there for your kids and your grandkids. The system will take care of you in terms of your medical support", at the end of the day it comes down to money—"I can't pay my mortgage if I go and claim for a dust disease." And then it is that issue of "What do I do next?"

Unfortunately, when we do vocational assessments in this State, we have a work capacity ideal about it. Instead of dealing with a dust worker, we're dealing with them as a generic workers comp claim, and so any job is a job. Rather than being "What if I get training in this? I might be able to pick up a job that's similarly skilled", any job is a good job. So you see people with these high-level skills, who could probably go off and do engineering or something in different industries and maintain their income level, being sent to be courier drivers.

NATASHA FLORES: Courier driving is a very popular thing, it seems, in the workers comp scheme. It's ridiculous, because courier driving is a very physical job where you're jumping on and off a truck, but that seems to be the go-to job. I've heard it time and again: You can go and drive a truck and deliver packages. It's not a job that someone who's had a dust disease should or could do, and it's not a highly skilled job. As Sherri said, a lot of these people could be trained into engineering and other such fields, but that does cost more money.

SHERRI HAYWARD: The problem we've got is that the workers compensation legislation allows SIRA to set up programs, and I think I've got a table in my submissions about all of the different programs SIRA has available. While Dust Diseases Care has been doing a good job, on an ad hoc basis, getting people rehabilitation and looking at retraining options, we need something more stable. We need something that's more certain so that every worker knows what it is that they can be requesting. We do need to be looking at, okay, this person is highly skilled. What else can they do? What other training can they have? They've got a long work career ahead of them if we just get them in the right space. But, unfortunately—and this isn't everybody—a lot of vocational assessments come back with just the bare minimum.

I do wish, in both spaces, even though this isn't about workers comp, that we look a little bit more at—okay, it's not that person's fault they're injured and it's not that person's fault that they've got a dust disease. We're robbing them of what they feel is a meaningful career and sending them off to do something they don't want to do and they've never wanted to do. I've got all these skills. Why can't I get a skilled job? But, at the same time, while they are getting that retraining, they need to be properly supported financially. I don't know whether or not the scheme—and this is not me thinking any way—can support a new PIAWE system or a new weekly benefits system, but I think we should absolutely be investigating whether that's an option and how we can go about it. At the moment, it's fine if you're at 60 and you're being paid—well, it's not fine, but there is a big difference between being 65, your kids have grown up, they've left home and you're being paid \$590 a week, and being 33, your kids are just starting school and you're being paid \$590 a week.

The CHAIR: Could I just jump back to the Comcare matter? Ms Flores, could I take you to the Unions NSW submission on page 4? You've probably got it in front of you. If you haven't, it doesn't matter.

NATASHA FLORES: I do somewhere

The CHAIR: At about point 7 on page 4 is a paragraph that commences, "Many of the current projects"; do you have that paragraph?

NATASHA FLORES: Yes. The John Holland projects.

The CHAIR: It states:

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.

Do you want to elucidate on this? I cannot speak for other members, but it is helpful to try and understand it. If we take the State of New South Wales and its laws and regulations, and what the State Government could or could not do in terms of those matters and the relevant agencies, you've got Comcare and you've got John Holland with its licence. I am trying to work out—and forgive me, I probably should know this—does this licence cover the field or cover a large field which sort of overlaps the whole area of occupational health and safety, or is it just butting up against New South Wales? I know it's a very awkward way of describing it.

NATASHA FLORES: I know what you mean. I think that you're right in that it's sort of butting up against. You've got the two sitting alongside each other. John Holland would employ people directly, and those people would be covered under that scheme. Then you've got contractor, contractor, contractor and subcontractor. They may be covered under SafeWork, so there is a sort of sitting alongside each other.

The CHAIR: It's almost parallel.

NATASHA FLORES: It's not ideal.

The CHAIR: No. That's what I'm trying to understand from the point of view of trying to come to terms with how this might be dealt with.

NATASHA FLORES: Look, we'll be quite frank—and, again, I'm surprised that we're saying it—but life would be easier if we did have everyone under SafeWork because it is the New South Wales scheme and, you know, we're not generally great fans of Comcare.

SHERRI HAYWARD: If I can just add to that, often these tunnelling projects are joint ventures, so John Holland will have its Comcare licence and whoever its joint venture partner is would have a SafeWork licence. The question becomes who is the primary entity in the joint venture? That's not always super clear. That's why

having more clarity about how the two agencies are working together can only assist workers in, "Who do I call if this is a problem?"

The Hon. ANTHONY D'ADAM: How does it work? The Comcare licence surely only applies to John Holland's employees? Its direct employees would be tiny in terms of the overall employment in a project.

SHERRI HAYWARD: Yes, but because they have the Comcare licence, the safety and rehabilitation Act is the Act that governs the Comcare arrangement.

The CHAIR: Sorry, could you please repeat that?

SHERRI HAYWARD: It's the safety and rehabilitation Act.

The CHAIR: That's Commonwealth legislation; that's fine.

SHERRI HAYWARD: What happens is because John Holland has the licence and they have the Comcare scheme, they automatically have—their safety regulator becomes Comcare. So it's all connected together because, like with the self-insurance licence in New South Wales, safety is an important factor in getting your Comcare licence and they connect together. That's why it would apply to them. So their workers comp is just their direct employees; their safety actions are Comcare. How that works with a joint venture partner, I'm still trying to figure out, and it's been all these years.

The Hon. ANTHONY D'ADAM: Presumably, there would be some other corporate entity that would undertake the joint venture and it wouldn't have a Comcare licence.

SHERRI HAYWARD: Except that that's not how it's been working in practice, so I think that needs to be drilled down a little bit. It's not very clear to me how they operate that way.

NATASHA FLORES: The Work Health and Safety Act of New South Wales does require all PCBUs to work together, and it doesn't say, "Well, that doesn't include a Comcare PCBU", so you could say the Work Health and Safety Act does require joint work. But, again, that's not very clear. It doesn't really tell us what to do in this situation.

The CHAIR: In some senses it's a wicked problem in that in the construction industry you've got the structure which—I won't say always, but perhaps nearly always—has this economic imperative that sort of makes the structure work and probably would be most beneficial for the actual body that's been given the job of completing the project, if we sort of put it that way. But this is a very unusual industry in that it's not as if it's in any sense a free market. There's certainly one, but maybe a very small handful of entities that are capable of even tendering for such projects with the capacity to deliver them and, even as you describe, it manifests in joint projects.

But it just seems that it almost is inviting that there be a big nudge, dare I say, by the government of the day—and let's just forget politics and say any government of the day, whoever's in power—to say to these large companies, and this might sound a little bit naive, "Listen, there's been a whole lot of stuff going on in here over a long period of time and it's just not up to scratch. Either you get your act together and perhaps have a period of time to work through what I'm not denying are a myriad of issues, or that will force us to come in and regulate formally." Maybe they jump to the regulation straight up. I'm not forecasting what the government may or may not do, but this is just ripe for ducking and weaving, and much of the evidence this morning has been describing your frustration with the ducking and weaving.

SHERRI HAYWARD: Some of my colleagues have suggested that that might be why some companies do take out Comcare insurance.

The CHAIR: One could be a cynic. In terms of the whole economics of it and in terms of the detailed, fine granular analysis of the costings, that may well figure into the consideration. I don't know that; I'm speculating. But at the end of the day, and either way, it's still not addressing what are not insignificant issues which are staring us in the face.

SHERRI HAYWARD: There's definitely a role for government, particularly where there's government funding involved.

The CHAIR: That's another point, isn't it? These are multibillion-dollar contracts.

SHERRI HAYWARD: Yes, and that's a whole discussion about procurement. But, absolutely, these things should be worked into the contracts. Yes, the Work Health and Safety Act says you should do air monitoring if you think there is a serious risk to workers, and it's up to you to determine what that serious risk is. What you could put into the contracts is, "Air monitoring is mandatory on all New South Wales government projects."

Ms ABIGAIL BOYD: And needs to be reported back.

SHERRI HAYWARD: Correct.

The CHAIR: Instead of having these buts or maybes in there, which are, in effect—

NATASHA FLORES: A way out.

The CHAIR: —a way in which one path can be the least form of resistance, versus one that might be considered resistance and so therefore we're not going to take it. I suppose I'm thinking out loud, but there seem to be some obvious things that could be done.

Ms ABIGAIL BOYD: I was going to ask about the procuring agencies. Do we know if there are any conditions put in these agreements with these contractors that oblige them to do better than what they are doing?

SHERRI HAYWARD: I do know that there has been consultation on the procurement policies under this Government. We have not been involved for some time, for reasons.

The Hon. ANTHONY D'ADAM: Is there any impediment to the State Government—all these projects are State government procurement projects—stipulating that the entity that undertakes the project can't be a Comcare licence holder?

SHERRI HAYWARD: I think you're going to have a competition problem if you do that. The ACCC might knock on your door.

The CHAIR: That's perhaps the case but, nevertheless, it's worth giving a bit of thought to. Given that there is pretty good evidence over a period of time about the threats—I use the word "threats" deliberately—and the impact of crystalline silica dust impacting on workers, being manufactured stone or the manifestation now in the tunnelling work, whoever is writing the contract almost has a vested interest to ensure—particularly given the impact of what might be over a long period of time, and not just years but decades—it is doing a lot more through that contractual process to set in or to wedge in very clear standards.

SHERRI HAYWARD: If I think back to when I did torts, I think the New South Wales Government should absolutely think about what it's doing about it, because if you're aware of the issue and you're not doing enough to fix the issue, you could have a negligence problem.

The Hon. SUSAN CARTER: Just on that ACCC point, have either of you got any experience of authorisations being sought for conditions of that type on a public benefit outweighing any anti-competitive effect approach?

SHERRI HAYWARD: No.

NATASHA FLORES: No.

The Hon. SUSAN CARTER: Because I think that's an avenue that could be explored.

SHERRI HAYWARD: Yes.

NATASHA FLORES: Yes.

The CHAIR: If there are no more questions, I thank you most sincerely. The submissions were good but, I've got to tell you, the oral evidence was very rich and detailed. You are both very knowledgeable and I appreciate the work you've done over a long period of time as the specific union and as the peak union body of the State. I went back and looked at previous reports, and names keep coming up of people giving evidence. It must be a source of great frustration, or probably more than frustration—deep frustration—that these issues seem to take so long to get resolution in the sense of law and regulation, which is going to mitigate, as far as practicable, the effect of—

SHERRI HAYWARD: I think frustration would be putting it mildly.

The CHAIR: You've been very measured and considered but also very thorough in your evidence today.

NATASHA FLORES: On that, the Committee does do good work. For that, we thank you.

The CHAIR: I don't think any questions were taken on notice, but there may well be supplementary questions arising from that evidence once members have the chance to read Hansard. If you would be open to taking those into account, the secretariat will liaise with you.

SHERRI HAYWARD: We're very happy to help where we can.

(The witnesses withdrew.)

Mrs KATE COLE, OAM, Doctor of Philosophy (PhD) Candidate, The University of Sydney, sworn and examined

Mr CHRIS DONOVAN, Assistant National Secretary, Australian Workers' Union, affirmed and examined

The CHAIR: I'll commence by thanking you both for coming along and acknowledging your respective submissions. Mrs Cole, you have two submissions with the different hats you're wearing today. Mr Donovan, the AWU's submission is No. 14 and forms formal evidence to this inquiry. Mrs Cole, yours is No. 6, and will also form formal evidence for the inquiry, in addition to what you're going to provide now, orally, and what questions on notice and supplementary questions that may arise. I will invite you both to make an opening statement. In terms of recognition of the parties at the table, the union is here in its capacity, and Mr Donovan is the assistant national secretary, and we have Mrs Cole. Are you together, working as one, working jointly? Should it be the Australian Workers' Union and Mrs Cole as part of some formal project? How best should we see this?

CHRIS DONOVAN: I think separately.

KATE COLE: Separately.

The CHAIR: Separately, but of mutual interest on this particular matter, and working jointly on some aspects of it. We will start with you, Mr Donovan, if you'd like to make an opening statement, and then we'll go to Mrs Cole.

CHRIS DONOVAN: I welcome the opportunity to give evidence to the Standing Committee on Law and Justice as part of the 2024 review of the dust diseases scheme. The AWU represents members across a diverse range of industries. Among these, tunnelling, quarrying, cement work, mining and civil construction workers face the greatest risk from dust exposure and dust-related diseases. As the union that represents tunnel workers across the country, the AWU is particularly concerned about the risk faced by these workers. Today I would like to use my opening statement to focus specifically on the experiences of and risks to tunnel workers. As this Committee knows, the past decade has seen a surge in tunnelling projects across the country, particularly in Sydney. Thousands of workers are responsible for constructing the tunnels that a countless number of commuters now use and will use. It is undeniable that these workers have been exposed to respirable crystalline silica, a carcinogen. A carcinogen is defined as a substance, organism or agent capable of causing cancer.

Recent reporting in *The Sydney Morning Herald* highlighted that the AWU uncovered thousands of silica dust monitoring records held by Transport for NSW. This data pertains to Sydney's tunnelling projects. I want to clarify a few key points for the benefit of this Committee. The AWU utilised the Government Information (Public Access) Act to request silica dust monitoring data held by Transport for NSW. As a result, Transport for NSW provided data from projects using tunnel-boring machines. Tunnel-boring machines generate less dust compared to road headers. The data revealed that one in three air quality tests exceeded the legal safety limit, with some tests exceeding the limit by up to 208 times. While this data is deeply concerning, Transport for NSW should be commended for its transparency in releasing the information.

The AWU also submitted a GIPAA request to SafeWork NSW to obtain silica dust monitoring data from projects utilising road headers—projects such as NorthConnex, WestConnex, M6 stage one and the Western Harbour Tunnel, for example. Road headers are known to produce significantly more dust than tunnel-boring machines. Unfortunately, SafeWork NSW refused to release the data, in part due to concerns raised by contractors CPB and John Holland, which argued that releasing the data would damage their public reputations. The AWU's submission called for the use of Standing Order 52 to compel the release of this data. As this Committee is aware, the SO52 motion passed in the upper House last week thanks to Mark Banasiak, MLC.

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. This is a matter of profound importance to the dust diseases scheme, which exists to support workers impacted by these preventable diseases. The AWU urges the Committee to consider the critical need for transparency and accountability in safeguarding workers' health. The information currently withheld by SafeWork NSW must be made available to fully understand and address the risks faced by our tunnelling workforce. I thank the Committee.

The CHAIR: Thank you. I've got an immediate question, but perhaps we'll let Mrs Cole give her opening statement.

KATE COLE: I would like to first acknowledge the traditional owners of the land that we're meeting on today and pay my respects to Elders past, present and emerging. Thank you for the opportunity to give evidence at this very important review. I am a Winston Churchill fellow, a consultant occupational hygienist and I have worked in the construction and tunnelling industry for decades. This morning, though, I am here solely in my capacity as a PhD researcher at the University of Sydney, where I'm undertaking my PhD under the supervision of Professor Tim Driscoll on the topic of respirable crystalline silica exposures to tunnel construction workers.

The majority of all tunnelling in Australia happens here in New South Wales. Sydney has the highest amount of crystalline silica in the rock that we tunnel into in comparison to anywhere else in the country. While every tunnel worker is at risk, tunnel workers in New South Wales are at the highest risk. The most prevalent work-related disease reported in tunnel workers globally is silicosis, and the main factor that determines the risk of developing silicosis is cumulative exposure to respirable crystalline silica dust.

Over the past year, I have been applying to access silica dust in air data from tunnel projects for the purposes of research through freedom of information requests and through direct requests to stakeholders who also hold this information, and I have received silica dust and air data from New South Wales tunnelling projects. That information demonstrates that tunnel workers were exposed to silica dust at very high concentrations. Exposures were higher than have been reported from engineered stone workers. Those tunnel workers were not protected by the use of masks, and therefore they breathed in a very large amount of respirable crystalline silica dust.

Most concerning, the size of the tunnelling industry is much larger than the size of the engineered stone sector. Based on the information that I have received, the New South Wales Government should expect a large number of cases of both silicosis and lung cancer as a result of building our infrastructure. The initial recommendations that I have for the Committee are to significantly increase prevention efforts by SafeWork NSW and that we need active case finding—a targeted case-finding program for anyone that has worked in tunnel construction. With those opening remarks, I thank you again for the opportunity to be here and to take any questions.

The CHAIR: We will move the questions around. There are representatives on the Committee from the Government, crossbench and Opposition. We will do that shortly. Mr Donovan, going back to your opening statement, if I understand correctly, you are saying that you believe that SafeWork currently has some information in its possession which you're looking to access to enhance the work you're doing on this particular issue. But that's not the complete picture, is it not? We don't know what we don't know. In terms of the PCBUs and the subcontractors who operate doing this work, would some of this information be domiciled inside those respective organisations and SafeWork don't have it and so you need that as well—to use the vernacular—to complete the picture of what's going on in the tunnelling industry?

CHRIS DONOVAN: That's a really good question. I understand that SafeWork NSW doesn't have all of the information from every single subcontractor or company that has operated in the tunnelling space. What we do know is that they hold a significant amount of information from some of the key contractors from major projects such as WestConnex, NorthConnex, M6 stage one and others. SafeWork NSW doesn't hold all the information.

The CHAIR: With respect to the collection, storage and analysis, such as it might be, with respect to information collected about monitoring, are you in a position to give us some explanation or insight into what is required or is that too much of a long explanation and we perhaps should put that one on notice? In other words, what are the obligations in general terms for the collection of this information?

CHRIS DONOVAN: The collection from SafeWork NSW?

The CHAIR: With respect to a tunnelling project—pick any one, if you like—what is the obligation that legally operated for the collection of information around silica dust on that project over its extended project completion date, from start to finish?

CHRIS DONOVAN: That's right. I can point you to the New South Wales WHS regulations 49 and 50, which are a requirement for companies to undertake dust monitoring.

The CHAIR: A requirement?

CHRIS DONOVAN: Yes. They must undertake dust monitoring if they believe it's a high-risk environment. They must do that, but the problem with that certain provision is that it stops there. It doesn't detail how often the monitoring requirements should be. It doesn't detail any further information around how the company should go about conducting it. The problem we find, and what I found throughout this entire process, is the companies are ticking the box of, "We've done section 49 and 50. We've monitored." But really, what they're doing is they're only conducting monitoring once a month. When they do conduct that monitoring, it's a type of

monitoring called gravimetric testing. There is a bit of apparatus attached to a worker, and they go around for the day, and it's monitored because it's in the breathing zone. They do that once a month on any one particular day or couple of days, and they get back information. But the problem with that, again, is it takes about two weeks to get that data back. A worker might be exposed to a toxic dust. They won't actually know until two weeks, which doesn't leave any sort of time for the company to react quickly to changes.

The CHAIR: It's looking in the rear-vision mirror.

CHRIS DONOVAN: Yes.

The Hon. CHRIS RATH: What reason was given to you by SafeWork NSW for why they don't want to publish this information? Obviously you've done your freedom of information, your GIPAA. You have requested the SO 52, which we've now done through our Chamber. But what was the reason or the hesitancy from SafeWork to provide the information that you're looking for?

CHRIS DONOVAN: They have provided a few different reasons, but one of the reasons was that the companies, CPB and John Holland, had stated that releasing the data will adversely impact upon their reputation in the general public forum, including because it is reasonable to expect that the reports will lead to adverse media coverage in respect to the management of respirable crystalline silica dust. That's what CPB and John Holland said. There were other companies as well that we tried to seek information from, such as Acciona and Samsung. They did not object to the release of information.

Ms ABIGAIL BOYD: Could I just clarify that point? My understanding is that the data that SafeWork had obtained was under notice. Because of that, they are restricted, under the legislation that they got the data under, from providing it to anybody else unless there is approval from the companies involved. I absolutely take your point that then we hear back from these companies, "No, thanks, because it might adversely reflect on us, which is terrible." But do you accept the position that SafeWork had no option because they were obliged under the law to only release information if they had permission from the company?

CHRIS DONOVAN: Really good question. I'm not a lawyer, but I could just point you to Transport for NSW releasing practically the same kind of information.

The Hon. ANTHONY D'ADAM: They didn't require it.

CHRIS DONOVAN: I don't know what the standard is in relation to what these departments can and cannot release, but Transport for NSW released the information that they had.

Ms ABIGAIL BOYD: The air monitoring data that SafeWork holds, they hold because they had issued a notice to get that data. Because of that, under the Act, they are then restricted from releasing it, unless they get permission. That's my understanding.

The CHAIR: Mrs Cole might have some insight.

KATE COLE: Maybe I can provide some insight because I have been applying for freedom of information—requesting information from different work health and safety regulators across the country. I did apply for access to Comcare as well because, as the Committee has heard, Comcare regulates at least one tunnelling contractor in the State of New South Wales. I applied to access silica dust and air data through Comcare, who also obtained the information under notice, and Comcare granted me that information.

Ms ABIGAIL BOYD: And that's really interesting because clearly there is a different legislation applying to Comcare than there is to New South Wales. Should we be changing our provisions to allow SafeWork to release this sort of information?

KATE COLE: Potentially, but the heart of it comes down to the decision-maker within that government department—their decision as to whether it's in the public interest to release that information. Obviously, the decision-maker will consider a range of factors and apply weight to those factors, and those factors and the weighting applied are not consistent across the jurisdictions in Australia. As Mr Donovan has said, one of those factors was the reputational impact of the contractor. That was considered and, in SafeWork NSW's case, I think it was given moderate weight. It was actually given a weighting by SafeWork NSW in their public interest test, but that weighting was not applied within Comcare.

Ms ABIGAIL BOYD: I read the GIPAA response and I had a similar view. I was like, "What's going on here?" But then when I asked further questions about it in the context of the SO 52, I was told it's a bit misleading, the way it's written, because they're just not allowed under the law. If that's not the case then we can ask them this afternoon, but I'm trying to get to the point where—it seems ridiculous to me that we don't have a regulator that can just get this information and then make it public. If that's because of the way that our laws are drafted then perhaps we need to change them.

CHRIS DONOVAN: Agreed.

The Hon. SUSAN CARTER: Thank you both for being here. Could I ask a hypothetical question, not asking you to draw on your own particular experience of anywhere you've been. Occupational hygienists have access to the monitoring data that companies acquire. What, then, would an occupational hygienist typically do with that data?

KATE COLE: I can answer that, being an occupational hygienist. Occupational hygienists that work for tunnelling contractors—or, indeed, most businesses—are bound by confidentiality agreements. We must not talk about our engagement, the levels of silica dust in the air that we monitor or, indeed, anything with the results, because we work for the PCBU. The occupational hygienist attends site on a day that's directed by the contractor, to work fronts that are directed by the contractor, to collect data for workers that are provided to us by the contractor. We then put pumps on workers and collect the samples. It does come back about two weeks later, and then a report is provided to the contractor with the results of the air monitoring. Occupational hygienists will have the air monitoring reports, but we are prohibited from doing anything with those reports other than providing it back to the tunnelling contractor.

The Hon. SUSAN CARTER: But those air monitoring reports would have recommendations as to safe and unsafe levels of exposure?

KATE COLE: Absolutely. Those reports will go through the types of workers and the work activities that people were performing. It will explain the level of silica dust in relation to the workplace exposure standard and if that has been breached or not. It will include a series, most importantly, of safety control measures that need to be implemented or are recommended to be implemented, short term and long term.

The Hon. SUSAN CARTER: So the PCBU would receive a report with an indication that there had been unsafe levels and an indication of what safety measures need to be taken.

KATE COLE: Correct.

The Hon. SUSAN CARTER: Is that report available to another occupational hygienist who might come in, let's say, in one month's time or two months' time to check whether the levels have been breached again?

KATE COLE: The scope of work of an occupational hygienist is determined by the contractor, and the information that's provided to the occupational hygienist is determined by the contractor. So occupational hygienists typically don't have the ability to go and access additional information. They can request it but it may not be provided. Typically, it's the same hygienist that will go to the site each time. But if recommendations are not acted upon, they have no authority or jurisdiction or influence in that regard.

The Hon. SUSAN CARTER: So is there any mechanism to check whether recommendations that have been made with respect to safety have been acted on by the contractor?

KATE COLE: Visually, sometimes, yes. If we're going back to the same workplace and the previous recommendation may have been around improvements to ventilation or improvements to dust suppression, then you could visually observe if those improvements had been made.

The Hon. SUSAN CARTER: What options does an occupational hygienist have if no action is taken in respect of the recommendations?

KATE COLE: Very little. They can raise it to their client, the tunnelling contractor. As I said, they're bound by confidentiality provisions which restrict an occupational hygienist from talking about the specific workplace conditions any further.

The Hon. SUSAN CARTER: What, if any, is the mechanism to make sure that the information gathered as part of the monitoring process is actually acted upon for worker safety?

KATE COLE: That is the responsibility of the tunnelling contractor.

The Hon. SUSAN CARTER: What if the tunnelling contractor does not act on that?

KATE COLE: That's why we need improved intervention by SafeWork NSW in this sector.

The Hon. SUSAN CARTER: Action after the event is not desirable in this circumstance, but would that give rise to negligence actions in respect of the employer if they knew of a risk and failed to act to address that risk?

KATE COLE: Potentially.

The Hon. ANTHONY D'ADAM: Is the hygienist liable as well? Do you have any advice about your own exposure in the event that you've been providing advice—advice that's knowingly ignored—and you continue to engage and provide that advice?

KATE COLE: In my experience, the occupational hygienists that I know and am familiar with who work in tunnelling work incredibly hard to do everything within their power and realm of influence to make a positive change on every single project that they work on. It can be challenging on some sites. On other sites, it can be less challenging because you have an engaged contractor that prioritises worker health and really does go above and beyond to try to put the right control measures in place. But if we're talking about tunnelling, I will say it's inconsistent. It's not as though every workplace will be abhorrent or every workplace will be great. There are huge inconsistencies. That brings about the challenge when this is a very large industry.

Occupational hygienists are engaged to do air monitoring to provide advice on control recommendations and maybe to run an occupational hygiene program. That doesn't just include looking at the risk of dust diseases but also welding fume diesel particulate, occupational noise, thermal heat stress and other hazards as well. In my experience, they're working very hard. But ultimately, the onus to protect workers and to create a safe work environment—so far as is reasonably practicable with all the right control measures—is the responsibility of the PCBU.

The Hon. ANTHONY D'ADAM: What about whistleblower protection?

KATE COLE: It's a good question. I haven't had any experience in that. I can't answer it.

The Hon. SUSAN CARTER: If somebody was to be a whistleblower, would they would blow the whistle to SafeWork? Where would they blow the whistle to?

The CHAIR: Hypothetically.

KATE COLE: Probably SafeWork. I don't know.

CHRIS DONOVAN: Probably SafeWork, I guess, yes—where it would be hidden away forever.

The CHAIR: What was that last bit?

CHRIS DONOVAN: It was just a smart-alecky comment. I said, "Where it would be hidden away forever and no-one could ever find it."

The Hon. ROD ROBERTS: Smart alec, or perhaps quite true.

The CHAIR: You might suggest the Australian Workers' Union as a place where the information could be—

CHRIS DONOVAN: We would love to receive information from hygienists who want to blow the whistle, yes.

The Hon. ROD ROBERTS: Mr Donovan, in your opening remarks you talked about obtaining air quality monitoring reports from Transport for NSW under the GIPAA process, and said that those reports showed a number of high exposure rates. To your knowledge, has SafeWork investigated those clear breaches that have been recorded?

CHRIS DONOVAN: No, not to my knowledge.

The Hon. ROD ROBERTS: I'll certainly ask them this afternoon, but I just wanted to know from you. I stand to be corrected, but somewhere in the evidence from either Ms Flores or Ms Hayward earlier this morning there was some mention of some photos that had been taken in the tunnelling process that were shown to a previous Minister. My interpretation was that perhaps you had those photos at some stage. Is that correct?

CHRIS DONOVAN: Yes, I believe those are the photos that were held by a former tunnelling organiser in the New South Wales branch.

The Hon. ROD ROBERTS: Is it possible, on notice, to actually get those photos—if they could be tabled and presented to us as an inquiry?

CHRIS DONOVAN: I can certainly do that.

The Hon. ROD ROBERTS: Because they sounded, from the evidence, that they were quite—

The CHAIR: Quite revealing?

The Hon. ROD ROBERTS: Yes. Horrific, if I can use that word, as an example of how much dust there was. As the common man that has no experience in tunnelling, I think it would be very helpful to us if we were to obtain those photos. Can I leave you to take that on notice?

CHRIS DONOVAN: Certainly. I am more than happy to do that. I can send you more than just photos. I can send you videos of some very shocking scenes that are taking place in the tunnels.

The Hon. ROD ROBERTS: We were unaware of that. Now that you've brought that to our attention, I think we can get those too. Can we, Chair?

The CHAIR: I think so. The secretariat will liaise with you after the hearing over what might be in your content and of possible pieces of additional evidence.

The Hon. ROD ROBERTS: I have one final question on this line at the moment. On page 5 of your submission, Mr Donovan, the last paragraph talks about workplace entry permits. We talk about there being no explicit right to take measurements or record information and stuff like that. I find, as somebody that's come from an investigative background, it's a complete anomaly that work health and safety officers can't take measurements to record dust, for example, or take photos. Would it be your opinion and your evidence that that needs to be changed in legislation?

CHRIS DONOVAN: Yes, it certainly is. I think I do touch on that in a further recommendation in my submission. The current situation is that if a union official who is a registered permit holder under the WHS Act seeks to conduct a safety visit at a worksite, for which they need a reasonable suspicion that there is a breach of the Act—you can't just willy-nilly go and do it; there has to be a reasonable suspicion—their powers are to basically investigate the suspicion. It has been the case that because the powers under the Act do not allow for the permit holder to take videos, take photos or take measurements to measure levels of dust exposure—it might not even be dust. We could just be going in there to measure the temperature.

The Hon. ROD ROBERTS: It could be anything.

CHRIS DONOVAN: Yes, anything—sound or noise. Those provisions are not currently in the WHS Act. They certainly should be. It is, a lot of the time, the unions actually going in and doing the job of SafeWork NSW, or at least collecting evidence to provide to SafeWork NSW to say that there was a breach here. This isn't a radical thing. This already exists in South Australia and Queensland. It is unfortunately the case that 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. It's something that we definitely need.

Ms ABIGAIL BOYD: We know that this is a more concerning issue in New South Wales because of the geological aspects et cetera. In terms of what other States and their regulators are doing in relation to air monitoring more generally, are there other States doing it better? Are there things we can learn from other jurisdictions that we should be importing here?

CHRIS DONOVAN: That's a good question. I might have to take it on notice. If you're looking at tunnelling, then it's pretty poor across the board. It is the case that in New South Wales it is a very dangerous situation because of the earth that we're tunnelling into. That doesn't mean that we should be taking anything away from the other States. It's still extremely dangerous as well. It's dangerous work in the first place and dangerous because of the dust. I am happy to take that on notice.

Ms ABIGAIL BOYD: I apologise, Mrs Cole, if this is a question I should be asking in the later session, but I am interested in the exposure of workers. I'm not an expert in tunnelling, so I'm not quite sure about the terminology, but obviously there are those workers who are using the machinery at the front. I understand there's also people in trucks and other things. How is the exposure different for those types of workers? Is there an understanding that, across the board, there is that exposure?

KATE COLE: Different tunnelling methods result in different levels of risk of dust diseases to workers. Arguably, the use of tunnel-boring machines, which is the primary tunnelling method used on Sydney Metro, is the lowest risk. Using roadheaders, or what's called mined tunnelling, is the highest risk, as is drill and blast, which is used on Snowy 2.0 or the Coffs Harbour bypass. So, yes, mined tunnelling is a very large risk at the front, at the face of the tunnel, because there's a lot of dust that's being generated.

To capture that dust, tunnel contractors will use large filtration or extraction systems, but the efficacy of those extraction systems is reduced the larger the diameter of the tunnel. We do have very large diameter tunnels in Sydney. NorthConnex is a great example, or a bad example. WestConnex is a similar example. We know that those workers that are at the front that are involved in mined tunnelling were at the highest risk, hence the need—and I'm very grateful for the order for papers—to get that information from those tunnel projects, because we're most concerned about workers in mined tunnels.

But it's not just the workers at the face. When that dust is not adequately controlled at the front, it obviously then travels all the way back through the rest of the tunnel and puts other workers at risk. Going through the information that's been obtained by GIPAA, even though there were a large number of samples, or results, from the City and Southwest project that were very high, it's very clear that those very high results are repeating again in very recent tunnel projects as well. So this issue has not gone away, unfortunately.

Ms ABIGAIL BOYD: When they do the air pollution monitoring, are they taking it just at the front of the tunnel or are they taking it further back? And is there a standard way to do that monitoring, so that you can then compare?

KATE COLE: I understand your question now. We do air monitoring by assessing the amount of silica that a worker is exposed to. It's actually fixed to workers, which is really important, because that's the only way that a contractor could demonstrate compliance with the workplace exposure standards, because it must be collected in a worker's breathing zone. Occupational hygienists will collect samples of silica dust in the highest risk workers. The ones closest to the face are the ones doing the dustiest activities. So it's not a stationary point at the front or the back of the tunnel.

A key gap that we have, though, is that even though air monitoring is required—particularly now we have the new crystalline silica regulations, which makes it little bit clearer, even though arguably it was already law to do this—what we don't have is a code of practice or minimum frequencies of that air monitoring. We have seen some large projects do a small amount of monitoring, and not very frequently. There is no standardised approach. SafeWork NSW in 2022 announced that they were going to review and revise the *Tunnels Under Construction: Code of Practice*. At the time, they had said that that was incredibly urgent and they wanted to finalise that within six months.

The CHAIR: Sorry, what date was that?

KATE COLE: In March 2022, they announced. Unfortunately, that hasn't progressed and we don't have a tunnels under construction code of practice. It's that type of document that would go to that level of granularity around air monitoring—the type of air monitoring, the types of workers to be monitored, how frequently that monitoring would be conducted and how that monitoring is conducted. Getting to your question, personal monitoring is important. Other types of monitoring, like real-time monitoring, to supplement that monitoring are also really important. Because that's not a legislative requirement, it's seen sometimes as a bit of an add-on or nice to have without it being something that's done routinely. So that is a key gap that we have at the moment.

Ms ABIGAIL BOYD: You would think with today's technology you could have constant monitoring.

CHRIS DONOVAN: Yes, correct.

KATE COLE: You can use real-time dust monitoring. I will say that it supplements what we collect, because that real-time dust monitoring helps us understand if we have a problem. I think the Committee heard in the previous session that when you can see workers in clouds of dust, you probably don't need a real-time dust monitor to know that you have a problem. But the challenge with silica dust is that it is invisible. 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.

CHRIS DONOVAN: I believe it is the case now that technology has evolved enough to actually do live testing for crystalline silica as well, which is only a recent development. That is my understanding.

The CHAIR: Can I press you further on that? Are you able to point us in the right direction in terms of where we might be able to obtain more details about that? Is that something you would be able to, on notice?

KATE COLE: I can probably answer. There is real-time—we call them respirable dust monitors, and that has been around for a long time. Respirable dust is the fraction of dust that crystalline silica is in. That is used quite a bit in tunnelling, not consistently. There is a device manufactured by Trolex in the UK that's marketed as a real-time silica detector, the accuracy of which has been questioned and is the subject of a review by the office of the chief scientist in this State. It would probably be appropriate for me to hold comment until the outcome of the review by the office of the chief scientist. The challenge with that device, though, is that it's stationary. When you have a stationary device, people can put it somewhere where it's not dusty and think that it's okay. That's why monitoring of workers is important, because it goes with the worker.

The Hon. ROD ROBERTS: In that regard, then—because I certainly don't know your role, Ms Cole, as an occupational hygienist—who provides the equipment that the worker wears? You as the hygienist or the employer or the PCBU?

KATE COLE: Are you referring to the masks?

The Hon. ROD ROBERTS: Yes. You said in your evidence that that sort of equipment captures the air that the worker at the workplace breathes. Who provides that?

KATE COLE: The air monitoring equipment is provided by the occupational hygienist, and then the result or the report is provided by the hygienist back to the tunnel contractor. Just to close the loop, SafeWork NSW then will go and obtain a copy of that—maybe under notice or for other reasons—and sometimes that is also provided to the client, which is how the AWU has the data as well. That's sort of the flow.

The Hon. ROD ROBERTS: I just wanted to know about the equipment itself and who provided that. So you provide your own, then, basically?

KATE COLE: Yes, it's standardised to an Australian standard. There are a lot of requirements around it. It will all look the same on every tunnel that you go to. The monitoring equipment is separate to the respiratory protection and other controls, which is all provided by the contractor.

The Hon. ROD ROBERTS: That's fine.

Ms ABIGAIL BOYD: I understand that the data that's then produced has a discount on it to basically cover the effect of the PPE. How is that factor calculated, and is it going to be accurate?

KATE COLE: That's a great question. There is an Australian standard that specifies a minimum protection factor for different types of respiratory protection. For example, a P2 respirator, which you might call a paper dust mask, has a minimum protection factor of 10 and the powered air purifying respirators, which are the very large hoods, would have a minimum protection factor of 50. What can happen is that an occupational hygienist will collect a sample of air from a worker, and we would do our best to observe that worker while they are doing their work activities. We will check if they've had a respirator fit test or if they're clean-shaven, in the case of a P2 respirator. If that has been the case, then the level that the worker has breathed in would be reduced by a factor of 10. Equally, for a powered air purifying respirator, it would be reduced by a factor of 50.

However, I must caution the Committee assuming that the reliance on masks or PPE is appropriate because, in the information that has been 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. When you hear people say that they're wearing masks or that there are masks there, you have to understand that it's the lowest form of control. When we're making recommendations as hygienists, we're focusing primarily on ventilation, dust suppression and other higher order controls because masks generally are not effective 100 per cent of the time.

The CHAIR: We're nearing time. I just have a couple of quick ones. I probably should have said this at the beginning. With respect to the submissions themselves, there were what might be described as attachments or accompanying documents. Starting with you, Mr Donovan, we had your submission No. 14 but then there are two of what we're calling attachments, which have been published as part of the submission. One's on SafeWork NSW letterhead. It's a letter under the name of Deahna Bowling, senior coordinator, Right to Information, SafeWork NSW. Accompanying that is a small-type and what might be described as an Excel spreadsheet-type document with a lot of dense information. In regards to those two attachments, is there anything that you'd like to reflect on, comment on or draw to our attention that we perhaps should look at more closely? Or should we just read them in conjunction with your overall submission?

CHRIS DONOVAN: They are to be read in conjunction with the submission as further evidence of some of the claims that I make. When you look at that data—and it is an Excel spreadsheet format as well—you'll see there are a few thousand records of monitoring data that's been collected.

The CHAIR: Yes, very detailed.

CHRIS DONOVAN: What you see in there—and this is in my report as well—is one in three of those were actually above the workplace exposure standard. Some of them were in excess of the workplace exposure standard by around 200 times. I thought it was on me to provide that data with my submission as evidence for it, rather than just simply relying on my word.

The CHAIR: I appreciate that explanation. Mrs Cole, with respect to your submission, No. 6, attached to it is a document that runs from page 5—a short submission—through to 15, inclusive. Is there anything within those 10 pages that you'd like to particularly draw to our attention, or should we read that in conjunction with your submission overall?

KATE COLE: The main thing I wanted to bring to the Committee's attention is that there's evidence of very high exposures of tunnel workers to silica dust and there is a lag between the time of exposure and the development of disease. A lot of the data that's been released was collected between 2018 and 2020, so it's around four to six years ago. We typically see cases of chronic silicosis after 10 years of exposure. When I talk about

expecting waves of disease, please appreciate that the exposures that are happening now or, indeed, four to six years ago have actually mostly yet to be realised. That's not to take away from the many cases that already exist in tunnelling from projects prior to the recent infrastructure boom.

I hope that provides evidence to the Committee as to why active case finding is so important, because we only found the cases in engineered stone through active case finding, and no active case finding has occurred in the New South Wales tunnel construction industry. Until that occurs, we won't have an accurate understanding of just how big the current issue is. Thanks to the order for papers we will have a better indication of the future burden, but, arguably, there are a lot of tunnel construction workers that are already at risk of being diagnosed with silicosis and lung cancer from building government projects.

The Hon. ANTHONY D'ADAM: Those workers are subject to health monitoring, though, aren't they?

KATE COLE: Workers that are currently engaged in work that would be considered high-risk work should be receiving health monitoring on an annual basis. Workers that have left the tunnelling industry—maybe they only worked in tunnelling for one or two years and now they work in another industry that may not be considered at risk—do not receive ongoing health monitoring and assessment. In some of the cases here—particularly looking at road header operators, for example, the highest risk task, these workers have received what we would consider more than a 10-year dose of silica in less than one year. They have already been exposed to a very high concentration, thereby increasing their risk. If they're not in tunnelling any more, or if the employer is not providing health monitoring, they are not getting any of that screening.

The CHAIR: On that very sobering note, I draw this part of the hearing to a close. Thank you both very much for your deep professional expertise, and the work of the union in terms of looking deeply into and opening up this issue, which surely needs to be given a lot more consideration and look to see what needs to be done to deal with it. I have no doubt there will be supplementary questions. It sounds like you might have a bit of a treasure trove of photographs and videos that we might liaise with you over. That will be done through the secretariat.

(The witnesses withdrew.)

(Short adjournment)

Mrs JOANNE WADE, Head of National Asbestos and Dust Diseases, Slater and Gordon Lawyers, sworn and examined

Ms NICOLE VALENTI, Senior Member, Dust Diseases Special Interest Group, Australian Lawyers Alliance, sworn and examined

Mr TIMOTHY McGINLEY, Senior Member, Dust Diseases Special Interest Group, Australian Lawyers Alliance, and Senior Associate, Maurice Blackburn Lawyers, sworn and examined

The CHAIR: I welcome the next panel of witnesses. Thank you all very much for coming along. I went back to look at previous inquiries for the supervision of this scheme and I noted that all your respective organisations were represented there, and I think probably the one before that. I open by thanking you all. You may not have been giving evidence back then, but it just shows that there has been a very strong and consistent longevity from respective organisations on what is a very important matter. Those with legal expertise have been able to bring a high level of intricate knowledge into the scheme and to aspects of the scheme. I thank the law firms and the Australian Lawyers Alliance for that contribution; it's greatly appreciated by the whole Committee.

We might open up with the opportunity to make an opening statement. I might just confirm that, with respect to your submissions, they have been each been received and processed, and we appreciate the detail contained within. Slater and Gordon's is marked No. 3 to the inquiry, Maurice Blackburn's No. 7, and the Australian Lawyers Alliance No. 2. They have been processed and uploaded as submissions to the inquiry. Over the course of the next hour or so, we are looking forward to being able to ask you some questions to elucidate on your opening statements and the material in your submissions. We look forward to what you have to say.

JOANNE WADE: Thank you, Chair, and thank you to all members for inviting Slater and Gordon Lawyers to appear at today's public hearing for the 2024 review of the dust diseases scheme. I would like to acknowledge the traditional owners of the lands on which this public hearing is taking place, the Gadigal people of the Eora nation. I pay my respects to their Elders, past and present, and to any Aboriginal and Torres Strait Islander peoples taking part in today's public hearing. My name is Joanne Wade. I'm the head of our national asbestos and dust diseases team. Slater and Gordon are a plaintiff law firm with extensive experience in dust diseases claims throughout Australia. I've worked in this field now for 28 years, and our firm represents clients affected by silica-related diseases, coal-related diseases and asbestos-related diseases. I note the focus of this review is the support available for younger workers within the scheme and other risk areas for silicosis.

Our written submission outlines key recommendations for the Standing Committee to consider based on our experience in helping young workers diagnosed with silica-related diseases. The scheme established under the Workers' Compensation (Dust Diseases Act) 1942 does not serve this cohort of young workers in the same way it does for those suffering from asbestos-related diseases. Some of these young workers are presenting with autoimmune diseases, such as rheumatoid arthritis, which are not covered by the scheme. Young workers need to leave their jobs; they then face financial distress. They need support to retrain. The scheme should support at least 52 weeks of fortnightly pay at what was their income, including regular overtime, so that the financial burden is minimised whilst they undergo retraining.

Workers would also benefit from improved rehabilitation and retraining services. Mental health has a really big impact on these workers and the scheme should approve upfront mental health sessions so that they can access psychological services earlier. Tunnelling and quarrying industries are also exposing workers to silica dust, and those workers should also get tested regularly for silica-related conditions. Slater and Gordon continues to support these workers. I thank the Committee for the opportunity to appear today. I'm happy to answer any questions.

NICOLE VALENTI: Thank you to all members of the Standing Committee on Law and Justice for inviting the Australian Lawyers Alliance to appear at today's public hearing for the 2024 review of the dust diseases scheme. I am appearing today alongside Timothy McGinley. We are both senior members of the ALA's Dust Diseases Special Interest Group and we both represent clients affected by dust diseases to make claims, so that they can access the treatment and support they and their families need. I too would like to acknowledge the traditional owners of the land on which this public hearing is taking place today, the Gadigal people of the Eora nation. I pay my respects to their Elders, past and present, and to any Aboriginal and Torres Strait Islander people taking part in today's public hearing.

The ALA is a national association. Its members are dedicated to protecting and promoting access to justice, human rights and equality before the law for all individuals, including those who have developed diseases as a result of exposure to toxic dusts, primarily in their workplaces. The ALA is represented in every State in Australia, and we estimate that our 1,500 members represent up to 200,000 people nationally each year. We note that the Committee's focus for the 2024 review is on support available to younger workers within the dust diseases scheme,

as well as risk areas for silicosis. Our written submissions have addressed those focus areas for the Committee's consideration. I will now hand over to Tim, who will briefly outline some of the points which the ALA would like to emphasise.

TIMOTHY McGINLEY: Thank you, Nicole. Thank you to the Standing Committee on Law and Justice for this opportunity. Our written submissions include reflections from ALA members as well as case studies demonstrating the experiences of our clients. Those clients are greatly affected by diseases like silicosis. What those clients have experienced within the dust diseases scheme underscores the urgent need for legislative and systemic reform within the scheme in New South Wales. The scheme is ill-suited to address the needs of younger workers diagnosed with accelerated forms of silica diseases, including younger workers in the stonemasonry and tunnelling industries. Even before they are able to receive an accurate diagnosis, some of our clients have been misdiagnosed. This has compromised those workers' access to comprehensive medical treatment and support within the scheme, and they are not reassessed for several years.

The ALA has made recommendations in our submissions that we believe will ensure younger workers and their families can be supported through the scheme. The scheme must adapt to the new reality that workers are being diagnosed with dust diseases earlier in their lives, when they have many decades left of their working lives. Icare should support and provide a range of services for affected workers wishing to explore alternative study and employment opportunities so that they are not forced to return to workplaces where they are further exposed to toxic dusts. Further, the scheme must offer those workers, who are primarily young men, access to psychiatric and psychological services to assist those workers in navigating a life-changing diagnosis, medical treatment and career changes. Nicole and I are happy to answer any questions from the Committee. Thank you again for the opportunity for the ALA to appear before this public hearing.

The CHAIR: Thank you very much for those great, succinct and clear opening statements.

TIMOTHY McGINLEY: Chair, I also have a separate opening statement on behalf of Maurice Blackburn Lawyers. Once again, I'd like to thank the Chair and all the members of the Committee for inviting Maurice Blackburn Lawyers to appear at today's public hearing for the 2024 review into the dust diseases scheme in New South Wales. I will again take the opportunity to acknowledge the traditional owners of the lands on which we meet today, the Gadigal people of the Eora nation, and I pay my respects to Elders past, present and emerging. In my everyday work I represent and assist clients who have had their lives severely impacted and often cut short by entirely preventable dust diseases. In recent years this has included an ever-growing cohort of younger workers suffering from an array of silica-related diseases.

The members will have before them a copy of Maurice Blackburn's written submissions. Our observations and recommendations, like my colleagues' appearing beside me today, are based on extensive expertise and experience advocating for persons affected by dust diseases. Maurice Blackburn believes that the national ban on engineered stone is a welcome development in the law since the previous review of the scheme. However, while the ban is a necessary first step, we are of the view that further work needs to be done to protect the lives of Aussie workers and to provide necessary assistance and recompense to those affected by dust diseases.

In particular, our submissions include the following major recommendations: firstly, that the scheme be improved by empowering and resourcing icare to provide more extensive career and educational counselling services to workers to assist them in identifying, training for and transitioning into new career paths; secondly, that there be a substantial increase in the quantity and duration of income support provided to affected workers to give young workers the freedom to undertake further education and training in new career paths; thirdly, that icare be properly resourced to provide assistance and support to service a cohort of young workers who are increasingly coming from culturally and linguistically diverse backgrounds; fourthly, that the scheme be amended to ensure that workers who have had multi-jurisdictional employment and exposures to dust are not disadvantaged by having their benefits reduced; and, finally, that the Nominal Insurer scheme be amended to ensure that workers are not deprived of valuable common-law entitlements due to unscrupulous employers failing to take out any or taking out insufficient workers compensation insurance. I again thank the Committee and would be happy to answer any specific questions the members have regarding Maurice Blackburn's submissions.

The CHAIR: Thank you very much. As I said at the commencement, the submissions are rich with very useful information, thoughts, reflections and, indeed, recommendations, which I am sure members will follow up.

The Hon. SUSAN CARTER: Thank you all for being here. I appreciate the submissions and you making yourselves available today. In all of the submissions, you flagged the issue that we are looking at a younger cohort of workers and, therefore, workers with, happily, longevity. So we are looking at retraining and reskilling, and the answer that appears to be given routinely by icare is courier and truck driving—something which has significant income impacts. You also flag that a lot of these workers have low levels of English proficiency. I do not know whether you can answer this question or whether this is an issue we need to explore, but are there other

employment opportunities that they can transfer across to at the same level? Is it possible for them to do the type of university retraining that you are contemplating without extensive language training? What other pathways are available to these workers so they can maintain their income levels and support their families but also not progress the silicosis disease?

JOANNE WADE: I might answer that. For some of these workers where English is their first language, it is easier to be retrained. But the rehabilitation that icare tends to direct them to is courier driving or truck driving. For someone who has been the breadwinner and they've had a career because they've progressed through their stonemasonry career, to then just sit in a truck or be a courier driver can be a bit demoralising, and also their pay is a lot less. I've had a few workers who have gone ahead and done an adult apprenticeship. That means for four years they're going to be earning a lot less than what they were earning, but it's giving them a career. I've got one worker who's doing an adult apprenticeship in carpentry, another one as an electrician. To take those steps, they have to earn almost half what they were earning for four years to then start off with their trade certificate.

Another opportunity could be to explore TAFE certificates with these workers—certificates III and IV. I've got a few workers who've gone into the gym industry as personal trainers, but we are talking about a cohort of workers who've generally left school at age 15 or 16. In order then to do a university degree, that would be a bit more difficult. But you can't overlook it, as a mature age student, but it means supporting them for longer to get them through that. With the cohort for whom English is not their first language, and there are quite a number of these workers who come through and can't speak any English at all, they would need extensive English lessons to then assist them in that retraining process. Again, they've left school very young. I recently only saw one last week, a Vietnamese worker who's aged 50. He left school at age eight in Vietnam before he came here. His skills to be retrained are very limited.

The Hon. SUSAN CARTER: Is it realistic to assume that they can be assisted to find work at a comparable income level, or are we looking at income supplements for an extended period of time?

JOANNE WADE: I think it's both.

TIMOTHY MCGINLEY: I think it's entirely realistic to assume that they can be retrained, and we do have evidence of that. I have one client who did a university degree and has retrained as a social worker, but he was only able to do that because his injury occurred in Queensland and he was supported under the Queensland system, which provides him with that sufficient level of support that he was able to undertake a university degree, and now he's a practising social worker.

The Hon. SUSAN CARTER: Does a social worker earn what a stonemason earns?

TIMOTHY MCGINLEY: He's earning comparable money. Yes, that's right. In regard to linguistically diverse backgrounds, 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. A lot of these workers did train with limited work experience, went through TAFE and similar certificates to get their stonemasonry education. If they want to go on and get a university degree, they probably will need to get that education in English training, but we envisage that that should be part of the system in individualised care plans for those sorts of people.

The Hon. SUSAN CARTER: Just in terms of recommendations we may formulate, should there be an upper limit of the type of vocational support and assistance that's available? How would we set guidelines for that type of process, bearing in mind we're dealing with a younger cohort of workers?

JOANNE WADE: I think it's a really good question, but if you're thinking about a university degree, that could take anywhere from three to four years. Similarly, with an apprenticeship, we're looking at three to four years. If there is an upper limit, I would say it would have to be to support them through their education, through their university degree or TAFE qualifications, or apprenticeship.

The Hon. SUSAN CARTER: I believe you flagged an issue with some workers needing to return to their country of origin. Is that because their visa requires them to, or because they have more family support available to them?

TIMOTHY MCGINLEY: It's both—sometimes because their visa requires them to return to their country of origin; other times, if they're struck down with a life-changing illness, particularly a terminal illness, they might want to return both to be with their family for emotional as well as physical support that they need as their disease progresses and while they're not able to work anymore.

The Hon. SUSAN CARTER: Clearly, visa issues are Commonwealth issues. Are you aware of any conversations with the Commonwealth Government about that issue?

TIMOTHY MCGINLEY: Not aware of any.

JOANNE WADE: I'm not aware of any.

The Hon. SUSAN CARTER: One more question, if I may. You talk about extending the range of recognised diseases, recognising that silicosis is not always diagnosed first. Are there any multiple causation issues with, for example, autoimmune diseases?

Where is the medical science? Are we sure these all flow from silicosis, or could they be comorbid with silicosis and have other causes?

TIMOTHY McGINLEY: The fact of the matter is that when the original diseases were added to the schedule to the 1942 Act, it was at a time when the medical science was not advanced to realise that there were certain systemic diseases that related to dust exposure. At that time in 1942, the medical science was at the stage that dust caused lung-related diseases. It made sense. But the medical science has moved beyond that now, and there is very good causative evidence to show that there are a range of conditions outside of the lungs now that can be caused not just by silica but by exposure to various dusts. The medical evidence is settled now. It is something that is diagnosed by treating practitioners as being causative. Yes, there are diseases that can have multiple causes, but a well-trained treating practitioner, whether that be a rheumatologist, immunologist or respiratory physician, is able to look at a person's entire history and work out what the cause is.

The Hon. SUSAN CARTER: Is dust the only cause of, for example, rheumatoid arthritis?

TIMOTHY McGINLEY: Not at all, no, but it is a cause and, in a particular patient, a trained medical physician will be able to determine if this is rheumatoid arthritis caused by dust exposure as opposed to anything else.

The Hon. SUSAN CARTER: Would reasonable medical opinion vary on that, or would it be fairly conclusive?

TIMOTHY McGINLEY: There can obviously be a range of opinions when it comes to medicine, but there is scientific and medical evidence to show the link between the two, and there are tests and systems that doctors use in order to work out if a disease is related to a dust exposure.

Ms ABIGAIL BOYD: Thanks for your submissions and all the work you do. There are a couple of points that I want to touch on. The first is in relation to this comment in the Maurice Blackburn submission that there is a growing number of small employers who are inadequately insured or hold no insurance whatsoever, despite it being mandatory. What is the flow-on effect of that in terms of workers then being able to claim under the scheme?

TIMOTHY McGINLEY: While it hasn't been conclusively determined yet, the problem is that the interaction between the 1987 and 1942 Acts means there's a potential reading of the legislation that if an employer is not adequately insured, then if their employees get injured, they might not be able to claim valuable common law entitlements. That includes damages for their pain and suffering, damages for loss of wages into the future and damages for care and medical expenses that they require. On the reading of the 1987 Act and the reading of the *Hansard* around that time, it doesn't seem that it was Parliament's intention to rob these workers of that right, because the entitlement to damages still exists for workers of non-dust diseases who have uninsured employers.

It just seems that there is a defect or gap in the legislation, and it's got to do with the interplay between the meaning of the word "injury" between the Acts and how it excludes dust diseases that has led to a situation that a certain reading of the Act would mean that employees of uninsured employers may not have access to common-law entitlements in the same way that sufferers of non-dust diseases or injuries would be. That's problematic because it should not be the responsibility of an employee to check that their employer has sufficient insurance before taking on a job. They should not be punished if their employer has not taken out adequate insurance.

If you speak to any small or medium business owner, they will tell you that one of the major overheads they have is workers compensation insurance. That has to factor into the cost of the services and products they provide. That means, if you've got an employer who is not paying for insurance, it has a commercial advantage over other businesses who are doing the right thing because they can undercut them on price. We should not be giving a commercial benefit to employers who don't follow their obligations under the law and get insurance.

Ms ABIGAIL BOYD: Which regulator would be responsible for checking on that, then?

TIMOTHY McGINLEY: That would be SIRA.

Ms ABIGAIL BOYD: There seem to be two elements here, then: getting SIRA to actually go out and monitor and enforce that, but then also a clarification in the legislation.

TIMOTHY McGINLEY: The clarification in the legislation would have to be passed by the Parliament to make that clear. That's first. Then, second of all, there would have to be more work done by SIRA to make sure that these businesses are being properly audited, and that punishments are being handed out to employees who are skirting their obligations to get proper insurance.

Ms ABIGAIL BOYD: The other legislative change that has been suggested is in relation to the requirement that a worker must get 100 per cent of their exposure in New South Wales. As I recall, the submission was saying this isn't the case in any other State or Territory. Do you know why historically it's been like that?

TIMOTHY McGINLEY: I don't know the reason why, but the way that the legislation is in New South Wales—and this is the 1942 Act—is that a person's benefits are reduced proportional to how much of their exposure occurred outside of New South Wales employment. This is quite common, particularly with road tunneller workers where they've worked in projects in multiple jurisdictions. If they bring a claim under New South Wales legislation, that will be reduced commensurate to how much of their exposure occurred.

Ms ABIGAIL BOYD: Is the idea that they then go to the other State for the rest of their—

TIMOTHY McGINLEY: I don't know if that was the idea under legislation, but the problem is a lot of these schemes are mutually exclusive. If you apply for benefits under one scheme, you can't go for benefits under another scheme. Whereas, if you look at schemes in other jurisdictions, like Queensland, all you have to prove is that there was a material contribution to your disease and you'll be entitled to 100 per cent of your benefits.

Ms ABIGAIL BOYD: Effectively then, Queensland, or whichever other State, is picking up the tab for New South Wales. You'd expect people to go to Queensland to get 100 per cent cover even if they've only had 20 per cent of exposure.

TIMOTHY McGINLEY: Exactly. Even if a person had entitlements in multiple jurisdictions, it is quite burdensome. High legal costs are required for them to go around different legal jurisdictions to get all of their entitlements because they have different procedures and different methods of proof that have to be satisfied.

Ms ABIGAIL BOYD: If it's a New South Wales resident, and we have an interest in getting that person back to work, then you would want them to be covered within the New South Wales schemes.

TIMOTHY McGINLEY: That's exactly right.

Ms ABIGAIL BOYD: This was mentioned in a lot of the submissions, from yourselves but then also from others: this reluctance to necessarily get a different job because it's high paid doing, particularly, tunnelling work. I note your recommendation around getting psychological support at the beginning and how vital that is to stop that secondary injury or to reduce the psychological injury from the diagnosis. Is there also a need for some psychological support or counselling before you even get to the point of having made a claim—to talk people through that decision as to whether to actually make a claim and then lose your job and all of those sorts of things?

JOANNE WADE: That hasn't been explored, but in order to get access to the scheme you need to make a claim. It's very difficult to get that support without actually putting in a claim.

Ms ABIGAIL BOYD: I guess you could still have SafeWork, or whoever, providing that as a service to people before they even make a claim, just to allow them to talk it through.

JOANNE WADE: It would be talking it through, but added to that might also be some financial counselling. To face that decision about giving up work, and not knowing what will follow, maybe some financial counselling would help that cohort as well in making that decision.

The CHAIR: Mrs Wade, I think you've given evidence to inquiries before over the years.

JOANNE WADE: Yes, I have.

The CHAIR: So 28 years is a wealth of experience.

JOANNE WADE: Showing my age.

The CHAIR: Some of us have been at those inquiries as well, so we know how you feel. I was going to make this point. It's an observation; I'm not necessarily asking you to specifically agree with it. Dealing with the manufactured stone matter—which is not fully resolved—important things have been done, like banning. But, obviously, we've got a tail of workers that have been exposed. Notwithstanding the ban, until it's completely stopped at the border, so to speak, and no more comes in full stop, there are going to be those being exposed to it cutting it still today because it is in stock in some warehouse somewhere.

The tail of this is a very long one. It can be argued that to finally get on top of the manufactured stone, which did happen, it took national intervention. It was the movement at the national level. Once it started to coalesce, it appeared to move a lot quicker than otherwise was the case over a long period of time.

I expressed a fear to some witnesses earlier today. You would not have this in front of you, but I'll draw it to your attention. It's the submission from the Australian Workers' Union. On page 4, they've got a very useful illustrative table of the tunnelling projects. A large number are still ongoing. They're under construction. They're taking place still. We know that over the past dozen years or so, there has been a lot of tunnelling work done. We've got quite a large cohort of workers out there that have been exposed to respirable silica dust specifically from tunnelling work.

I know that lawyers always use very considered and measured language, and I'm not asking you to change that approach. Is there potentially a concern or fear that if we don't bring a particularly sharp focus, attention and willingness to deal with what seems to be—and I think we can reasonably say is—an issue that is manifesting, this is really problematic? Government, however we might like to describe it, and whoever comes in and goes out of government, really needs to move on this because, if not, we're going to have this misery running. In other words, what I'm saying is that we don't want to repeat the manufactured stone long tail timeline. That was more of a statement, but I welcome any thoughts.

JOANNE WADE: With the tunnelling, as we know, we're digging into sandstone. A lot of the time it's sandstone that's being dug through to build these tunnels. They're really big infrastructure projects compared to maybe 50 years ago. On top of that, you've got machinery that is different to the machinery that was used before. These workers need to be protected. Why are we not protecting them when we know the damage that silica can cause and they're getting exposed? I think we need to really look at this at the moment. Whether it's increased SafeWork inspections or whether it's improving the cabins that they're sitting in, it's something that really needs to be looked at, otherwise these workers, in the next five to 10 years, will continue to come forward with silicosis.

TIMOTHY McGINLEY: In particular, the problem posed by tunnelling is a very different problem to the manufactured stone. Whereas banning manufactured stone is quite a simple solution in a way, we cannot ban road tunnel projects, ultimately. They're going to be necessary with our sprawling cities and with the transition to a low-carbon future, where we need trains and other means of public transport. We're not going to be able to ban road tunnelling. Instead, the answer is going to come through better regulation of these industries and bigger penalties for those who breach it. That is a harder thing to do than simply banning something. It's going to require consistent effort over many years.

The CHAIR: Following on, then, we know that tunnelling is done in other jurisdictions—much less than New South Wales, but in Queensland, Victoria and perhaps elsewhere. We know that other jurisdictions other than those—Western Australia, South Australia and others—have passed legislation to deal with the dust associated with manufactured stone. By virtue of what's happened, that's essentially going to be dealt with. Is it important that the New South Wales Government be approaching this with a thought that there needs to be this concern for comity between jurisdictions as far as practicable and have that influence their decision-making about pushing to get this moving and ultimately done? Or is the reality that New South Wales does the preponderance of tunnelling and that we're, dare I say, big, bad and ugly enough to take the lead and get stuck in?

TIMOTHY McGINLEY: Ideally, you would want a national approach to this sort of thing to make sure that all Aussie workers are protected. But I think in New South Wales there is a need that New South Wales move ahead as quickly as possible, even in the absence of a national approach. There are two major reasons for that. First of all, as you have identified, there is the sheer number of tunnelling projects that we have had and that we will have in the future compared to other jurisdictions. There's also a problem with New South Wales' specific geology. We sit on what's known as Hawkesbury sandstone—the whole eastern seaboard here—also known as Sydney sandstone. It's a type of sandstone that is very high in silica compared to some of the stones in other jurisdictions. If you go down to Victoria, there is a lot more shale and a lower silica content down there. The problem with that is that our tunnelling projects, therefore, are going into a type of stone that is naturally more toxic to workers. Regulations that might be suitable going through the geology in another State just might be insufficient in New South Wales for that. There is a need for New South Wales to go ahead and have the best standards in all of Australia because of that.

Ms ABIGAIL BOYD: It occurs to me, on that jurisdictional issue, that obviously we have quite a lot of Commonwealth land within New South Wales and Commonwealth projects. How does it work when you've got exposure on those? For example, I know that the Department of Defence is still using manufactured stone and they have sites within New South Wales. If a worker is exposed, is that a Commonwealth responsibility or how does it work?

TIMOTHY McGINLEY: It's a mix, depending on the particular project. Even though a project that's ultimately run by the Commonwealth—say, Snowy 2.0—is being run in New South Wales, a company there might still be subject to New South Wales regulations and a person who is exposed is still maybe entitled to New South Wales-based compensation, whereas a person who's working on a defence establishment who's injured in that way is more likely to be entitled to Commonwealth-based compensation. So it's kind of a mix of the two, depending on the particular projects.

The CHAIR: I welcome your thoughts about whether or not there is a dichotomy between looking at the manufactured stone industry—particularly the way in which the work was done in cutting and installing, where you effectively had a contractor for a project and then the work subcontracted down, which is very commonplace and virtually the norm in the building and construction industry—and tunnelling. The reality is that there is a very small handful of enormous construction and engineering companies capable of doing projects and ultimately capable of making tenders and being successful, but equally are various functions subcontracted down. Do you see a parallel that is quite a good parallel analogy and quite a true analogy or that there are some fundamental differences in the way in which work is organised and conducted in one versus the other? I'm particularly interested in whether there are some particular aspects in tunnelling that we should be aware of that we just don't assume we can carry across the manufactured stone model and apply that.

TIMOTHY McGINLEY: The first difference is the size of these projects. Obviously, you are dealing with much more people and much bigger projects than you are dealing with in engineered stone. If you go 10 or 20 years ago back to projects like the Blue Mountains sewerage scheme, back in those days it was common that there were just a couple of companies working on it and they would be direct employees for everybody on site. But, obviously, with the way the industry has moved now for cost purposes, yes, for these tunnelling services there will be a couple of big head contractors on there but they are still serviced by a mishmash of different contractors and also increasing labour hire firms. You might have a person who is working for a subcontractor to a main contractor but is not employed by that subcontractor and is actually employed by a labour hire firm who has lent them out to the subcontractor, which creates a whole host of problems. It plays into that issue again of some of these employers not being properly insured, especially when you get down to the smaller micro levels.

The CHAIR: That's right. There is a real myriad of arrangements. One of the points that got raised in a discussion back and forth with the previous witnesses was the capacity of or the ability of the State—that is, the State of New South Wales—in entering into these contractual arrangements for the building of large tunnel projects. Embedded in those contracts are provisions that very explicitly deal with and elevate occupational health and safety to a very clear, unequivocal level and standard, notwithstanding the fact that there is legislation and regulation at the State level. As we've heard from other witnesses, Comcare is even being involved as the licensed provider for workers compensation on some of these projects. We've got that issue of law and regulation at the State level and the Commonwealth level, but there is potential for the State—through its contracting arrangements, perhaps—to intervene. I raise that because, once again, the manufactured stone issue took place over a period of time. Ultimately, laws got passed, but that can take a period of time. Are there levers that can be pulled or pushed that may have an accelerating effect on being able to bring pressure to bear on elevating the occupational health and safety standards in the tunnelling industry?

JOANNE WADE: I think it's still going to come down to enforcement.

The CHAIR: And enforcement.

JOANNE WADE: You put it in the contract, but it has still got to be enforced. Someone has got to be inspecting in sites—

The CHAIR: You've got to have an enforcer too.

JOANNE WADE: Yes.

TIMOTHY McGINLEY: As Ms Wade said, it's all well and good to put it in the contract. The New South Wales Government should be putting it in those contracts—

The CHAIR: And they may do. Forgive me if I'm wrong.

TIMOTHY McGINLEY: —but unless someone is enforcing it, we don't know it's happening. There was a submission from an anonymous member who is working on Snowy 2.0 at the moment saying that they have a team meeting every morning where they say, "Safety before everything", and where standards are put in, but when it comes down to it, they're just not enforced.

The CHAIR: To follow that point through—and I appreciate we've just gone beyond time—with your experience dealing with clients over a period of time in this area, specifically with respect to silica dust and related

matters, the enforcement is very, very important. Unless there is firm, clear and, dare I say, strong enforcement of standards, we're not going to get ourselves on the way to dealing with this, are we? Is that what you're saying?

JOANNE WADE: I think that's correct.

The CHAIR: And that really can only be done through the State having the will to put the necessary resources into the regulation and the enforcement of the regulation or legislation as well.

JOANNE WADE: Correct.

The CHAIR: Other than the State—not that I think there's anything quite like the capacity of the State to compare with—do you have other thoughts about ways and means of bringing pressure to bear? You can take that on notice. Or is it really up to the regulation?

JOANNE WADE: I think it's the regulation and the enforcement.

The CHAIR: Yes, and the enforcement.

TIMOTHY MCGINLEY: And by the State, where a contractor or company fails in their obligations to a project, making sure that they're never given any projects by the State in the future again.

The CHAIR: One final point. A number of the witnesses, particularly the unions earlier today, expressed concern about the vagueness—I don't think they used that word—or the generic nature of some of the language in the legislation and regulation, which creates slipping and sliding opportunities to avoid or "take the time to deal with" it, or whatever the case may be. So the tightening up or the clarification or specificity of language inside laws and regulations can only help in having an obligation that can then be enforced. I think some of the enforcement issues flow from the fact that the legislation, in some areas, had generic features to it that provided opportunities to slip and slide. Do you have any other final comments or observations?

JOANNE WADE: No, thank you, Chair.

The CHAIR: Thank you once again. I'm sure there will be some follow-up supplementary questions. I don't think anyone took questions on notice but, if so, they will come through. The secretariat will liaise with you. On behalf of this Committee—I'm the Chair at the moment; the Deputy Chair was the previous Chair—I thank the two firms and the ALA very much. We always get quality material in terms of your submissions, and you also provided very precise and thorough oral evidence today.

(The witnesses withdrew.)

(Luncheon adjournment)

Mrs KATE COLE, OAM, Chair, External Affairs Committee, Australian Institute of Occupational Hygienists, on former oath

The CHAIR: Welcome back, Mrs Cole. It was very valuable to hear from you this morning with one hat on, and of course you appear this afternoon in your capacity as chair of the External Affairs Committee of the Australian Institute of Occupational Hygienists. The submission from the organisation stands as submission No. 1 to the inquiry, so it can be taken as read. It has been processed and uploaded onto the inquiry's webpage, and it is very valuable evidence that we'll be looking at. I'm sure there'll be some questions flowing from the submission and perhaps your opening statement as well. I invite you to again make an opening statement in your capacity as chair of the organisation you're representing this afternoon.

KATE COLE: Thank you very much. To clarify, I am here to represent the Australian Institute of Occupational Hygienists as past president and chair of the External Affairs Committee. We are the largest organisation representing professionals in this field in Australia. As occupational hygienists, we assess the risk of exposure to silica dust. We're the ones who measure silica dust in air. We make recommendations on safety control and verify if safety measures in place are enough to prevent dust diseases. I presented to this Committee on behalf of the AIOH in 2022, and I would like to acknowledge the improvements in place in this State since that last review, including the ban on the manufacture, supply and installation of engineered stone and the adoption of the model crystalline silica regulations.

On-the-ground experience has prompted us to raise key areas worthy of the Committee's attention, and those are that we need improved guidance on returning to work to support the increasing number of workers where dust diseases occur. We need more options for extended support for medical assessment for workers who leave employment in at-risk industries. Our State is in critical need of a "tunnels under construction" code of practice, as it is a code to address the requirement for basic competencies for those who undertake air monitoring for silica dust, along with the processes and interpretation of monitoring and applying those results. We also recommend that government employers and those private entities who receive government funding be required to use the services of icare rather than private medical providers. With those opening remarks, I thank you once again for the opportunity to appear in front of the Committee and am happy to take any questions.

The CHAIR: My questions go to some evidence that was provided by you this morning but is also relevant to the submission you've made for this afternoon's part of the hearing. It is about the tunnels under construction code of practice—its importance, the explanation for its need, why it's needed now and what it would involve in broad terms.

KATE COLE: It's very much needed now because we have more sophisticated processes for tunnelling and we have more sophisticated control measures to apply in tunnelling. Whilst I recognise the strength of the new crystalline silica regulations—and they're very much welcomed in many industries, including tunnelling—there is a gap. From the perspective of an occupational hygienist, there is a gap specifically around controls and there is a gap specifically around air monitoring. At the moment, the frequency of air monitoring—whether that's daily, weekly, monthly, six-monthly or annually—is not specified, nor are the specific work groups that should have air monitoring undertaken, nor is the competence of the person who does the air monitoring, for example. There is quite a number of gaps.

I think I said this morning that very early in 2022—around March—SafeWork NSW initially proposed the update of the code of practice. Unfortunately, nothing really happened until May of 2023, when SafeWork decided to review some pre-WHS legislation codes of practice. They put five codes out for consultation. One of those was the Code of Practice for Tunnels Under Construction. We continued to provide feedback that this code was very much needed, as did other stakeholders, I understand. Unfortunately, in October of 2023 SafeWork wrote to us—and members of an advisory group that they had put together initially—to say that they were now considering escalating that code of practice to a national level.

While that might seem like a good idea, that delays the implementation of a code of practice. We wrote back very forcefully to say that we did not see the benefit of changing it to a national code unless the intent was to delay the implementation of the code of practice, waiting for the tunnels that are currently being constructed to be completed. I understand that in January this year they advised us that they were now going to have the code reviewed at the State level and then submit it for consideration at the national level. That was in January. We haven't been able to get an update since that time. Obviously, we are in November without a code of practice.

The CHAIR: Have you formally sought an update from them by contacting them?

KATE COLE: Yes, we sought an update earlier this year by contacting them. I also contacted them by phone in the middle of this year and unfortunately was unable to receive an update.

Ms ABIGAIL BOYD: I will pick up on one of your recommendations about the private clinics. Can you talk us through what the issue is there and why we need the change?

KATE COLE: 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.

In addition to that, there is no requirement or mandate for tunnel workers—or, indeed, other at-risk workers—to receive CT scans. The minimum health monitoring requirements include spirometry, chest X-ray and some questionnaire-type paperwork. We know that using lung-function testing and chest X-ray can underdiagnose cases of silicosis. We've seen that in engineered stone. Concerns have been raised in at-risk industries like tunnelling as well. Icare is more likely to recommend CT scans in those type of scenarios. The scope of private medical providers is limited by what is given to them by a PCBU or a tunnelling contractor.

The other difference is that, by centralising it to icare, those workers' records are always in the same place. The medical professional can look back at previous health monitoring scans and assessments to see progression over time. With private medical providers, those records are contained in the different medical providers that are used by the contractor. Lastly, icare do follow up. Every year, after you've had health monitoring, they contact the worker for repeated follow-up after they've had a screen.

Ms ABIGAIL BOYD: Is there any good reason to continue the use of private clinics at all? Are they quicker? Is there some sort of benefit that a worker would have in being able to go to a private one?

KATE COLE: I don't see a benefit from a worker's perspective. 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.

The Hon. ROD ROBERTS: From the perspective of someone who lives in a rural area—I'm certainly very supportive of the icare model that you're talking about—I know that we're focusing a lot today on tunnelling in Sydney but, as we know, this dust disease can come from quarrying, mining and all sorts of things that happen in regional areas. Is it possible, for ease of access, that maybe a private provider in a remote area is easier than coming to Sydney for icare? We've had this discussion with icare before, in terms of remote testing, but the Lung Bus, as they call it, doesn't seem to get anywhere. I am not a fan of the Lung Bus. We learnt, through our silicosis in manufactured stone inquiry, that CT scans—I argued, "Why don't we have mobile CT scans?" They tell us the equipment is too precious to move over long distances. I don't want to create the impression that I'm not for icare, because I am for those reasons you stated. Do you think it's sometimes more practical to use a provider in the regions?

KATE COLE: Yes, I understand that concern. The Lung Bus, as it's colloquially called, is fantastic. I think we need more of them. In our submission, we have identified that that may be a challenge in terms of capacity or even in location. We've suggested that a secondary measure could be that any health monitoring screening data undertaken by a provider other than icare be required to be submitted to icare on a routine basis. Thereby you would at least have an idea of the prevalence in certain industries.

The Hon. ROD ROBERTS: How would we enforce that? What would need to be in place so that the private provider is therefore legally obligated to pass it on to icare?

KATE COLE: I think that would be a legislative change.

Ms ABIGAIL BOYD: There's some pretty worrying statistics that you've provided in this submission, particularly that in the construction and tunnelling sector less than 10 per cent of respondents to your survey—presumably, they were occupational hygienists—reported that exposures were less than the WES. Presumably over 90 per cent are not compliant. Is that what we're saying?

KATE COLE: Yes. We did a survey in 2022 of occupational hygienists who were members of the Australian Institute of Occupational Hygienists about their practical experiences. Yes—less than 10 per cent reported that all exposures to respirable crystalline silica were less than the workplace exposure standard. That just highlights how common it is for exposures to workers to be above the current workplace exposure standard. We know that the current workplace exposure standard is not protective enough of adverse health effects. It is

highly concerning. It is highly concerning for a person that works in construction and tunnelling, as it is for hygienists that work in mining, quarrying and stonemasonry as well.

Ms ABIGAIL BOYD: You talk about 20 per cent of respondents in construction and tunnelling reporting that air monitoring is seldom undertaken appropriately. That keys into the information you give a couple of pages earlier, which talks about the frequency of air monitoring and the time basis with the result that "in practice this could constitute as little as one full shift sample of a worker's exposure in a three-month period". Is it common to only be monitoring every three months?

KATE COLE: 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.

Ms ABIGAIL BOYD: Interesting.

The Hon. ANTHONY D'ADAM: For the record, what is the workplace exposure standard at the moment?

KATE COLE: The workplace exposure stand at the moment is 0.05 milligrams per cubic metre, as measured over an eight-hour shift.

The Hon. ANTHONY D'ADAM: So how does that work? You have to measure for a full eight hours in order to establish the benchmark? Surely you can't just take one sample over an eight-hour period.

KATE COLE: We collect that sample by attaching a pump and a sample device to a worker in the morning at pre-start and we're collecting it at the end of the shift. That might be eight, nine or 10 hours. Sometimes in construction and tunnelling, workers are working a 12-hour shift, so we're trying to get as much of that shift as possible. But you are right to imply that 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. As you may have seen from the data this morning, there are lots of samples and they're categorised in groups. That might be labourers; that might be shotcrete workers. 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.

The Hon. ANTHONY D'ADAM: There was a suggestion, I think, in a previous inquiry that the standard, as it is currently set, is still not a safe standard. Do you agree with that?

KATE COLE: There is scientific evidence that has repeatedly demonstrated that the current workplace exposure standard is not protective of adverse health effects, correct.

The Hon. ANTHONY D'ADAM: One of the issues we grappled with in a previous inquiry is if you lowered the standard to a safe level, the monitoring technology is not sufficient to actually detect at the lower standard. Is that correct?

KATE COLE: That was correct in 2022. Thankfully, there has been significant progress made in that area. 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.

The Hon. ANTHONY D'ADAM: So there's no impediment now, then, to lowering the exposure standard to a safe level?

KATE COLE: No. I will note that my own organisation, the Australian Institute of Occupational Hygienists, did publish a position paper last week that suggested that measurability may have been an issue. They were suggesting that it may have been an issue because other constituents—other things in the sample might have interfered. I took it upon myself to contact the senior analytical chemist from TestSafe Australia last week, who was the primary author of that paper and that method, to determine if that was the case. She confirmed for me that in the vast majority of cases that issues around interfering constituents is actually not an issue for that method. On that basis, measurability does no longer appear to be a concern.

The Hon. ANTHONY D'ADAM: There was another issue that surfaced in terms of the properties of the particulates generated by manufactured stone versus natural stone and whether there was a higher degree of carcinogenic qualities for the particles generated by manufactured stone versus natural stone. Can you shed any light on whether there have been any further developments in relation to that?

KATE COLE: As part of our work in advocating for the important need for the ban on engineered stone, we spend a lot of time trying to understand the science behind the dust that was generated from engineered stone. We know that the size of the dust generated from engineered stone was much smaller than the size of dust generated from other types of stone or materials that contained silica. We also knew that there were other constituents in that dust that may have made it more toxic. I personally have not researched the chemical, physical properties of the different types of dust from engineered stone or natural stone. I do know other researchers are looking at that. But what I will say is that once it is respirable crystalline silica, no matter the particle size, it is carcinogenic. It was designated a group 1 human carcinogen 27 years ago. We know that exposure to respirable crystalline silica increases the risk of developing lung cancer.

The Hon. ANTHONY D'ADAM: The smaller the particle, though, the more difficult it is to use PPE to protect yourself. Is that fair to say?

KATE COLE: Particle size provides a few challenges. One is that it will stay in the air for a very long period of time. It's already invisible, so you can't see it. Over time it will settle, and that's when you'll start to see it on surfaces. It does present some challenges with controlling the dust, which is why when we look to control dust we always want it to be controlled at the source—on-tool extraction or extraction close to the face of tunnelling, for example. We always want to control it at the source because once it's uncontrolled and it's in the general working environment, that really fine dust is very difficult to capture and knock out of the air. Our last resort is to provide workers with respiratory protection or masks, and we know that that's the lowest form of protection. Think about how challenging it can be to work a 12-hour day and 11 of those hours are spent wearing a paper P2 dust mask. It can be very, very challenging. This is why they're commonly removed to maybe talk or have a drink or just to adjust it, because it can be very challenging. It's not to say that they don't have a place, but to rely on it to reduce exposures to the workplace exposure standard day in and day out is very hard.

The Hon. ANTHONY D'ADAM: What is it about tunnel-boring machines that make them safer than the alternative forms of—

KATE COLE: Tunnel-boring machines are like a really large worm that is underground. It's about 100 metres long. It covers the whole footprint of the tunnel itself. There's not a lot of space for the dust to escape to, because it has extraction systems on the tunnel-boring machine that are generally very good at extracting the dust from the cutter head as it's tunnelling. Mined tunnelling—if you imagine a very large cavern and a very small machine that's tunnelling at the face, that dust can go anywhere within that cavern. So if it's not appropriately controlled at the point of dust generation, if the ventilation system is over here and the road header is over here, it's relying on the dust travelling all that way, and we know that in many cases it's not very effective. It's just a difference in the method.

The Hon. ANTHONY D'ADAM: What would cause fluctuations in the amount of particulates in the environment in tunnelling? It seems like while the machines are operating you get a consistent level of dust and you have a constant environment, so it doesn't matter when you do the air quality testing. If it's pretty consistent, then the amount of particulates in the air would remain relatively constant.

KATE COLE: Actually, it's the opposite. It's very variable. You have road headers that will mine and then they will pull back, then you'll have a bolting rig that goes in and then you'll have a shotcrete crew that goes in, and the process continues. In my experience and in the experience of others that have spoken to me—and I'm sure maybe SafeWork NSW can share some of their experiences in tunnelling—sometimes when we will go and do air monitoring, the machinery is not working. So maybe on that day that the air monitoring was done, it was not representative about what was happening on that day. That's why a bit more prescription around air monitoring and tasks that are occurring at that time while the air monitoring is being performed is so important, because dust levels do fluctuate depending on the method used, depending on the time of day and depending on the tasks that are being undertaken at that time. There are a lot of things that happen in tunnelling that aren't just at the face.

There are other back-end works that are happening in parallel, but all that air has to flow past the workers to get out of the tunnel.

The Hon. CHRIS RATH: On that, of the big infrastructure projects that we know about in Sydney, which ones are using the boring method and which ones are using the cutters? Is the metro doing the boring and are the road projects doing the cutters?

KATE COLE: Sydney Metro West and Sydney Metro City and Southwest will use tunnel-boring machines. Every other project will use mined tunnelling—except Coffs Harbour bypass, I believe, is using drill and blast, and Snowy Hydro 2.0 would use drill and blast.

The Hon. CHRIS RATH: I don't know if you want to or if you can answer this question. From your time at Sydney metro, is there anything that you could tell us about? What was your role there? Was it in the tunnelling work health and safety space?

KATE COLE: I've worked on many projects, and one of them has included Sydney metro. I'm definitely not authorised to speak on behalf of Sydney metro in the capacity that I sit here. I will provide some publicly accessible information for you. Sydney metro was the first project that had an occupational health standard in place. It was the first project that put minimum, mandated contractual requirements into tunnel contractors' contracts. That required air monitoring. It required air monitoring results to be sent to Sydney metro. It required minimum mandatory controls. From my perspective, it did a lot of things, from a client, to try to improve conditions in tunnelling. As Mr Donovan said this morning, even though this data came from Sydney metro, they should at least be commended for sharing that information. The information they did provide demonstrated that the highest risk is actually in mined tunnelling. There is a significant amount of mined tunnelling happening in Sydney from which we do not have publicly accessible data.

The Hon. CHRIS RATH: That's the non-metro projects?

KATE COLE: That is the non-metro projects.

The Hon. ROD ROBERTS: I have one follow-up question from your original opening statement, Mrs Cole. Again, I don't know if I heard this correctly, and please correct me if I'm wrong. I got the inference that you talked about the monitoring of air samples by the PCBU themselves. What level of competency must there be for the person that takes that actual sample at the workplace?

KATE COLE: That's a great question. At the moment there is no minimum mandated competency for persons that do air monitoring. Obviously at the Australian Institute of Occupational Hygienists, we have made recommendations about those minimum standards. It's not as simple as going to a store, getting monitoring equipment and putting it on a worker. Even if it was, there is a lot of skill that is involved in understanding how to interpret that information. It is more than just air monitoring; it is understanding where the sources of exposure are coming from, and most importantly, if there is an issue, understanding what the appropriate control measures are to keep workers safe. Myself and many occupational hygienists have been incredibly busy since the implementation of the new crystalline silica regulations and the majority of our time has been spent helping businesses understand how to control the risk—not so much air monitoring, but most importantly, how to get on top of it to minimise the risk as much as possible rather than just going and putting pumps on workers and measuring the dust that we know is probably a problem.

The Hon. ROD ROBERTS: Prevention is always better than cure. For us as a committee, which at the end of the day will be making recommendations to government, going back to where the PCBU is taking samples themselves, what could we recommend in that field to ensure the integrity of the samples that are taken?

KATE COLE: One of the best recommendations would be to require that all air monitoring for silica is 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.

The Hon. SUSAN CARTER: I just have a couple of quick questions, if I may. When you were answering questions from the Hon. Anthony D'Adam you were talking about PPE—perhaps user fatigue, lack of comfort, or that PPE isn't perhaps the solution to managing risk. Is that an accurate summary?

KATE COLE: PPE would not be the first choice in managing risks. It is something to supplement what we call higher order control measures. There is a hierarchy that we would follow. We want to eliminate the

generation of dust, substitute the product we are trying to work with, or substitute the method that we are using to do the work et cetera.

The Hon. SUSAN CARTER: If we're talking about silica, is it possible in tunnelling to eliminate the production of dust?

KATE COLE: I don't think it's possible to eliminate the production of dust, but it's definitely possible to minimise and reduce the amount of dust that is in the air, yes.

The Hon. SUSAN CARTER: And that's where you're talking about using different types of machinery?

KATE COLE: Let me give you a really good example. There is a large number of workers that work underground in heavy machinery that have the benefit of closed cabins with windows. You would expect that a typical underground piece of heavy machinery is appropriate to use without having to wear a dust mask. That's not always the case. 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.

The Hon. SUSAN CARTER: One hopes that the welfare of the workers would be the overriding consideration, but are there other incentives that you can think of that could be offered to PCBUs so that they would implement those best-practice measures?

KATE COLE: It's a good question, but it might be a question for the PCBUs. I don't think I could appropriately answer it. I'm sorry.

The CHAIR: Could we expand the discussion beyond tunnelling to quarrying work and workplaces like cement factories, for example? This inquiry is a review of the whole scheme, amongst other things. Part of that is to go beyond manufactured stone and, clearly, into tunnelling, but also wherever there is a manifestation of dust. How do we keep abreast of what we need to, as a committee, to make sure we're always on the front foot as opposed to being reactionary to things? I speak for myself only here, not for other Committee members. Obviously, manufactured stone has the tail described earlier, which has been a long tail. We are now confronted with what is happening with respect to the tunnelling. My sense of all the very rich evidence today is that we are behind the eight ball, arguably, in quite a significant way, which is not where we want to be. How do we keep abreast of other manifestations of dust and the implications for workers, as opposed to only from hearing from experts like yourself once every cycle when we do a review of the dust diseases scheme?

KATE COLE: I acknowledge the work of SafeWork NSW in the context of its silica dashboard. It updates that quite regularly. That includes information around prosecutions, notices and, importantly, cases of dust diseases. One wonderful and welcome improvement to that dashboard that would inform members of the public and, indeed, the Committee and future trends in terms of dust diseases would be to update that dashboard to include information about overexposure to silica. Now that the new crystalline silica regulations require PCBUs to notify SafeWork NSW when there are exceedences, they would then have this information. So to be able to categorise that information into industry, about how many exceedences are actually coming through to the regulator, I think, is really important information, because that would give you a bit of a snapshot and you can start to see the level of risk in different areas across the State.

The CHAIR: And with respect to quarrying, for example, obviously there are many quarries around the State. I don't have detailed knowledge, but often those quarries are quite small and there might be a limited number of workers on the site. Nevertheless, if there are exposure issues there which are consequential, it is important that that be attended to as well. Is anybody doing expert work, if we can use that phrase, on the matter with respect to quarrying and what we need to confront there?

KATE COLE: I would have to take that question on notice.

The CHAIR: Sure, take that on notice. That might be a topic for your second PhD, when you are through your first one. This question may be beyond your practical knowledge and expertise, and please feel free to say so if that's the case—it is no reflection on your particular expertise. This inquiry is having a good look at the dust diseases scheme in New South Wales. Many witnesses have talked about how it has progressed or, arguably,

regressed—depending on their point of view—over time. What we have now is what we have now. But when you stand back and look at the scheme with your expertise, are there any headline observations that you would like to make about where the scheme might be improved?

KATE COLE: I think, as has been raised before, it is becoming increasingly challenging for younger workers—I know of at least one example of a younger worker with a young family, who may be female—when the scheme was set up to look after workers that were significantly older and male only. This is definitely an issue for both genders and, indeed, much younger people. That would be my main observation. In tunnelling, as I said, we typically have cases of chronic silicosis—that's after 10 years exposure—but that does not mean that it's confined to gentlemen in their fifties. Indeed, there are cases of tunnel workers with silicosis younger than myself, without giving my age away, so that is increasingly concerning.

The CHAIR: I suspect that once we've had the opportunity to read *Hansard* there may be some supplementary questions—if you are prepared to have a look at those. Once again, thank you for coming—in fact, twice today. You bring a great deal of expertise to the table. I noted earlier, looking at the previous reports, your participation. It has been an important contribution, to have that continuity of expertise over a period of time to bring to the table.

(The witness withdrew.)

Dr JANE MUIR, Member, Royal Australasian College of Physicians, and Fellow of the Australasian Faculty of Occupational and Environmental Medicine, affirmed and examined

Dr ARUVI THIRUVARUDCHELVAN, Consultant Respiratory and Sleep Physician, affirmed and examined

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, before the Committee via videoconference, affirmed and examined

Mr MARK BROOKE, Chief Executive Officer, Lung Foundation Australia, before the Committee via videoconference, affirmed and examined

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, before the Committee via videoconference, affirmed and examined

The CHAIR: Thank you for coming along this afternoon to provide evidence to our inquiry. I commence by acknowledging that this is a very important panel this afternoon with people who bring myriad expertise and knowledge to the table, which will be helpful for us in our inquiry into the dust diseases scheme in New South Wales but, more broadly, that is to do with silica dust around tunnelling and related sites. I invite each witness, if you wish to do so, to make an opening statement. That will help to set the scene for members when we come to frame some questions to you. You don't have to; there's no obligation to do so, but you will be welcome to make one, if you like.

JANE MUIR: I'll just give a quick introduction about RACP and who I represent, and the work that I do. The Royal Australasian College of Physicians represents 32,000 medical specialists from 33 different specialities. I am an occupational physician so I'm a member of the Faculty of Occupational and Environmental Medicine. I am an expert in workplace health and how health affects work and how work affects health. In my line of work, I work with a lot of tunnellers, both performing health surveillance and managing those who have been diagnosed with silicosis.

The CHAIR: Very good. That will be very useful for us. Dr Thiruvarudchelvan, would you like to make an opening statement or provide a general statement?

ARUVI THIRUVARUDCHELVAN: I am a respiratory physician with a special interest in occupational and interstitial lung diseases. I am also a member of the Thoracic Society of Australia and New Zealand, which is the peak professional body for respiratory health in Australia and New Zealand. I see many patients with silicosis and other occupational lung disorders in my daily clinical practice and I'm involved in research in this field and work alongside Professor Yates, who was initially intended to present today but is indisposed. I'd like to summarise the TSANZ's recommendations in response to the current review of the dust diseases scheme. There were two areas in which the Legislative Council invited submissions. The first was medical support mechanisms and assistance for workers impacted by dust disease. Our feeling is that respiratory surveillance in New South Wales needs standardisation. There is no central repository of data, system for quality control or access to results by workers or healthcare practitioners.

Contrary to the TSANZ's recommendations, icare uses insensitive technologies and spirometry to detect dust diseases in workers who have a high risk of disease, meaning that early-stage disease can be missed. In addition to the implementation of lower dust levels at source to reduce cumulative dust exposures, regulating a cap on working hours for dust-exposed workers should be considered. The feedback loop between icare and SafeWork NSW is inadequate, leaving workers exposed to further workplace risk. Current support mechanisms, including medical and financial assistance for workers impacted by dust disease and job reassignments, are inadequate. Toxicology testing of emerging replacement stones should be undertaken before new products enter the market, and not after potentially toxic materials have been introduced. Such products need clear labelling with a listing of all the constituents.

The second area we looked at was the emerging areas of risk for silicosis in industries including but not limited to tunnelling and quarrying. The TSANZ notes that there is no safe level of exposure to respirable crystalline silica and that silicosis has been documented to occur in workers after exposure to products with low levels of RCS where poor occupational hygiene exists. Silicosis has been described in a variety of industries, including jewellery making and dentistry, and therefore a high index of suspicion is required for every silica-containing product. Thanks for your attention. I'd be happy to answer any questions.

The CHAIR: That was very precise and very clear, and a very good opening statement. We will move to witnesses online.

HAYLEY SEE: I want to reiterate the expertise and experience that the Thoracic Society is offering to the Committee and the New South Wales Government. The Thoracic Society of Australia and New Zealand is a leading authority on lung health, with a professional membership base of over 1,800 individuals and a wide range of health and research disciplines. The Thoracic Society first raised the alarm regarding silicosis diagnoses in stonemasons back in 2016, and we've been advocating for the elimination of engineered stone, the protection of workers, respiratory surveillance, standardised care, and mechanisms to support lung health and workers ever since. During this time, we have worked alongside our colleagues at the Royal Australasian College of Physicians and Lung Foundation Australia in advocating to protect and support workers here in New South Wales and around the country.

Our recommendations, which Dr Thiruvarduchelvan just described, prioritise evidence-based practices to protect workers and improve respiratory health outcomes. These will deliver significant benefits in terms of both worker wellbeing and also cost savings in the long run by preventing disease and associated healthcare burdens. Workers deserve to be protected from harm when they are out earning a living. This Committee can help to bring much-needed standardisation of safety regulations, surveillance and implementation of clinical pathways to support workers, keeping them safe and cared for if they do come to harm. We are happy to assist the Committee today and into the future.

The CHAIR: I appreciate that very much. I'm happy to acknowledge the past contributions by the organisation as well. I've had the honour of being on the Committee over a period of years. I have always been impressed by the quality of the submissions and evidence. Thank you for that, along with the other participating witnesses today.

MARK BROOKE: Thank you for the opportunity to present today. I'll take our report as read, but we would like to make three additional comments, if we may. First and foremost, you will have seen that the national silicosis eradication agency released the *Silica National Strategic Plan* this week. The Lung Foundation was contracted by the Department of Health to deliver the forerunner of that document, and we are really pleased to see that the Commonwealth and all States and Territories, including New South Wales, have adopted the plan. But its adoption will only be successful if the recommendations and actions within that plan are taken seriously by government.

The second area we'd like to highlight is that, over the next 12 to 18 months, we have a really crucial opportunity—with the introduction of the National Lung Cancer Screening Program by the Commonwealth—to be able to see an increase in the number of patients potentially identified with occupational lung diseases, in particular. Being prepared, and leveraging that opportunity, is something that we would encourage the Committee to consider.

Finally, as part of a Commonwealth-funded package, the Lung Foundation receives a substantial grant to support men and women, and their families, impacted by occupational lung diseases. We offer a specialist nurse program, a telehealth nurse program and a specialist social work program. These are free of charge and allow workers and their families to seek independent, confidential and, at times, very sensitive information about not just their workplace and their rights and obligations but also about how they're managing their particular disease, or whether they're at risk.

We just make the point that that service is increasing. Silicosis did not go away as a consequence of the ban on artificial benchtop stone. As you've seen this week, there is a re-occurrence, or an emergence, in a number of industries, including tunnelling. Particularly, we'd like to highlight the TSANZ's point and position that new products coming onto the market are arriving every day without sufficient testing or understanding of their impact on workers' health.

The CHAIR: It was remiss of me to not acknowledge the contribution through the submission, which stands as a submission tendered to the inquiry. That's been received, processed and stands as a submission. The Thoracic Society's submission No. 9 has been processed and stands as a submission to the inquiry. Mr Driscoll, if you'd like to make an opening statement, and then we can move on to the questioning from the members.

TIM DRISCOLL: I actually wasn't going to say anything, but I would like to say two things. I strongly support the statements of the Thoracic Society and the Lung Foundation in terms of what they say. I definitely support that. The second thing is to keep in mind that, although the problem with silicosis in Australia has been particularly brought to light because of engineered stone, there is a large number of workers who work in other areas who are also exposed, or potentially exposed, to silica. We need to make sure that their exposure is prevented or controlled as soon as it can be, as well as what we've been doing with engineered stone.

The Hon. ROD ROBERTS: Dr Aruvi, you said in your opening statement something like these words—I'm not quoting you exactly—that the loop between icare and SafeWork is completely inadequate. Can you tease

that out a bit more? Explain to us why it's inadequate, the importance of it becoming adequate and how we rectify that.

ARUVI THIRUVARUDCHELVAN: The issue at hand here is the focus of the two different organisations. SafeWork NSW is present to create a safer working environment for the worker, whereas icare and the Dust Diseases Board are more focused towards compensation and the care of the patient. While the patient is being assessed and sorted out for compensation and routinely followed, they don't necessarily communicate the recommended dust restrictions to SafeWork NSW. Sometimes, some of these patients who have been found to have an occupational lung disease and have been given compensation can actually return to the workplace in a similar capacity without any increase in their precautions. In fact, they're continuing to do what they were doing before, just with compensation. Potentially, what might be beneficial is having a communication between icare and their assessments and SafeWork NSW to impact the worker moving forward, rather than just focusing on their own side of the table, which is compensation and medical management.

The Hon. SUSAN CARTER: I have a follow-up question from that because I was interested in the same issue. You indicated that icare used insensitive technologies for diagnosis. Why is that?

ARUVI THIRUVARUDCHELVAN: It's an interesting question. Undoubtedly, it's to do with the development of new technologies and also the ability to use these technologies in the workplace in a sensible way. For initial screening, we were talking about chest X-rays and spirometry, but we now know that a chest X-ray is inadequate in the early diagnosis, for example, of silicosis, and spirometry will be normal until patients are quite impaired with silicosis and progressive massive fibrosis. At the moment, the current recommendation would be to consider CT, rather than chest X-ray, early and more complex lung function, including gas exchange, to try to accurately assess these patients or workers early enough that we can modify their trajectory. Potentially, in the future there are other options, like exhaled breath testing, which might be more amenable in the workplace than the current recommendations.

The Hon. SUSAN CARTER: Are they much more expensive technologies to use?

ARUVI THIRUVARUDCHELVAN: Complex lung function can now be done more easily in the workplace health assessment setting. It's not necessarily more expensive. CT scanning is certainly much more expensive than the chest X-ray.

Ms ABIGAIL BOYD: I apologise in advance. I'm going to ask some pedestrian questions—questions that you'll probably find not very clever. Taking a step back, we had some submissions this morning from people saying that these silica-related diseases are not all lung diseases. At the moment, for the purposes of the dust diseases scheme, we only recognise those lung-based diseases. If we were to include that broader group of diseases within the scheme, what level is the evidence at and what would we need to be shown in order to link it causally with the exposure?

ARUVI THIRUVARUDCHELVAN: That is a very interesting question. It is a question that is currently being researched. I'm probably not best placed to give the details into that. At present, there does appear to be an association between silica exposure and autoimmune diseases which can affect the joints, the blood vessels and the skin. For any further detail, I may have to defer to others or provide an answer at a later point.

The CHAIR: You certainly can take it on notice.

ARUVI THIRUVARUDCHELVAN: Yes, I will take it on notice.

JANE MUIR: In terms of the other lung diseases associated with silica, I know there is definitely an association that is heavily reported and recognised in the literature. In terms of any evidence for causation, I will have to take that on notice.

Ms ABIGAIL BOYD: That's why I say that I feel a bit ignorant in this space. I'm trying to work out at what level or threshold it would then be included in the scheme if we were to broaden it, which it sounds like we probably should do with information getting better and our understanding getting better. But what level would we then expect there to be in terms of percentage causation to the exposure?

Sorry, someone has their hand up on the video feed. Maybe they can help me.

TIM DRISCOLL: I don't disagree with what has been said. It probably depends on who you are as to the outcome and how strong the evidence is. I think 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. I have [inaudible] probably two years ago. At that stage, for several of the conditions you are referring to, I would say the evidence was pretty strong but not absolutely clear at that stage. As to whether it ought to be included or what level of evidence you would need before you would include it, it

really depends a bit on the philosophy of the scheme, in a way, as to whether you want to make sure that somebody has developed a condition as a result of the silica exposure. You want to make sure that they are covered, accepting that there might be some people who are then covered when it actually wasn't caused by their exposure.

The alternative is, if you want to have a stricter definition, essentially you would be excluding people where the connection had been made. In terms of what should come from the Committee, I think it would be worthwhile at least recommending that somebody—not me, but somebody—look at the current level of evidence so that you are well informed now. I think that there has been quite a bit of evidence or some evidence available in the last couple of years that hasn't been summarised previously. I think that might well be useful for you, given the question that was asked. And it could be done relatively straightforwardly, I think.

MARK BROOKE: It's a chicken and the egg scenario, insofar as many of these diseases are diagnosed but not necessarily recorded in a register. 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. That is part of the problem that we have seen consistently. It has been so narrow in its definition and not supported by good data registries, or funding hasn't been directed towards those data registries or the data reporting systems, to enable us to be proactive. It always seems, as we said in our submission, that we tend to be reactive when patients are at their worst condition.

Ms ABIGAIL BOYD: Thank you. That is incredibly useful. We have heard a lot about people who are diagnosed with silicosis or even have got to the point of actually making a claim under the scheme who want to keep their job and want to keep doing their work. Are there ever circumstances where they can be put back into the same environment or is it really a case of once you have been diagnosed you should not be going back into any situation where you would be exposed to dust?

ARUVI THIRUVARUDCHELVAN: That is actually quite an interesting question. I have been working with some of Dr Muir's patients who are tunnellers who have been exposed to silica dust and they have been diagnosed with silicosis but it is, in the grand scheme of silicosis, relatively mild and provides no impairment. In that particular situation, they do actually return to the workplace in their current role with clear guidelines about dust monitoring and dust management. The decision of whether they can return to their current role or a modified role depends, it would appear, on the severity of the illness when it is diagnosed and at every reassessment point.

JANE MUIR: I might just add to that. I have, in the course of my work in the last 18 months, diagnosed a lot of tunnellers, newly, with silicosis. Almost all of those workers are asymptomatic with normal lung function, with very early changes on their CTs. My recommendation to all of these tunnellers is they should consider another occupation with low dust exposure. Overwhelmingly, their position is that they don't have another trade and they have lots of other obligations—mortgage, young children—and they can't afford to leave the industry. My understanding is that currently, because they have no level of disability, the vocational support or retraining support that is available to them from the dust disease scheme isn't available—because they've got no level of disability—or isn't adequate to allow them to not be significantly financially disadvantaged if they leave the industry.

As their managing doctor, and as the liaison between themselves and the workplace, and the doctor who is putting restrictions in place, I have been working very closely with the operators to allow these workers to make an informed decision to stay in the workplace as safely as we can. That includes mandatory use of power-assisted respirators—the PAPR Versaflos—including a daily register to confirm they are wearing it throughout their full shift. I also have implemented monthly to three-monthly personal exposure monitoring. Those workers who are actually exposed, we are having their actual gas—like, their dust levels—so I can review that every three months and look at their readings with them. I am reviewing them every three to six months with this information, repeat lung functions, repeat CT scans, in consultation with Dr Aruvi on recommended frequency.

Now, it is not perfect because whilst they've got those PAPRs 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. The issue is what alternative duties might be available for these workers with their operators, and whether or not there would be a job for them. That is where I really think there is a big gap with the dust disease scheme support that is available to these workers—that they have to wait until they have got a certain level of disability, rather than having the opportunity to retrain.

The CHAIR: That is very good evidence.

Ms ABIGAIL BOYD: Very useful, thank you.

The Hon. ANTHONY D'ADAM: Are these patients coming to you because you are involved in a health monitoring scheme? How does the disease burden look over the total population of the people in the scheme? As a follow-on, are there specific worker functions that appear to be much more exposed, and what are they?

JANE MUIR: Absolutely. I actually did a case series analysis for one of the projects that I worked on for all the workers who had been diagnosed with silicosis to look at the demographics and the kind of exposure history they were having. The average age was late 30s, early 40s. The average exposure—and I think that is important as well. A lot of tunnellers haven't just worked in tunnelling. A lot of them jump between tunnelling and mining, and so they have quite broad exposure histories. On average, there had been—

The CHAIR: Sorry, Doc. That's underground mining?

JANE MUIR: Underground mining—coalmining and hard rock. They are very similar roles and a lot of the machine operators jump between the two as projects become available. The average years of—and this is a very small data set, I would say. This is just based on ten workers, but the average time exposed to silica dust was 15 years. The average time in tunnelling was—sorry, off the top of my head—somewhere between five to 10 years. By far and away, the workers who are over-represented in this group are roadheader operators. The other group were mechanical fitters, who aren't necessarily the obvious group. My theory, and it's only a theory, is that they do a lot of work around the scrubbers and, when the scrubbers break down, they're the guys who go in there and fix it, so perhaps they're exposed to the dust through that.

The CHAIR: And related maintenance work that goes with those pieces of machinery.

JANE MUIR: I did a very rough prevalence, based on the cohort of patients that I had with either possible—very early changes but not able to confirm the diagnosis, but someone we're going to watch very closely—or confirmed silicosis. The prevalence in the group that I was doing health surveillance on was 8 per cent, so it was not insignificant.

The Hon. ANTHONY D'ADAM: In the Thoracic Society submission, there's a suggestion about capping worker hours. I wonder whether Dr See or Dr Thirumarudchelvan could speak to that proposal.

ARUVI THIRUVARUDCHELVAN: A lot of these workers that I've seen tend to work long hours. They tend to do 12-hour days seven days in a row—sometimes up to 10—and then have longer breaks. The reason for that recommendation in particular is it limits the period of time that they're exposed to the dust. It also gives a period of time where they're not exposed to the dust where the natural mechanisms in the airway can work towards clearing out the dust. While they are exposed, at least there is a little bit of time frame to clear it out afterwards. That's the reason for that recommendation.

The Hon. ANTHONY D'ADAM: So it's a capping in terms of daily hours, not like a radiographer, who has a maximum number of hours that they work and then they really have to get out of the industry.

ARUVI THIRUVARUDCHELVAN: Yes. Potentially that may become relevant in the future, but I think at present the situation is mainly about protecting them in the day to day.

The CHAIR: For those on the video link, are there any observations or related comments you'd like to make over the last five or 10 minutes of questioning that we have?

HAYLEY SEE: Yes, I would like to draw the Committee's attention to the early reports coming from the National Occupational Respiratory Disease Registry, which started in May. There are mandatory notifications for silicosis. Early data already shows that the main industries are construction and manufacturing. The main roles are stone pre-assessing, machine operators, stonemasons and then those who are involved in cutting, shaping and sawing. Also, the leading State for notifications is New South Wales, which is leading with nine notifications for silicosis, whereas all the other States are under five at the moment. The registry will continue to be improved in years to come, but it will be able to provide data for the Committee to help it understand industries and trades which are leading being infected by exposures.

TIM DRISCOLL: I wanted to add a couple of things. One is the mention that Jane said, which is that there's about roughly 8 per cent in her small pool, which is not atypical based on the little information we have in Australia. A 20 per cent prevalence of silicosis in tunnel workers is unfortunately what seems to have been found. That doesn't surprise me. The other thing would be talking about what to do with people who might have a low level of silicosis. I don't disagree with what was said, but it's just worthwhile keeping in mind, with them and for all the workers, that people only develop silicosis if they're exposed to silica. In tunnellers, you're not going to be able to avoid exposure entirely, but we have the systems in place. We know what to do to keep exposures below a level that could ever result in silicosis. The fact that people have developed silicosis, and are developing silicosis,

is clearly reflecting a failure in those control mechanisms. I'm not sure if that's directly in the focus of the Committee and the inquiry you're doing now, but I think it's very important that we keep in mind that every one of these cases is, one, preventable and, two, reflecting a failure of the controls that we should be able to have in place.

The CHAIR: Mr Brooke, did you have additional comments?

MARK BROOKE: Just two additional comments. I think it's really important to acknowledge that this workforce is, at times, transient and will go from State to State. The transfer of information, histories and data for patients is, at best, a leaking boat. It is subject to the patient declaring their previous medical history or the clinician being able to find that. The other point we would make is that about 30 per cent of everyone that is calling our specialist occupational lung disease nurse is now coming out of tunnelling. That is increasingly stepping up. As we see more data beginning to appear in the occupational lung disease registry, it will be really good to be able to identify not just those industries but also those workplaces that have repeated numbers of case presentations. At this stage, we are not at that point of having the granularity of understanding, "Is it firm A or corporation B that has better or worse practices?"

The CHAIR: Can I just follow on with a question, Mr Brooke? Forgive me, I probably should know the answer to this. With respect to the registry as it is set up here in New South Wales, does it contain the fields within it to enable the specificity of the type of information that you've just said would be important in terms of the monitoring of these affected workers, or do you not know the answer to that?

MARK BROOKE: I might ask my clinical colleagues, but my understanding is that the information doesn't have that granularity.

The CHAIR: Well, that's something. Perhaps I will just press on with that line of questioning about the registry here in New South Wales and how it's set up and operating. Do any of the witnesses have any insights from their practical experience of working directly or indirectly with the registry and any insights into how it operates? You can be as frank as you like too, Doctor.

ARUVI THIRUVARUDCHELVAN: I was going to say that I will be frank. I haven't actually registered for the registry myself yet. 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.

The CHAIR: Who sent you the email? If you can recall as best as you can, or if you need to go back to—

ARUVI THIRUVARUDCHELVAN: The New South Wales department of health. In the last few months, they sent an email essentially saying we no longer needed to notify NSW Health—not SafeWork, sorry—because there was now a national online registry which is done online, as opposed to the paper forms we used to fill out before. To be fair, I have been shown how to register for it. The registry link is associated with my personal Service NSW account which creates an issue if I want to, for example, enable a proxy person to help with the notifications. It creates extra work for the practitioner themselves. It creates a privacy issue, if you would try to enable a proxy, in its current form.

The CHAIR: Just so I can understand, this work has now fallen onto your shoulders? No doubt, with your responsibilities, you're pressed with a lot of commitments to your time. It is not reflecting on you. To do that, and to keep that updated at the level of professionalism you would want it to be maintained at, would become a bit of an impost over time, wouldn't it?

ARUVI THIRUVARUDCHELVAN: Exactly. There are a number of limitations with the registry, some of them purely to do with the fact that it's now on the shoulders of the practitioners to do it themselves after each assessment. But there are also so many limitations in terms of what would be classified as an occupational lung disease and whether the practitioner would make a notification for a lung disease or make the connection to an occupational exposure in order for that to be then registered with the registry. Then there are other limitations, including patients not wanting to come forward because it can affect their job prospects and career progression.

The CHAIR: I think Mr Brooke wanted to jump in.

MARK BROOKE: I'm going to try to wrap a ring of protection around our clinical colleagues and say it as clearly as I possibly can.

The CHAIR: Please do.

MARK BROOKE: It is a mandatory reporting requirement under Commonwealth legislation that clinicians complete that report. However, they are not compensated for it and it only looks at one lung disease at the moment, which is silicosis. We need to understand that whilst it is in its very early days, 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.

The CHAIR: I appreciate that contribution, I really do. Any other final questions or comments about the registry before we move on?

Ms ABIGAIL BOYD: I want to clarify that, because when the regulation came out, I made it a point of going and talking to SafeWork about that because I was worried about the lack of overlap between the two reporting requirements. So it's very important disappointing to hear that that has, in fact, rolled out in a not very effective way. Does that mean, though, that those registrations aren't being made? If you're not registered yet, does that mean that you have cases you haven't yet notified?

ARUVI THIRUVARUDCHELVAN: No. Essentially, the situation now is that when I need to notify, I will probably register at that point.

Ms ABIGAIL BOYD: But you have an obstacle to registering because they're making you do it through Service NSW?

ARUVI THIRUVARUDCHELVAN: Yes. It's partly that and the whole registration process. 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 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.

Ms ABIGAIL BOYD: I have another question that's not on the register.

TIM DRISCOLL: Sorry to pop in quick. Mark is correct about the registration only covers silicosis at the moment, but I wanted to note that the college of physicians and others have been pushing strongly that it should be expanded. My understanding is that the health department federally agreed with that in theory. I just think it would be good for us all to do whatever we can to encourage them to actually have it in practice. That's one thing.

The second thing, Mr Chair, you were asking about was whether there was information that would allow us to understand the exposure circumstances. That is certainly something that we've pushed strongly to have included in the register. I actually haven't got the fields in front of me, so I can't remember exactly what's in there. But my understanding is that there are fields that can be completed to provide data that might be useful, but it's not required. And, as Mark was saying, because there's no recompense—and I'm not just trying to push that barrow, but noting that realistically it takes time—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. So that's what we really need, from a prevention point of view.

Ms ABIGAIL BOYD: Going back to the evidence that you were giving earlier, Dr Muir, about these workers who have the early stages of silicosis, you were talking about how you could put them back into that environment if there was extra protection et cetera. That, of course, then begs the question of why don't all workers have that extra level of protection so that they don't get this in the first place.

JANE MUIR: There has been a progression on most sites now where that protection is standard and mandatory for all high-risk workers; certainly most of—all the sites I've been working on now. Versaflos and PAPRs are mandatory for high-risk workers on some projects; 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. One of the issues is that now there's no longer a clean-shaven policy because all of the workers are in these headsets, there's no longer the backup of putting on that P2 mask when they can't get into the small spaces. This is why 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.

The CHAIR: The issue of the challenge with respect to the tunnelling exposure for workers—there's much tunnelling work being commenced, much underway and being completed in New South Wales, and one may reasonably expect that there could be more into the future. A lot has been done, but there's still plenty being

done and may come. A fear that I have—and I speak for myself; others may or may not share it, and I've used this comment before—is that there has been a long tail associated with dealing with the manufactured stone. It moved what I judge to be reasonably rapidly when the Commonwealth came to terms, got people around the table and the consensus concretised. Then there was the movement towards the banning and much flowed from that, and we find ourselves where we are today.

Given that New South Wales is the heartland for the tunnelling and that we can see things coming down the pipeline, the impact on workers, would there not be a problem for New South Wales to accept the proposition that, "Listen, this in all good time will move. The State and Federal will come to a point where we're getting this addressed far better than we are now"? Looking down the line that could be quite a while. Surely there is an argument that New South Wales, whilst we obviously want to work and have comity with the other jurisdictions, have got so much skin in the game here that it is, dare I say it, obligatory on the Government to move on this and move with some serious momentum to do what needs to be done to address it. This is an open question. I would welcome any comments that people might have about that proposition, starting with whoever would like to jump in or disagree and please explain.

TIM DRISCOLL: I will jump in, if that's okay. I would probably even go further than what you've said, Mr Chair, and say I think there's an obligation for the Government, whichever government it is but particularly New South Wales, to act to make sure that exposures are appropriately controlled so that people are not developing silicosis, though keeping in mind that exposure to silica will also increase the risk of lung cancer. It's not just a silicosis problem. I'm just repeating what I said before: We know what to do; we know how to do it; we know how to control the exposure. All the papers on silicosis are showing that, for whatever reason, the control measures haven't been put in place appropriately. So as well as encouraging the employers to make sure they have the correct systems in place and knowing the importance of that, also it's important that there be strong enforcement. Hopefully the enforcement wouldn't be needed, but having strong enforcement I think is important to ensure that the [inaudible] themselves are appropriate. So I do strongly support what you say.

MARK BROOKE: I think we do need to refer to the national silica strategy that the Commonwealth and the States and Territories have recently signed up to. It gives us the three aims. Priority number one is workplace risk reduction. Recently Professor Driscoll and colleagues worked with the Lung Foundation to set up the national research priorities for silicosis. The impact or prevalence across industries is one of those key research questions. What are high-risk industries, how can a worker return safely—under what circumstances, if at all—are all things that the research and occupational physicians want to be able to see investment in. From our perspective, the first four priorities of workplace risk reduction; education and awareness; health monitoring, screening, surveillance and support; and research and development—we would warmly welcome if New South Wales worked with the Commonwealth to start leading the way, given that it has a very high number of large and ongoing tunnelling projects.

The Hon. ANTHONY D'ADAM: I think in one of the opening statements there was a suggestion that there's no safe exposure level. We have a workplace exposure standard that was set on the basis that it was what we could measure at the time. I heard evidence earlier today that the technology has now advanced; we can measure much finer particle sizes. Do you think there's any merit in changing the workplace exposure standard—lowering it further?

JANE MUIR: Yes. We know that the health risk of silica dust is accumulative. 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. But, also, we know that—I'm obviously predisposed to thinking about tunnellers because that's the group that I'm working with. They're starting work in their late teens, early twenties for 40 years, and there's that cumulative dust exposure. Obviously the goal is to reduce dust exposure as much as possible. Having that lower level of daily dust is going to reduce accumulative dust exposure for workers and reduce their risk over their working lifetime.

TIM DRISCOLL: I support what Jane said. I will just add that, from the college of physicians point of view, we strongly think there should be a health-based limit, and we strongly think that any health-based limit should be based on published evidence. 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. I think that's what most people say; some people might say 0.02. I'm not a hygienist, so I can't really speak to the controversy about whether it's possible to measure down to that level, but I'm pretty confident, from what I've read and been told, that it is. I do think that there are good reasons that the standard should be at 0.025 and not 0.05.

The Hon. ANTHONY D'ADAM: Mr Brooke, I think you had the thumbs-up emoji but that doesn't get picked up in *Hansard*. I might give you an opportunity to put that on the record.

The CHAIR: Please do, yes.

MARK BROOKE: One of the things that the national strategy wants to look at is reducing that exposure level to 0.25. Overseas it is certainly becoming the norm in most developed countries. We need to be able to adopt international best practice.

The Hon. ANTHONY D'ADAM: Is there any dissent on the panel? No-one disagrees with that.

ARUVI THIRUVARUDCHELVAN: No.

JANE MUIR: No.

The CHAIR: Can I just go back and hopefully more effectively re-prosecute my earlier argument about New South Wales having such skin in the game with respect to the tunnelling work it does and the consequential exposure to workers? There may be—I don't say there will be but there may be—a working through, as one needs to do patiently and correctly, of a national framework to deal with this matter. Because we have six States, two Territories and the Commonwealth—so effectively nine jurisdictions operating to wrestle with this—it is going to have an inhibiting effect on the time taken to come to some specificity around certain key aspects of this.

I am not saying that New South Wales should go it alone because we obviously operate within the Commonwealth, but the real fear being the additional time that is taken as we saw in the context of the manufactured stone. For the citizens of New South Wales and for the Government of New South Wales, whoever the government of the day is, that is something that ought to be pushed back on because many tunnellers are burrowing around in our metropolitan area right now and are being exposed. To think that we just may have a brake put on the speed with which this can be addressed I find pretty challenging, or am I missing something here?

JANE MUIR: No, I agree. New South Wales has the most skin in the game currently and I think it would be really beneficial for us to lead here and start the process. There are other tunnelling projects starting in other States. I should mention a lot of my workers, a lot of the projects I am working on are finishing, and they are leaving the State to go to other tunnelling projects. There are new projects starting in Victoria, new projects starting in Adelaide. Their problem will start to be seen in other States. I think we have had that 20-year head start on these infrastructure projects and we would serve the workers well if we can start putting our learnings into action ready for the other States to take on board.

The CHAIR: Yes. I am not arguing against the national approach because obviously we are a Federation, but in some sense—and this might sound like an odd way to put it—we have a comparative advantage with the disadvantage, the disadvantage being the exposure. But we have a comparative advantage because we have so much experience in dealing with it. To not, in a sense, take that and use it to advance the cause, if we can get the other States on board through our national approach, would obviously I would have thought be something that we should at least try to explore. I am conscious of the time. It has been a very valuable session, I have to say. On behalf of the Committee thank you all very much.

JANE MUIR: Can I add one point, sorry? I've been meaning to add it. One of the biggest limitations for doing health surveillance is the lack of a central register for the results of the health surveillance. That's one of my biggest issues that I have. I am nominated by their employer to see them, so often I will only have the results for the duration of their employment with that employer to refer to and look for that longitudinal change, which is a key part of health surveillance. Queensland coal resources have a central repository where all the spirometries must go into there, so you can see for the duration of the employment what the lung function has been, what the previous imaging has been, and look for changes.

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. Whereas, if there was a central register to follow those workers through—and, as I say, they're very transient. Each tunnelling project is two to three years, and then they go to the next one and then they go to the next one. There is an absolute disconnect between each of those jobs and no ability to follow through their medicine. 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 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.

The CHAIR: We have heard that in evidence given earlier.

JANE MUIR: It's their personal medical information and they're making an informed decision. So I think that's a really important gap.

The CHAIR: Yes—particularly, needing that continuity of information and being able to, from a medical and scientific point of view, track what is happening with some real precision.

JANE MUIR: We do it in mining, so we should be able to do it for all silica workers.

The CHAIR: I am sure we can. On that note, thank you all very much. You have brought some serious horsepower to the inquiry this afternoon—lots of experience, knowledge and information. We appreciate that very much and all the wonderful work you do in your respective organisations. I expect there will be some supplementary questions arising from members having read the *Hansard* and wanting to do a bit of follow-up. The secretariat will follow that up with you and provide you with a suitable amount of time to consider those questions and provide answers back. Once again, on behalf of the Committee, thank you very much.

(The witnesses withdrew.)

(Short adjournment)

Mr TRENT CURTIN, Acting Deputy Secretary, SafeWork NSW, affirmed and examined

Mr AKLESH NAND, Manager, Occupational Health and Environment Team, Specialist Harm Prevention Directorate, SafeWork NSW, affirmed and examined

The CHAIR: I welcome everyone back to the final session of today's hearing for our inquiry. I welcome our final set of witnesses for today: last but certainly not least, representatives from SafeWork NSW. Thank you both for coming along. We appreciate you carving out some time for us. We've received the submission from SafeWork NSW, which you would be aware of. That has been processed and uploaded onto the inquiry's web page as submission No. 13. You are welcome to make an opening statement, if you would like to. Obviously, the submission can be taken as read, so add to it as you see fit, and then we will open up for some questioning.

TRENT CURTIN: Good afternoon, everyone, and thank you for the opportunity to appear before the Committee today. Silica remains a high priority for SafeWork NSW and the New South Wales Government. This year the New South Wales Government has committed an additional \$2.5 million to support SafeWork's enforcement team to ensure the enforcement of the ban on engineered stone and stronger silica regulations. Our efforts are always guided by the Australian Work Health and Safety Strategy, the recently launched SafeWork NSW five-year strategic plan and our annual regulatory statement, where silica is called out as one of our regulatory priorities this year. We are committed to achieving no new cases of accelerated silicosis by 2033.

Significant progress has been made in regulatory reform since the last Committee hearing of 2021. A code of practice for managing risks of respirable crystalline silica was published in 2022. The Work Health and Safety Act was amended to establish a silica worker register framework in 2023. In June 2024 reporting requirements for silicosis cases through the National Occupational Respiratory Disease Registry were implemented. On 1 July this year a prohibition on engineered stone with over 1 per cent silica content was implemented. On 1 September this year strengthening of the Work Health and Safety Regulation to capture high-risk crystalline silica processes for all materials across all industries was implemented.

SafeWork NSW is currently leading the development of a silica worker register to enhance health screening and to improve protections for at-risk workers. Consultation closed on 3 November with input from industry, unions and health professionals. We're working closely with icare in the design of the register to make sure that we can track silica exposure and enable timely health screenings. Importantly, tunnelling workers will be captured by the register where they're also exposed to high-risk crystalline silica processing.

You would be aware that SafeWork NSW is going through a period of reform guided by the McDougall review and the recent Audit Office performance audit. Since those reports were released, we've implemented a scalable organisational restructure which has resulted in an increase in the number of SafeWork inspectors from the previous 370 to 418 inspectors within our existing budget. We've established an operational intelligence function and improved data governance to better target regulatory activities. We're increasing our focus on high-risk workplaces and repeat offenders, and we've secured \$4.4 million from the Government to redesign SafeWork's technology platforms.

We will be working on strengthening our partnerships with stakeholders, particularly health and safety representatives and union delegates, with a new team dedicated to that. That was evidenced by a recent health and safety representative training refresher that we did with Unions NSW, where we had 200 health and safety representatives from across New South Wales attend. We're in the process of setting up an interim tripartite reference group with representatives from unions, industry, WHS experts and those with lived experience to make sure that we further guide SafeWork's reforms and regulatory priorities. Inquiry submissions have highlighted that there's more to do improve awareness among PCBUs and workers, particularly in the tunnelling industry. With engineered stone now banned and a number of education enforcement activities taken, our new silica compliance team will expand its focus on other industries, starting with tunnelling.

Regarding information access concerns raised in the media in the last week or so, SafeWork NSW is restricted by confidentiality provisions under the Work Health and Safety Act when considering whether to release information that we've obtained under notices and where consent hasn't been given by PCBUs to release that information. Importantly, though, PCBUs have a specific obligation under clause 50 of the WHS Regulation to ensure that air monitoring carried out in workplaces is readily accessible to workers who may have been exposed. This supplements existing rights for entry permit holders and health and safety representatives. I'd like to call on workers, health and safety representatives and union delegates to report any breaches of this part of the regulations.

Given the recent strengthening of the regulations from 1 September this year requiring notification of air monitoring exceedences to SafeWork NSW, I think there's an improved opportunity for us to work together, to collaborate with unions and stakeholders, to improve the way silica safety is achieved through access to air

monitoring information. We'd like to work with our stakeholders to continue to work on that. These reforms reflect SafeWork's commitment to working with industry, unions and other experts to improve conditions around silica-related risks and to ensure safe workplaces. We remain dedicated to working with those people to ensure compliance in pursuing regulatory reforms to improve safety for workers. Thank you for the opportunity to be here with you today.

The CHAIR: Thank you very much; that was a very good opening statement. It scoped it out very nicely, so I appreciate you doing that. I will open it up for questioning. We have members around the table from Government, Opposition and crossbench. If you're agreeable, we'll share the questions. I think they'll flow in a pretty fair and reasonable way. We'll commence with Ms Abigail Boyd.

Ms ABIGAIL BOYD: I wanted to test this issue around the GIPAA and the evidence that the AWU was talking about this morning. My understanding, and what you've just said in your opening statement as well, is that there's a threshold. Once you've obtained information through a notice, you are then obliged under the Act, effectively, to not release that information unless the PCBU has given some approval for that. Does that then mean that SafeWork has never issued under a GIPAA information it has obtained through a notice without the consent of the PCBU? Has there even been an exception made, or is it just not possible?

TRENT CURTIN: 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 PCBUs, 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 confidentiality provisions applied. That would allow them then to consult with the PCBUs that provided the information to obtain consent to release the information, and that consent was not given in this case. Therefore, the determination was made, based predominantly on section 271, that those details wouldn't be released in this particular matter. I would have to take on notice your question as to whether we have never done that.

Ms ABIGAIL BOYD: That would be very helpful. We also asked the unions this morning about that right to seek the information when you're a worker, an HSR or a union official. But, in practice, we're told that a lot of the time workers are too afraid to and that, even when a request is made, there's this strange legal privilege placed over it, which doesn't seem to stack up. But the only way of then getting past that is to take legal action, which is expensive et cetera. Is that something you've heard about before? Is there a role for SafeWork to get in there and say, "No, you can't claim legal privilege over this"?

TRENT CURTIN: Yes, there is a role for SafeWork to play. 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. Inspectors undertake ongoing inspections in infrastructure projects and in tunnelling. In their observations, they'll have seen air monitoring results on pin boards or in other places. They make sure that they observe those air-monitoring results and they make sure that they're available to workers. I would encourage workers that are working for an employer that's not making those air-monitoring results readily available to them to make contact with SafeWork, whether that's through 13 10 50 or, importantly, if those workers are concerned about raising information with SafeWork in this way, we would encourage them to use the anonymous pathway through our Speak Up Save Lives app. It can be more difficult for the SafeWork inspectors to identify the particular place and time and the issue to deal with when it's anonymous, but there is an anonymous pathway for workers to use when they've got concerns.

Ms ABIGAIL BOYD: I have one last question on that issue. If it looked like one of the reasons that the company didn't want the information to be released is that it could be prejudicial, does that imply then that information has been given to SafeWork that SafeWork should have acted on, and have you acted on the information that was given to you by those companies?

TRENT CURTIN: That set of information was obtained by SafeWork under notice, as I understand, for the purpose of undertaking compliance activities.

The Hon. ANTHONY D'ADAM: Can I pick up on that? It seems odd. The union makes a GIPAA; they want the information presumably on behalf of the workers. You go back to the company and the company says no because you obtained it under notice. Doesn't that trigger to SafeWork a suggestion that they're not providing information to the workers and that you should actually be initiating some form of compliance activity? Did you do that?

TRENT CURTIN: I can't say. I'd have to take on notice in this case whether we initiated a compliance activity. This was part of a compliance activity process, in any case, where we were seeking information from the PCBU to make determinations on compliance.

The Hon. ANTHONY D'ADAM: Doesn't SafeWork say to the employer in that circumstance, "You should have given them the information anyway. I strongly suggest you provide the information. You are required to provide that information to workers"? Surely that process should have happened if the regulator was being diligent in terms of enforcing the law.

TRENT CURTIN: 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. I know Transport for NSW released a range of information to the AWU, and it's pleasing to see that they've got access to that information. From 1 September, 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.

The Hon. SUSAN CARTER: I have a quick follow-up to this. So a worker uses your anonymous complaint line or makes a direct complaint and you then approach the PCBU for the information about air monitoring. If you have to get that under a notice, how does the worker ever find out what the air quality is?

TRENT CURTIN: The information we're obtaining under notice might be a whole range of things in terms of work health and safety.

The Hon. SUSAN CARTER: No, but in that example—because you said that the worker can use the anonymous complaint line or can come to you—how do you then get the information and give it to the worker?

TRENT CURTIN: We would engage with the PCBU to ensure that they're complying with their obligations to provide that information directly to the workers. If they're in breach of that, there's a penalty.

The Hon. SUSAN CARTER: How do you follow up to make sure that the worker who cannot get the information about the air quality gets that information?

TRENT CURTIN: We would do an inspection and we would speak to the workers about that. If it was anonymous, we would speak to a sample of workers available, the health and safety representatives or union delegates.

The Hon. SUSAN CARTER: When you say that you would speak to the workers, you would speak to them and give them the air-quality monitoring information?

TRENT CURTIN: We'd expect the PCBU to do that, but if we had to intervene to obtain that information and pass it to them, that would be quite extraordinary.

The Hon. SUSAN CARTER: But if you obtain that information under notice, how do you give that to the workers?

TRENT CURTIN: In this case, we wouldn't need to obtain it under notice. If we're entering the workplace, they're up on pin boards and they're available to the workers. If, for some reason—

The Hon. SUSAN CARTER: There may be some places where they're up on pin boards, but we've heard evidence that they're clearly not up on pin boards in every workplace. I suggest that if a worker is ringing you, there is not current information up on pin boards. Otherwise, there would be no need for the complaint.

TRENT CURTIN: In which case, we could issue an improvement notice and ensure that the PCBU provides that information to the workers.

The Hon. SUSAN CARTER: From the time a worker calls you, what is the time lag between calling you and that worker receiving the information about the air monitoring?

TRENT CURTIN: I'm not sure. That's a hypothetical.

The Hon. SUSAN CARTER: No, you've said the mechanism is to call you if they can't get it from the PCBU. How long would that take for the worker to get the air monitoring information?

TRENT CURTIN: We would triage that through our process. It could be one to three days before we've attended. It's usually one day. We would attend and we'd be able to obtain that information.

The Hon. SUSAN CARTER: You obtain the information in one day, and the PCBU will just hand it across to you no questions asked?

TRENT CURTIN: If it's available. If they weren't going to hand it over to us, we would issue a section 155 notice and obtain it under notice.

The Hon. SUSAN CARTER: If you obtain it under notice, how does the worker get it?

TRENT CURTIN: They're required to provide it to the worker, so we could issue them with a penalty for not doing that and we could issue them with an improvement notice to make sure that they do that.

The Hon. SUSAN CARTER: So you can't give it to the union under a GIPAA, but you can give it to the worker?

TRENT CURTIN: The PCBU can provide it directly to the worker.

The Hon. ANTHONY D'ADAM: But they didn't in the case that you—you've got an actual example. You're saying, "This is what we would do theoretically", but in the actual example, you didn't do that. Why not?

TRENT CURTIN: In the GIPAA example, this is information obtained in relation to 2015 to 2020. That information was obtained under notice. It's a new requirement from 1 September this year to provide the information to workers under the regulations.¹

The Hon. ANTHONY D'ADAM: But they were supposed to provide that information anyway. The worker should have access to that information under the current arrangements. Prior to that change, there was a right for the worker to have that, and SafeWork has failed to enforce that. The AWU asked them for information. They were denied it. The workers clearly didn't have it, and SafeWork hasn't done anything about it. What do you say to that regulatory failure?

TRENT CURTIN: Under this particular example, it's through the GIPAA process that they requested information obtained under notice. That information could be different to the information available to the PCBU or to Transport for NSW. They were able to obtain that information from Transport for NSW and through the PCBU. I would certainly encourage, where there are circumstances where workers who have a right to air monitoring information and are unable to get that information, that they contact SafeWork NSW, and we can go out and make sure that they get access to that information. The example here with the GIPAA is a different circumstance where information was obtained under notice for the purpose of compliance activities.

The Hon. ANTHONY D'ADAM: Are you saying that the process for dealing with a GIPAA was completely separate and siloed from the actual enforcement process, which was the object of the reasons behind the union seeking the information? It seems like the GIPAA consideration was made over here and the actual question of why the information was being sought—no-one in the organisation bothered to think, "Why are they asking for this? Clearly, there's a problem over here. Let's do something about it."

TRENT CURTIN: We should absolutely be making sure that those workers got access to that information.

The Hon. ROD ROBERTS: Just following on, did you follow it up? You should have. Did you?

TRENT CURTIN: Yes, I have followed this up. As a result of it coming to my attention, I've initiated a request for service for the team to make sure they follow up with those PCBUs to make sure they're compliant with our current laws in relation to providing information to workers.

Ms ABIGAIL BOYD: Can I just clarify your responses, though? Is there a difference between the right to receive current information versus the right to receive historical information? Is that what the difference is here? We had 2015 to 2020. That was obtained by you, but that isn't something that could be obtained by a worker? Or could a worker go in and say, "I want this data from these five years"?

TRENT CURTIN: Under the new regulations, workers are entitled to access that information. An employer has to keep that information for 30 years.

Ms ABIGAIL BOYD: When you say "that information", under those current regulations, is a worker entitled to receive the 2015 to 2020 data?

¹ In [correspondence](#) to the committee received 6 January 2025, Mr Trent Curtin, Acting Deputy Secretary, SafeWork NSW, provided a clarification to their evidence.

The CHAIR: That's historic information.

AKLESH NAND: If the PCBU has the data and the worker is working onsite, they're entitled to ask for and look at that information.

The CHAIR: The historic information.

AKLESH NAND: Yes.

Ms ABIGAIL BOYD: Which then goes directly to Anthony's point that the moment that you receive a GIPAA request from a union for information, that should tip you off that the PCBU hasn't been giving the information to the worker. At that moment, you should be going in and asking why.

TRENT CURTIN: We're in the process of asking why at the moment—why those people weren't given access to that information.

The Hon. ROD ROBERTS: While we're on that, then, we've heard from the AWU this morning that they successfully, under GIPAA, got information from Transport for NSW about released data that showed high exposure rates in many tunnelling projects. As the regulator and enforcer of the regulations, what have you done about that information that has come to you?

TRENT CURTIN: I've initiated a request for service to the team. We've got 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. In regards to that specific information, I have initiated a request for service for the team to go out and specifically look into that to make sure that those exceedances are checked and to make sure that the right conditions are in place in those particular—

The Hon. ROD ROBERTS: Hang on, no, this has happened already. I'm not worried about what you're doing in the future. What we have here is evidence provided by Transport for NSW, under GIPAA, of overexposure to dangerous levels of dust containing silica. You are the regulator. That information is now public. What are you doing about the investigation of those breaches in the past? What have you done about that?

TRENT CURTIN: That's what we're looking into at the moment. The team will engage with the PCBU, workers and union representatives. I have initiated contact with the AWU to talk to them about their concerns and how we might work together to look at them getting access to the information that they are looking to get.

The Hon. ROD ROBERTS: They've already got access to the information. The GIPAA has provided it.

TRENT CURTIN: I would like to see them continue to get ongoing access through the current regulations.

The Hon. ROD ROBERTS: We're not worried about "current". You're not answering my question. There has been a clear breach of the regulations in the workplace of which you are responsible for enforcing. What investigations are you undertaking at present about those previous breaches of the regulation?

TRENT CURTIN: We're undertaking compliance activities at the moment to look into those previous breaches of the regulations.

The Hon. ROD ROBERTS: Explain to us how, then. What are you doing? What, in practice, are you doing?

TRENT CURTIN: Our teams will usually go in to talk to workers. They will talk to the health and safety representatives. They will make observations in the workplace. They will request documents.

The Hon. ROD ROBERTS: Stop. Sorry to rudely interrupt, because I want to give you fairness. They are not making observations in the workplace. We're talking about previous breaches. What you observe today is not what was observed two or three years ago under that information provided by Transport for NSW, a government entity. They've provided that information. There have been a number of high exposure levels to the safety of workers. You, sir, and your department are responsible for that. What are you doing about those breaches?

TRENT CURTIN: Our role is to make sure that, when those things are identified to us, we make sure that those organisations are compliant with our laws. Where they have been in breach of those laws—

The Hon. ROD ROBERTS: Clearly, they haven't complied. They haven't.

TRENT CURTIN: Where they've been in breach of those laws and we've formed the opinion that we should undertake an investigation, we'll undertake the investigation and then information will be gathered and the investigation may result in a prosecution.

The Hon. ROD ROBERTS: So we could sit here, as the parliamentary committee that has responsibility for overseeing the dust diseases scheme, with a great deal of confidence that you and your department are back-capturing and back-investigating those breaches from the past, and we can expect to receive from you at some time in the future a detailed report and response as to those breaches that have clearly happened in the past, as identified by Transport for NSW?

TRENT CURTIN: Those breaches are being looked into at the moment, yes.

The Hon. ROD ROBERTS: At the next Committee hearing you will be able to produce to us documentation and evidence as to the depth of those investigations and the results of those investigations and, one would expect, if there have been numerous high exposure rates, potential prosecutions because of those breaches. Can we expect to see that?

TRENT CURTIN: That will depend on the information that becomes available during the investigation process.

Ms ABIGAIL BOYD: What happens with exceedances? Sorry, that's just a basic question. If there are a number of exceedances, at what point is a penalty imposed? What happens? At the moment, you're getting notified of exceedances, correct?

TRENT CURTIN: Correct.

Ms ABIGAIL BOYD: How many have you received since the scheme went live?

TRENT CURTIN: We've received 36 since 1 September.

Ms ABIGAIL BOYD: Of those 36 exceedances, how many of them are in tunnelling?

TRENT CURTIN: I would have to check.

AKLESH NAND: We don't have the breakdown with us, but we can take that on notice.

Ms ABIGAIL BOYD: You get the notification, and then what do you do?

TRENT CURTIN: We undertake a compliance activity. We go into that organisation and we check that they've got the right systems in place, that the right ventilation is in place, that the right respiratory protective equipment is being used, that workers are being consulted on the work health and safety systems and make sure that the right systems are in place to minimise those exceedances.

Ms ABIGAIL BOYD: At what point would a penalty apply for the exceedance?

TRENT CURTIN: It 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.

Ms ABIGAIL BOYD: So if there has been an exceedance, you get told about it. And if, for example, you went in and there had been a blatant case of not using the appropriate technology or something to manage the filtration—I don't know how it works—then that might lead to a penalty, but in most cases it would just be—would it just be advice, in terms of "You need to do a bit more of this"?

TRENT CURTIN: 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—

Ms ABIGAIL BOYD: How many penalty notices have been issued in relation to tunnelling and exposure?

TRENT CURTIN: I don't have that breakdown with us here today. We'd have to take that on notice, specifically.

The Hon. SUSAN CARTER: Of the 36 that you've been notified about, how many of those are repeat notifications, so the same PCBU?

AKLESH NAND: This process only commenced two months ago, and I haven't been able to have a look at the breakdown of the data.

The Hon. SUSAN CARTER: Sorry, with respect, 1 September, 36 notifications, three months and you can't tell us if it's the same PCBU that has exceeded more than once?

AKLESH NAND: It could well be multiple PCBUs. The notifications go to a different team than myself. But as the previous witnesses have explained, especially Mrs Kate Cole—she is a well-known hygienist—one of the biggest challenges is that the exposure assessment that is done today, the site may not get the reports back on that until a couple of weeks later.

The Hon. SUSAN CARTER: Thank you. I think we're focusing on enforcement and I would think that a PCBU who had a pattern of exceedances would be highly relevant for enforcement. Of the 36 notifications, how many improvement notices have been issued?

TRENT CURTIN: I would have to look into that. I don't know that there's been any improvement notices at this point in time in relation to those 36 exceedances. We're in the process of undertaking compliance inspections to check against those.

The Hon. SUSAN CARTER: How long do these compliance inspections take?

TRENT CURTIN: They get prioritised and we work through them. The silica team—

The Hon. SUSAN CARTER: You're notified on 1 September. We're sitting here on 29 November. Has there been a compliance inspection from a 1 September notification?

TRENT CURTIN: We have been in tunnels between 1 September and today. I'd have to get details on exactly when that's occurred. But we have had inspectors—

The Hon. SUSAN CARTER: Have you had a completed compliance process in relation to any of the exceedances that have been notified since 1 September?

TRENT CURTIN: I would have to check because—

The Hon. SUSAN CARTER: If you could, thank you.

Ms ABIGAIL BOYD: How does it operate to protect workers then, if there's been an exceedance? At what point do workers know that there has been an exceedance?

TRENT CURTIN: When the inspectors receive the exceedance, they are triaging those matters and they're programmed to go into those tunnels to check the work health and safety systems, have discussions with the workers and representatives to—

Ms ABIGAIL BOYD: But it could be months, then?

TRENT CURTIN: Well, not necessarily. In early September, with the new regulations coming in, we had focused some attention on engineered stone to ensure compliance in that area as well, given the new bans and the regulations that have come in there. Now we're looking to shift our focus towards tunnelling to make sure we've got the right regulation enforcement in place there. That will take into account those exceedances in the design of those compliance activities.

The CHAIR: To give a bit of context—and I appreciate that you're doing your best to respond to probing questions. To give context to the probing questions, some of the members have been on the Committee for a long period of time over a series of cycles of dealing with reviews. Some go back to when the whole momentum was still pretty latent with respect to dealing with manufactured stone. The Hon. Rod Roberts, in particular, pushed very hard over various cycles of inquiries, along with others. The Hon. Chris Rath was the Chair in the previous Parliament. There is a degree of intensity from Committee members with some real basis of having seen things dealt with in a way that we would judge as being certainly unsatisfactory and very slow. Ultimately, it got—not resolved fully, because obviously we've still got compliance matters, but there's the ban on the manufactured stone. That was done through a process which involved States and the Commonwealth, as you know the history to it.

I suppose what's causing the degree of anxiety around the table that you might be observing is that we're saying to ourselves that we collectively, as a Committee, can't allow there to be a repeat of the whole manufactured stone saga, if I could put it that way, which took so long to get to the point. As plain as the noses on our faces, not just from the evidence to this inquiry through submissions but from evidence in the previous inquiries, I have to say with some degree of regret that we had to try to deal with what was the one moving the most rapidly to get pushed along, which was the manufactured stone. It didn't mean that the silicosis around quarries and tunnelling was not there, but it was a case of what we could push.

The evidence from the unions this morning—and there's a very interesting table, I think on page 4, from memory, of the AWU submission of all of the actual tunnel projects. It's got the ones which are completed and the ones still on foot, to say nothing about those that are obviously being planned. What's exercising members' minds, I'm sure, is all that's on foot and what's to come. We can sort of rake the coals over why there's been this slowness, tepidity and lack of resourcing. We don't actually know with absolute precision why there's been this within SafeWork, but now the cat has been belled pretty loudly, understanding that in the roles that you've had you're becoming more and more aware of this.

There's a desire to push and shove, if I could use those words, and really make it very clear that we're very concerned. You can bet your house that when it comes to the report that we produce—without foreshadowing what's in it—there'll be pretty strong findings and recommendations. I'm not saying that in a threatening way, but there is a degree of anxiety about the speed with which this is now being dealt with, given what we know to be the case. It's like the elephant in the room. Sorry, that tended to be more of a statement than a question, but it will hopefully give you some context about why you're probably sensing some firm, pointed questioning to probe and push you pretty hard.

TRENT CURTIN: I share your passion, Mr Donnelly. The impacts of silicosis and other diseases similar are so devastating on workers, their families and our community, and I understand the impact that's having on workers all the time. There is an obligation for employers to make sure they're providing all of the right health and safety systems in their workplaces. Where they're not doing that, we have an important role to undertake compliance and enforcement activities to ensure that we're doing that.

I'd like to see increased consultation with workers and increased collaborative arrangements where workers are identifying issues and concerns and they're raising those with their employers—but, importantly, if they're not getting the traction they need, that they're raising those with SafeWork and that we've got the information and the support that we can use to go in and undertake compliance activities and, where necessary, undertake enforcement activities. Raising these concerns is a great opportunity for us to be able to target our attention to those areas where that might be most needed.

I think the change in the regulations to allow the submission of the exceedences, where we'll be able to take those exceedences and look at where there might be patterns of concerns and opportunities for improvement—Mr Nand is closer to the inspectorate than I am, but the observation of our inspectors is that there has been some improvement in tunnelling and there have been some changes in respiratory protective equipment, in ventilation and in atmospheric monitoring and health monitoring arrangements. But we agree that there's more to be done to make sure those workers are safe.

Ms ABIGAIL BOYD: Could I just ask a question on the back of that, then? Obviously, we had the SO 52 and the whole thing with the GIPAA with the AWU. We have two focuses in this particular dust diseases review, and one of them is in relation to tunnelling. When we asked you about exceedences, you could tell us very quickly how many you'd got since 1 September. Is your evidence that you did not seek to find out how many of those 36 were in relation to tunnelling, knowing that this is what this inquiry is about?

TRENT CURTIN: I just knew that there were 36 registrations on our website. I just don't have in front of me the information as to which organisations they've come from.

Ms ABIGAIL BOYD: It's difficult because we're hearing that, yes, SafeWork is taking it very seriously, this is an issue that you're now aware of and we think that it's probably better these days than it used to be, but then we have this live data: We have 36 instances. Where are they? What you're telling us here is that you haven't found that out. That's quite concerning. Can we get on notice, then, some data around what the 36 are, how many are in tunnelling and how many are repeat offenders?

TRENT CURTIN: Yes.

The Hon. ROD ROBERTS: To that, let's be a bit more bespoke because that's exactly what my next question is. You've told us that, since 1 September to today's date, there have been 36 notifications. Can you then, on notice, identify each and every one of those 36 notifications, the dates they were received, the dates they were first actioned, what action has been taken so far and where the sites are? The whole detail of each and every one of those notifications—can we have that, please?

TRENT CURTIN: We can take that on notice.

The Hon. ANTHONY D'ADAM: Mr Curtin, I think it's fair to say that the regulator can't be everywhere, and that the system is premised on working with a range of stakeholders in the system, one of which is HSRs. Another is the unions with their authorised officers, who are able to be the eyes and ears of a broader compliance system. We heard evidence earlier from the CFMEU that one of their frustrations with the regulator is that it doesn't prosecute breaches of the consultation obligations and that, actually, this whole question around providing information to workers is symptomatic of a disregard from employers around those lower level obligations. What do you say about the question of enforcing those consultation and information-provision obligations? Can you perhaps make some comment about that? Perhaps secondary to that is have you prosecuted? What kind of compliance action have you been taking around those obligations for information provision and consultation?

TRENT CURTIN: There is no doubt in my mind that those organisations that are performing well in terms of health and safety, and performing well as an organisation, have high-quality consultation mechanisms in

place with their workers. In all of the organisations, large and small, that I've visited across New South Wales in this capacity, it's obvious to me that those organisations that have good consultation mechanisms are better and safer businesses. In terms of those consultations mechanisms, we've been doing a whole lot of work to increase awareness around health and safety representatives, and to provide increased support for them. In our recent restructure, we have dedicated a new team focused specifically on health and safety representatives and union delegates to provide more support for them.

That team's only just started and they haven't yet filled out the number of people, but the purpose of that team is to make sure that we're providing support to health and safety representatives, who are in many businesses right across New South Wales, to undertake those important functions. I know that health and safety representatives often do that in very difficult circumstances where they're an employee and also a representative of the employee at the same time. We are strong advocates for better consultative mechanisms. In terms of your specific question about how many that we've prosecuted for and what compliance activities, I'll take that on notice so that I can come back to you with a full answer in relation to those places where we have done compliance activities in relation to consultative mechanisms.

The CHAIR: Mr Nand, far be it from me to claim any expertise in running the important role that you and the inspectors who articulate into your role have, but would it not be the case that, as far as silicosis and its effect on workers goes, the tunnelling now is the pink elephant in the room—or whatever colour elephant you want. There is surely a case that, amongst the inspectorate—if this has been done so already, please tell me—there is a dedicated cohort of inspectors who become, essentially, the inspectors with the expertise around dealing with everything to do with tunnelling. They become the elite group, if we use that phrase, of inspectors who are trained up on all aspects of matters that are being submitted as issues to be got on top of in terms of tunnelling.

I am wondering if you can elucidate on the deployment of the inspectors. Are they receiving particular training and obtaining through that some historic knowledge about, dare I say, the lack of enthusiasm by certain companies, businesses or head contractors to cooperate? All this information that's coming to us is coming to us from people that are on the job and associated with tunnelling work. It's not as if they're State secrets. It's information which is readily available if you go and harvest it.

AKLESH NAND: You're correct, Mr Donnelly. There is a dedicating infrastructure team that looks after—

The CHAIR: I'm talking about tunnelling.

AKLESH NAND: Yes—it is called the infrastructure team, which also looks after all the tunnelling workplaces.

The CHAIR: No, sorry. I'm saying "dedicated to tunnelling", not "also tunnelling". Do you have a dedicated group of workers who occupy inspectorate positions that are dedicated to dealing with compliance matters in tunnelling full stop?

AKLESH NAND: They look after tunnelling plus other infrastructure sites. One of the inspectors is a person that has got great expertise in tunnelling, because he was a former tunnelling worker himself.

The CHAIR: With the greatest respect, one individual with a level of expertise, which I don't cavil with you—if you say he or she is expert, then I take your word for it. Just think of all the tunnelling work which is happening right now under our feet in Sydney. You're talking about one person.

AKLESH NAND: All of those inspectors in the team go through the tunnels as part of their regular work.

The CHAIR: Suppose I am advancing this case: Given that we're dealing with something which is a present and clear danger—the bell's been rung—is there any merit in having a discussion within SafeWork, at the high level, about whether there is efficacy, value or good purpose in having dedicated workers in the inspectorate team sealed onto tunnelling work in New South Wales?

TRENT CURTIN: Mr Donnelly, SafeWork has a range of general inspectors that work across all sorts of industries to ensure compliance. Because of the specific nature of the construction industry, we have a dedicated construction group. Because of the very specific nature of critical infrastructure and tunnelling, we have a dedicated team focused on tunnelling. We have separate team focused specifically on silica, and we have another team focused on engineering. In some cases, we have dedicated groups, expertise and inspectors that provide support to other parts of SafeWork NSW in a kind of networked approach to make sure that, regardless of the issue that is being dealt with, in any particular business we've got the expertise available to support our inspectors. We think that tunnelling and infrastructure projects have such a specialist nature to them that they do need a dedicated team. We have a dedicated team specifically set aside. It is predominantly for tunnelling, but also for infrastructure and renewable projects.

The CHAIR: I don't want to hog this. I know Abigail wants to ask questions. These individuals who are focused on tunnelling—how many of those are in that cohort?

TRENT CURTIN: I'd have to come back to you with the exact number. I think there's about 10 or 12.

The CHAIR: If you could take that on notice, and the other two categories.

Ms ABIGAIL BOYD: We heard about the tunnelling code of practice and how that was promised, but then there was a change. It was maybe going to be done federally. Where are we up to with it now?

TRENT CURTIN: The current status of the code of practice is that we finished consultation late last year with an industry and sector group to progress that work. There's a number of other activities underway at the moment that support and impact the tunnelling code of practice, including the national code of practice for silica. We're in the process at the moment of taking steps to engage some expertise to support the progress of that code of practice. Mr Nand has been closer to it than I have. He can provide more context. We'll be progressing with gaining some expertise and bringing that group back together early next year to progress that as quickly as possible.

Ms ABIGAIL BOYD: An estimate of when it might be ready would be good to know.

AKLESH NAND: We are hoping that the code of practice will be ready before the end of next year.

The CHAIR: Next year? So 2025?

The Hon. ROD ROBERTS: Twelve months from now?

AKLESH NAND: It is a very complex document. We have a document that is a national guide on tunnelling. This code of practice is an old document that was developed in 2006. We have commenced the process of updating it, but we recognise that we didn't have the technical expertise within SafeWork NSW and we are sourcing the technical expertise from outside. We will try and get it hopefully sooner than 12 months, but no longer than that.

Ms ABIGAIL BOYD: Is there something that can be done in the interim in terms of frequency of air quality monitoring, simple things like the equipment that should be fitted and whether or not it should be worn on workers—those sorts of things? Are there some basic parameters that could be placed earlier? Because my understanding at the moment is, for example, in relation to frequency, under the current rules you could do it once every three months for a single shift and that would meet the requirements for monitoring. That's clearly insufficient. Is there something we can do more immediately to tighten up those bits of regulation?

TRENT CURTIN: We'll look to bring that group together as quickly as possible to progress those sorts of things. The code of practice in its totality will take some time to complete, but there's no reason that we can't bring that group together to try and progress those particular elements.

Ms ABIGAIL BOYD: We heard earlier that there was a memorandum of understanding between Comcare and SafeWork. Is that something you could provide to the Committee?

TRENT CURTIN: Yes, we can provide the documents we've got in place between Comcare and SafeWork. We've got an ongoing relationship with them. At times we co-regulate in these tunnelling projects, where we've got federally regulated entities working alongside State-based entities, so we can provide the documentation that outlines that process.

The Hon. ANTHONY D'ADAM: When you say you co-regulate, does that mean that SafeWork inspectors are able to exercise powers under the Commonwealth Act?

TRENT CURTIN: No.

The Hon. ANTHONY D'ADAM: How does that work?

TRENT CURTIN: 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.

The Hon. ANTHONY D'ADAM: Is there a capacity to, effectively, have an inspector exercise that kind of authority by agreement with Comcare?

TRENT CURTIN: That would need to be delegated under the Comcare arrangements, yes.

The Hon. ANTHONY D'ADAM: My question is this: Is it possible?

TRENT CURTIN: I understand it is, yes. We'd have to look at it specifically, but my understanding is that is possible, yes.

The Hon. ROD ROBERTS: Have you ever explored that opportunity before?

TRENT CURTIN: Yes. We've had discussions with them about doing that. I don't know that Comcare have had the appetite to progress that in terms of a formal arrangement, but those have been preliminary discussions. If the Committee has a recommendation, we can continue to work through that to see whether there's some improvement. Because of the current arrangements and framework, we meet with them regularly. We work collaboratively with them to make sure that, if there are concerns in relation to principal contractors where we're seeing concerns in the tunnelling projects, they're aware of those concerns. We work as closely as we possibly can with them to share information and to meet with them regularly.

The Hon. CHRIS RATH: I know you probably didn't get to hear the evidence of the witnesses before you about the new online reporting system, the NORDR. Are you worried at all that, as you're moving towards this new online reporting system from the old paper-based system, there might be cases that slip through the cracks and go unreported? Do you have any views or evidence on that, because some of the evidence we got from the last witnesses was that that might be happening?

TRENT CURTIN: I don't have any evidence of that occurring. We have moved, for silicosis, to the national model. That creates some benefits in terms of we're more readily able to access that information faster than we were under the previous arrangements. There are some benefits in terms of workers that might move interstate and other things under the new model. But, no, I'm not aware of circumstances where workers have fallen through the cracks in that reporting.

The Hon. CHRIS RATH: I think it's because the directive was that they no longer need to report it to the department of health and that that may have happened a bit prematurely as people transition from the paper-based systems to the online system. I don't know if there's anything you could provide to us or maybe take it on notice about how that transition is working—and I know it's probably more department of health—from one system to the next. That would be helpful.

TRENT CURTIN: We can take it on notice to seek that information, yes.

The Hon. SUSAN CARTER: Just one last question. Are you able to give us an update on the progress of a new data management service so you can report adequately about incidences of silicosis?

TRENT CURTIN: Are you referring to the SafeWork WSMS system that needs to be updated?

The Hon. SUSAN CARTER: Yes, the response to the Auditor-General's report and the issues raised there.

TRENT CURTIN: Yes, the Government has provided \$4.4 million to SafeWork to undertake a process not just to replace the technology but to look at our processes and the systems to make sure that we've got the most efficient processes and systems for our compliance activities. That piece of work is in the process of—we're currently doing that work, and we're also scoping out a business case in order to go back to government for more funding in order to replace that technology. It's a 20-year-old technology, and by the end of this financial year we'll have that business case ready.

The Hon. SUSAN CARTER: I think originally the agreement was the business case would be done by 1 December.

TRENT CURTIN: That's right, and we received funding this financial year. But since we have to go through the process of undertaking the analysis—rather than buying a technology that replaces the existing technology that would not be the best use of our funding, we've gone through a process of understanding what the right processes and systems are, what the data management and data governance looks like in order to build the business cases.

The Hon. SUSAN CARTER: What's your timeline on that?

TRENT CURTIN: End of the financial year—30 June next year we'll have the business case.

The Hon. ANTHONY D'ADAM: I just want to ask, on notice, if you could look at the evidence from the previous panel about reducing the workplace exposure standard, bringing it down further, and whether there are any issues that SafeWork sees associated with that or what the extent of consideration around further reduction in the workplace exposure standard is.

AKLESH NAND: We'll take it on notice, but just a very brief comment is that we have a dedicated lab at SafeWork NSW that has the capability to do the laboratory analysis that is needed for the low-exposure

standards. The bigger challenge will be in terms of monitoring compliance, because it is such a lower level, and the increased reliance on personal protective equipment, to provide the controls. We'll now reply on notice.

The CHAIR: As I said, we want to press you pretty hard. I think we've done that up to a point. We can be harder, but we thought we'd not go any further. Seriously, though, as I think you can appreciate, there is a depth of feeling about this because of the historic nature of what we're dealing with, and we just don't want to see a repeat. I know that is not your intention, and we appreciate the work that you're doing. It's just the behemoth size of the tunnelling industry in this State which is going on right now, and I've just got this awful feeling—not reflecting on you personally here—that you may not have the resources and be up to taking on the job of the size that it might be. If you've got your inspectorate stretched out as far as it is, trying to cover all the myriad of calls on the demands for the inspectorate of work safety in New South Wales, I just wonder how much time is capable of being devoted to dedicated work in the tunnelling industry.

That's a political issue, obviously, to be raised, I suppose, by us through the processes and with government. I suppose we want you to understand, or yourselves to understand, that we want to do what we can to do the strongest nudging possible. We need, in a sense, your full cooperation to help us understand the complexity and not be left to just pick up pieces of information, put it all together ourselves, and then come at you and say, "Listen, are you not doing this?" We know this has developed over a period of time, and it doesn't get resolved overnight, but the red lights are flashing, and that's the feeling we have around the table. We want to push the Government as hard as we possibly can to get yourselves in a position where you have the resources on the ground to do the work that needs to be done.

We know that the players play pretty hard. It's the building and construction industry. We know it's hard yakka, hard business, and you're up against it. If you're saying, "No, we're not up against it. We just need a little bit more time," I think you will need to persuade me. These are hard operators and you will need the resources to do it. The question I have after what we've heard this afternoon is not so much whether you're up to it but whether you've got the resources to do it. Did you want to comment on that? It's an open invitation to say, "We need more dedicated resources and more money from the Government to do what needs to be done for the tunnelling industry."

TRENT CURTIN: Our role is to secure safe and healthy workplaces in New South Wales. I wish I were here to tell you that goal has been achieved, that everything's safe and that everyone's healthy every single day, but that's just not the case. Any further support that can be provided to SafeWork to make sure that workers can go home safely to their families every day, we would welcome. I look forward to seeing the recommendations of the Committee and working to make those changes to make sure we can do everything we possibly can. Any further support would be a matter for the Government in terms of resource allocation, but SafeWork NSW would welcome any help from anywhere to make sure we can do everything we can to protect our workers.

The CHAIR: I'll just push you one more time. You're not prepared to say that you feel in the circumstances you don't have enough resources? You believe—because if you say you've got enough resources—

The Hon. ANTHONY D'ADAM: Greg, he can't say it. He's a public servant.

The CHAIR: I'm just pushing you. You've got sufficient resources?

The Hon. ANTHONY D'ADAM: It's a matter for the Government.

The CHAIR: Well, a matter for the Government but—

The Hon. ROD ROBERTS: The Government mightn't know unless the regulator tells them.

The CHAIR: Hate to know and come back—

The Hon. CHRIS RATH: You'd have to ask Mookhey and Cotsis.

The CHAIR: No further comments?

The Hon. ANTHONY D'ADAM: You're putting him in a hard spot. I don't think it's fair.

The CHAIR: That's okay. We didn't want to leave any stone unturned. I appreciate the answer. On that note, thank you very much, gentlemen. I appreciate your frankness. We pushed you hard. I hope you appreciate we did it for good reason. I appreciate the honesty of the answers. It now falls to the Committee to do what we need to do to help you get the job done.

(The witnesses withdrew.)

The Committee adjourned at 16:45.