REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

2024 REVIEW OF THE DUST DISEASES SCHEME

At Jubilee Room, Parliament House, Sydney, on Wednesday 11 December 2024

The Committee met at 9:30.

UNCORRECTED

PRESENT

The Hon. Greg Donnelly (Chair)

Ms Abigail Boyd
The Hon. Mark Buttigieg
The Hon. Aileen MacDonald
The Hon. Bob Nanva
The Hon. Chris Rath (Deputy Chair)
The Hon. Rod Roberts

PRESENT VIA VIDEOCONFERENCE

The Hon. Anthony D'Adam

The CHAIR: Welcome to the second hearing of the Committee's 2024 Review of the Dust Diseases Scheme. My name is Greg Donnelly and I am the Chair of the Committee. I acknowledge 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 respect to any Aboriginal and Torres Strait Islander people joining us today, either coming into the Parliament or over the internet.

I ask everyone in the room to please turn their mobile phones to silent or to turn them off. Parliamentary privilege applies to witnesses in relation to the evidence they provide to the inquiry at the hearing today. However, it does not apply to what witnesses say outside of the hearing. I urge witnesses to be careful about making comments to the media or to others after completing their evidence. 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 these procedures.

Mr STUART FARQUHARSON, Interim Chief Executive Officer, icare, affirmed and examined

Mr ROHIT MANDANNA, General Manager, Lifetime and Workers Care, icare, affirmed and examined

The CHAIR: Thank you both for coming along this morning. If I'm not wrong, both of you have not appeared before this Committee with the periodic reviews we do of the statutory schemes.

STUART FARQUHARSON: That's correct.

The CHAIR: This Committee has as part of its ongoing responsibility the review of the schemes on a rolling basis. We've always appreciated the cooperation given to provide very senior witnesses from the respective organisations, and you're most welcome. I don't know if you've been told about whether these hearings are difficult or not-so-difficult exercises. We don't seek to make them difficult, but we've obviously got some questions we'd like to ask you. The reports that come from this inquiry by this Committee are always important in terms of their findings and recommendations to go back to government, to provide them with thinking and ideas and even particular thoughts about ways in which matters can be dealt with to improve and enhance the operation of respective schemes—in this case, the dust diseases scheme in New South Wales. I commence by inviting an opening statement. That might be a good way to get things going.

STUART FARQUHARSON: Good morning, everyone, and thank you very much for the opportunity to be here today to discuss the Dust Diseases Care scheme. Icare's role is to administer the scheme and arrange compensation when somebody is identified as having a compensable dust disease. In accordance with the legislative framework, the scheme covers financial assistance for workers: loss of income and reasonable medical expenses for treatments and care related to their dust disease. That includes hospital admission expenses, psychological support, pharmacy costs, nursing, personal care assistance and ability aids, oxygen supplies and domestic assistance.

In addition to our legislated role of care and compensation, icare takes a proactive approach to working with other stakeholders, like SafeWork, to create awareness of dust diseases and support high-risk industries and impacted workers more broadly. An example of this is our lung screening service, which is provided free to workers and is heavily subsidised to employers, where applicable. We also work with SIRA-accredited providers to offer access to vocational programs, to enable workers with a diagnosed dust disease to leave their hazardous workplace. We take this inquiry as an opportunity to ensure continuous improvement across the Dust Diseases Care ecosystem.

I'd also like to take the opportunity to inform the Committee that we have recently gone through an organisational restructure at icare and are still undergoing changes in leadership, including for the dust diseases scheme. As interim chief executive officer for icare, and together with my colleague Rohit, who was the previous interim general manager for the dust diseases scheme, we'll do our best to answer questions from the Committee. But we may also take questions on notice to ensure we're providing full and accurate responses to inform your work and any recommendations from the inquiry.

Let me provide you with some background to the scheme and how it works. The Dust Diseases Care scheme currently provides support to approximately 1,500 workers and 3,500 dependants, 334 of whom have been impacted by a diagnosis of silicosis or another silica-related disease. When a worker is accepted into the dust diseases scheme, they are assigned an appropriately trained case manager at icare as a single point of contact, and that dedicated case manager is maintained for the life of the claim. Those icare case managers ensure the workers and, where appropriate, their families are aware of the support available to them and help to identify the most effective support for each worker, based on best practices. Our case managers provide guidance to the workers and their families in understanding the claims pathway and on what to expect in order to be able to plan for the future. They provide practical assistance with assessing financial entitlements and medical support as their needs change over time.

Importantly, while there are no legislated obligations under the scheme in relation to return to work, icare recognises the need to support people who are partially impaired due to occupational dust exposure yet are still of working age. This includes younger workers diagnosed with silica-related diseases who are encouraged by medical professionals to leave hazardous industries to eliminate their ongoing exposure to silica dust. Icare's vocational assistance program uses SIRA-accredited providers to help workers explore their employment options and transition to new industries, if they choose to do so. The provider offers a range of support services depending on a worker's needs regarding their location, cultural background and language barriers, and that includes retraining and skill enhancement opportunities, and assistance with job seeking, interview preparation and securing work trials. An example of this is icare-funded laptop technology classes and an interpreting certification for a worker who wanted to retrain from being a stonemason to being an interpreter.

Other examples are quite expansive. They include assisted training through our program for a personal trainer, a property manager, a disability support worker, a picture frame maker et cetera. We also offer psychological support to workers by funding appropriately qualified psychologists and counsellors. Unfortunately, the current legislative framework does not allow flexibility to provide tailored financial support to meet the individual needs of our workers with silicosis, many of whom need support at a younger age. These workers are often still building their careers and have many years of supporting families and paying mortgages ahead of them. Icare does what we can within the bounds of the applicable legislation.

Back to the screening, icare is the only subsidised screening service in New South Wales. We have a fixed clinic located in Kent Street in the Sydney CBD and a mobile lung bus clinic that travels across the State. Icare offers a team of expert clinicians who monitor a person's lung health over time, so they are in a good position to pick up anything unusual as early as possible. Those screening services are provided free of charge for workers. There is a significantly subsidised cost per worker to some employers. That is approximately 25 per cent of the cost of what is charged by commercial providers, as a comparison. Our screening services are provided free of charge for employers in the engineered stone industry. They are free for people who are retired or no longer working and believe they were exposed to harmful dust in a New South Wales workplace.

Our mobile service is well used by the community and employers across New South Wales. Last year, our board approved funding for a new mobile clinic to be built to ensure continuity of service as the current clinic, our popular Lung Bus, has reached the end of its life. This is expected to be launched in early 2025. It includes the latest equipment and an innovative design. Every year, more than 5,000 people with exposure to dust through work in New South Wales get their lungs checked on that Lung Bus or in Kent Street, but we know that there are many more who should be getting their lung health checks. According to the dust levy data, 78,000 workers in New South Wales work in conditions with hazardous dust levels. We are exploring options as to how to best expand our screening services and capacity. We play an important role in lung screening, but a larger market with a greater capacity is required to fully support workers across the State who are exposed to unhealthy dust levels.

I'd also like to say that icare is very supportive of the forthcoming silica work register being delivered by SafeWork, which will legally require employers in high-risk sector workplaces to enter their workers' details on a register. Icare will have access to the data on the register, which will help us target more workers for screening purposes. We have established routine meetings with SafeWork to facilitate interagency information sharing and we need to strengthen our joint efforts to promote screening and prevention in our interactions with employers in this regard.

My last point is I'd like to highlight that icare's Dust Diseases Care team does a wonderful job of caring for workers of New South Wales who are impacted by dust disease. They are passionate and committed and focus on providing empathetic and proactive support for workers and their families when they need it most. It is hard work but we can wholeheartedly say that we are doing everything we can within the bounds of the legislative framework for those who we serve. Our participant satisfaction within the Dust Diseases Care scheme remains high, with an average satisfaction rate over the last quarter above 90 per cent. Feedback remains positive, with frequent praise for our staff's professionalism, empathy, responsiveness and personalised care. We remain committed to maintaining that level as we move forward in optimising our administration of the scheme. We look forward to working with the Committee on this review. Thank you very much.

The CHAIR: Thank you very much, Mr Farquharson. Mr Mandanna, do you have anything to add to that, or does that represent the opening statement for the organisation?

ROHIT MANDANNA: No, nothing further to add from my perspective.

The CHAIR: Present today are members of the Legislative Council from Government, Opposition and the crossbench. The way we wish to proceed, if you are happy with it, is to share the questioning between ourselves and provide a back-and-forth exchange of questions and answers. We've got until 11.00 a.m., so we've got a decent period of time. I don't expect we will exhaust questions before then, but if we do, we won't hold you back for the sake of it. It is likely there will be a number of questions. Thank you for your submission from icare, which stands as submission number 12 to the inquiry. It has been processed and uploaded onto the inquiry's webpage. It forms part of the evidence to the inquiry in a written form. We are obviously going to receive some evidence from yourselves today.

I will start with a question. Thank you for your submission. It's a very valuable submission, particularly the data contained in the six appendices. I will take you to page 8 and the heading "Natural stone". Can I take it as read and understood that in the context of dealing with silicosis or dust diseases in New South Wales, we have moved to tackling and dealing with—not just in New Wales but at a national level—the situation relating to manufactured stone and the banning that has come in with regard to that. There is obviously a legacy issue that will play itself out that we need to be very alive to. That has been tackled in a legislative way and we are aware

of the laws around that. But, particularly in terms of this inquiry, we are having a particularly close look at the silica-related dust associated with tunnelling, of which there has been much work done in the State since around 2012-13.

I have to say upfront, if you're not aware of this, it's exercising the minds of Committee members in a most significant way because we see it lurking there as something that has not received, perhaps, the attention it deserves in terms of coverage in the public domain and, dare I say, in the political domain. But we're staring at it and it's staring at us. We're very keen to develop a report with findings and recommendations that are going to tackle that head on to significantly lift up what we're dealing with in regard to this matter.

On page 8 under the heading "Natural stone", I take you to the third to last paragraph on the page. It states, "Projections in relation to silicosis exposure are not reliable due to insufficient information being available." That's a significant statement about it not being reliable. Can you elucidate on that statement? I am particularly interested in the data collection associated with silicosis. Are we in a position to say we are collecting detail with specificity that goes to explaining the source of where the silica dust has come from? We are particularly focusing on and want to get our heads around the matters to do with the tunnelling.

STUART FARQUHARSON: Yes, certainly. What I can say is that icare is not yet seeing a trend for increased screening in the tunnelling and quarrying industries, but there has been an increase in the trend of employers in those industries using the services of private medical providers, rather than utilising icare's lung screening and health monitoring services. That limits our ability to systemically collect demographic workplace and health data and understand disease prevalence.

The CHAIR: Which is in the next paragraph.

STUART FARQUHARSON: It also limits opportunities for us to ensure workers are aware of the support available under the scheme and how to access it. As those tunnelling projects are generally run by major companies that are ensured by Comcare, it limits our ability to educate those workers. They would not be eligible for the scheme under the current legislation. I am not sure whether that addresses your question, but icare has reached out to offer health monitoring services to major employers in tunnelling, which they have declined, with a preference to use private companies due to a larger service offering.

The CHAIR: If I can cut to the chase, the Committee is particularly interested in hearing your thoughts. I am speaking as a single member of the Committee and other Committee members will have their own questions. In terms of what you've observed since you've been in the role and have come to understand—and bringing into that the previous experience that you've had—what can be done, in your view, or what should be explored at the very least, how we—the State through its agencies and bodies—get our hands on the data that we need to understand the size of the issue before us, so we aren't operating in the dark?

STUART FARQUHARSON: I'll let Rohit respond to that, but from September this year there are additional requirements in relation to the processing of silica substances. These assessments in the workplace should help in icare seeing an increased demand for our screening services. I think that's one component of it. But, of course, we will continue to monitor developments there. I will let Rohit respond to that.

ROHIT MANDANNA: Sure. Thank you, Stuart. Firstly, from a data perspective, SafeWork is working towards collecting the data and building out a register of employers that have exposure to environments that have got hazardous dust. We're working closely with SafeWork on the completion of that register. Once we have the register, we have the opportunity to identify employers at higher risk of dust exposure and then we can work jointly with SafeWork to target and prioritise screening services to those employers that are in greatest need.

The CHAIR: That sounds like potentially quite a horribly slow way of the State being able to access accurate information in a timely fashion about the exposure of tunnelling workers to silicosis. In other words, from exposure through to actually seeing data—seeing figures with some specificity. That would take, I would imagine, many, many months. Would you agree?

ROHIT MANDANNA: Thank you for the question. In terms of the register, SafeWork is looking to publish that register over the course of the first part of next year. That's the time frame that we are working towards, and I can take that away on notice to identify more detail on how we can work better to get access to the data.

The CHAIR: I've got more questions, but I need to share it around.

Ms ABIGAIL BOYD: Thank you both for coming along this morning. We've had a number of recommendations in other submissions and from other witnesses, and one of them involves this issue around private screening. The recommendation is that it just be made mandatory—that we need to make sure that all workers exposed to dust in their workplace have access to an icare screening. What is the practical implication if

we were to do that? Do you have the capacity to be able to do that screening? What would it look like? What would the lead time be and the resources required?

STUART FARQUHARSON: I quoted some numbers earlier around our current capacity and volumes. If we're looking at 78,000 workers potentially impacted, our current capacity is around—it's over the 5,000 that's currently going through the system, but it's not anywhere close to the 78,000. As I said, we're looking at options to maximise capacity, but there is a big difference. That would not solve the issue alone, would be my response.

Ms ABIGAIL BOYD: The alternative suggestion in the submissions, then, is that there at least be some mandatory reporting back to icare from the private clinics. What would that involve? Presumably you would need to set up the system and there would be a lead time. What would the resources look like for that as an option?

STUART FARQUHARSON: I think it's a question that we should consider and get back to you on. What I would say is that that is some of the issue. It would allow us to proactively engage and do further screening. I think there are benefits out of that. Practically speaking, from a reporting mechanism, I'm not sure what the demand would be. Rohit, do you have a view on that?

ROHIT MANDANNA: From what we know, there are 78,000 employees across the State that work in environments that have got exposure to hazardous dust. Out of that, we know that there are approximately 26,000 that would require screening on an annual basis. As Stuart mentioned, we have the capacity to provide screening to approximately 5,000 of those employees, and there is a broader market that we need to work with that can help meet that demand. That's something that the dust diseases team is exploring options in terms of how we best can increase our capacity to meet increased demand.

STUART FARQUHARSON: But I think your question was around the implications of implementing a reporting mechanism so that we have that information.

Ms ABIGAIL BOYD: Yes.

STUART FARQUHARSON: That's probably something that will require some consideration from us, because how do we respond to that additional information? We're saying it would inform us to be able to be more proactive, and I think that's the point out of this.

Ms ABIGAIL BOYD: Yes, that's right. If next year we were to pass a bit of legislation that said actually all of these results need to be forwarded through to icare, what would it then take from your side of things? Could you take that on notice and come back on that?

STUART FARQUHARSON: Yes.

Ms ABIGAIL BOYD: I understand when you've had an icare screening there is a follow-up mechanism.

STUART FARQUHARSON: Yes, that's right.

Ms ABIGAIL BOYD: So building that in also for those workers who have had a private screening.

STUART FARQUHARSON: My initial response would be the analytical side of it, you could probably—because that's right, obtaining insight from that information, creating awareness so that we can be more proactive. I would say, yes, there's going to be a focus required there. But, importantly, for the follow-up screening and that proactive approach, we will have to solve the capacity issue there for that.

ROHIT MANDANNA: And I think we also need to work out how we build data-sharing arrangements with the broader private sector providers so we can access that data, and then we have a consolidated view of how we can best report on those activities.

STUART FARQUHARSON: I think that's what you're leading to—what mechanism could we put in place that would help that.

Ms ABIGAIL BOYD: That's right.

The CHAIR: Can I just jump in quickly? Sorry to interrupt. Data sharing, at the end of the day, if we just go back to the paragraph we're quoting from on page 8, with respect to the employers, it seems to me from your experience—and correct me if I'm wrong—that there is some great reticence and reluctance to cooperate with respect to handing over data. Is that a fair assessment or a fair statement to make?

STUART FARQUHARSON: I'm not sure what the driver is. But, yes, we do not have a level of insight into the prevalence of dust disease through that screening.

The CHAIR: Has that information been requested? I appreciate you're in that role for a relatively short period of time. In that context, I do understand if you need to take it on notice. But has icare been quite assiduous in trying to get cooperation to receive data and then you've met basically a brick wall?

STUART FARQUHARSON: I will let you respond to that, if you're comfortable to.

ROHIT MANDANNA: That's something I might need to take away on notice and we can come back to the Committee.

The CHAIR: Sorry, I cut Abigail off.

STUART FARQUHARSON: I'd just respond with a different answer to that, which is slightly related. We did also make reference to the fact that we've been working very closely with SafeWork and SIRA around data-sharing opportunities. Now, it's not exactly the point you're asking about, but we are actively engaging on that area and I think making good progress.

The CHAIR: It's good that there's greater comity in the systems to enable sharing and analysis of information, but I'm talking about getting the primary data in the first place.

Ms ABIGAIL BOYD: If I could just finish on the dust disease screening side of things. That reluctance you were talking about with the Chair—is that from the companies themselves to share data in relation to employees or is it a reticence from private clinics or employees to share that data across?

STUART FARQUHARSON: I think it's a broader reluctance.

Ms ABIGAIL BOYD: That's useful. I don't remember what my second question was in relation to screening. I will hand over to someone else and come back.

The Hon. BOB NANVA: Sorry to harp on about the data that icare has available to it, but I think it is a critical issue. In terms of accurately projecting the potential liability to the scheme of emerging hazards like dust diseases, would you agree that is entirely predicated on having accurate, reliable and public data sets available to you? I mean, how can you accurately predict the potential exposure of the scheme to these diseases without that data?

STUART FARQUHARSON: Should I talk a little bit about the process that we go through? We do have a very strong actuarial capability in the organisation and we perform our half-yearly liability evaluations. I'll also just talk a little bit about how we run the scheme. We run this on a pay-as-you-go basis, and really what that means is that the scheme is funded so there's always a net zero result. I know your point is a little bit different around how do we get insight into what's going to happen in the future because that's really about the liability base that we have in the financials. The scheme has $2 billion in claims liabilities and those are funded through contributions and, of course, the investment asset base that we have—the investment returns and a drawdown on that. But we do significant modelling on the numbers that are coming through and, yes, it's important that we do have a handle on what's emerging out of silica, so your point is right.

The Hon. BOB NANVA: But to do that modelling, you need the data.

STUART FARQUHARSON: Yes.

The Hon. BOB NANVA: You need the monitoring data that's taken place, the actual exposure that's taken place. You can't perform a model on a range of hypotheticals, can you?

STUART FARQUHARSON: No, you can't, and the reality is that when you look at our claims and liabilities at the moment, they are still significantly impacted by historical exposures. This is a new, emerging exposure that we're talking about and we're talking about practical ways to improve the data that we hold. I think it's all absolutely relevant, but the substantial portion of our liabilities as they currently stand relate to historical asbestos-related claims. I'm not sure if that helps. I'm agreeing with you. We do need to be proactive in terms of the new, emerging risks that are coming through. Rohit, do you have anything else to add on that?

ROHIT MANDANNA: No, nothing further.

The Hon. BOB NANVA: Coming at this from another way, there's the potential liability to the scheme. You'd agree that icare would be incentivised to see this emerging workplace hazard mitigated in every workplace because, obviously, that reduces exposure to the scheme.

STUART FARQUHARSON: Yes, and, importantly, it helps us to provide support to people that are impacted—injured workers who are impacted through the exposure.

The Hon. BOB NANVA: Would you agree that beyond governments legislating, when there is an emerging workplace hazard that's presenting itself, like dust diseases, one way to mitigate that emerging hazard is to promote and enforce better practices at each workplace? Is that a fair assessment?

STUART FARQUHARSON: It sounds fair, yes.

The Hon. BOB NANVA: Is the promotion of data a key factor in that—having published public data available to everyone with a view to driving better practices at each workplace with emerging hazards?

ROHIT MANDANNA: There are two parts to your question. One is the promotion of safer workplaces and the second part was utilising data to promote safer workplaces.

The Hon. BOB NANVA: Yes.

ROHIT MANDANNA: I will start with the first part. If we think about the promotion of safer workplaces and increasing workplace health and safety, that's the role of SafeWork. Icare collaborates with SafeWork. The role of icare is to administer the scheme and provide treatment, care and support, and compensation entitlements to workers who have been assessed with a dust disease. The second part is in terms of the promotion of the data, as I think we've touched on. It is a small but it is a growing cohort and, as we have access to more data, that gives us an increased opportunity to better project some of those future liabilities.

The CHAIR: Sorry, can I just jump in? When you say "small", with respect, we don't know what we don't know and icare doesn't know what it doesn't know. It may well not be small. Is that not correct? If people haven't been tested, we don't have data and we don't have accurate information, how do we know it's small? I'm particularly focusing on work with respect to silica dust in tunnelling. You can't say it's small, can you? You can say that the information you've got suggests that it's small, but you don't know that it's small, do you?

STUART FARQUHARSON: That's quite correct. I think the answer is that, when you look at the claims that are currently being paid out of the scheme, the vast majority of them relate to non-silica related diseases—and your point being that there's an emerging risk and trend, and we need to understand that. Just to support the position that Rohit was articulating there, if you look at the number of applicants awarded benefits in 2024, it was almost 400 and, of that, new applicants with silicosis and payments for that were 80. It is not insignificant, but it is smaller. As you say, it is very important that we understand what is emerging.

Ms ABIGAIL BOYD: We heard in the previous hearing about silicosis taking 10 years, on average, after exposure. We've heard a lot of evidence about concerns with air quality, particularly in tunnelling, and some submissions and witnesses have said, basically, that we're going to see a big wave of new workers being diagnosed with silicosis after working in tunnels. Looking at that emerging risk, how from a pure financial perspective does icare get comfortable with how it can model its potential outflows in the future? What information do you need in order to do that accurately, given that you don't have that sort of screening data?

STUART FARQUHARSON: I think it comes back to the screening. The screening needs to be done and we need to understand what is emerging out of that. That's how we can best prepare for future exposure, really, or future illness. In terms of the way the model was set up, and I spoke about that a bit earlier, we're providing for current claims as they emerge, but your point is about future claims and that's really what the nub of this issue is: How do we get to that? It is about understanding that we're screening at an appropriate level, and we understand there are implications of what's coming out of that screening. The technology is improving all the time so we can understand and detect disease early, so it's about having access to that, I suggest.

Ms ABIGAIL BOYD: In terms of the health of the scheme at the moment financially, my understanding is that it's pretty good at the moment. It's not under pressure.

STUART FARQUHARSON: No.

Ms ABIGAIL BOYD: But there is a potential for these claims to really increase. What is the process then of ensuring that the companies responsible now are paying into the scheme to ensure that there's enough money in the future?

STUART FARQUHARSON: This comes back to that point about the structure of the scheme. As I described, the pay-as-you-go system means that, effectively, the claims that are incurred during a financial year are paid for out of levies that are levied that year and collected, plus returns on the prior investment base. There is an element of prior employers contributing to the current claims, but future claims coming through will be funded out of future levies and, to the extent that there are still investment returns, that will contribute to it. Those are the two mechanisms. If there's a significant increase, that's largely going to be funded out of future levies, to answer your question. So what is the mechanism to recover that from employers now? The mechanism doesn't

allow for that, other than the investment base that is utilised to contribute to those costs. Does that make sense and help?

Ms ABIGAIL BOYD: Yes.

ROHIT MANDANNA: I can comment on that.

Ms ABIGAIL BOYD: Go ahead.

ROHIT MANDANNA: We provide the total contribution data to SIRA. Essentially, then SIRA looks at the experience across the range of industries to then determine the appropriateness of the levy setting. Where we're seeing industries or companies with increasing exposure, then the levy setting will essentially be adjusted to factor in the rate at which the levy is calculated for those industries.

Ms ABIGAIL BOYD: Is that a standard model of doing this? Are there examples, in other parts of Australia or other places, of ways in which levies can be more accurately assessed against—I guess you'd need the data—a future claim pool, rather than working on this year by year? Is that just the way it is, or are there changes that can be made?

ROHIT MANDANNA: Each of the various workers compensation schemes operate slightly differently across the different jurisdictions in Australia. We'll probably need to take that away on notice to identify where there are opportunities for us to learn from and identify different levy-setting arrangements.

STUART FARQUHARSON: I'm not aware of an arrangement that allows for the collection of levies based on future liabilities coming through in this area, but it may well exist. We can investigate and get back to you on that.

The Hon. ROD ROBERTS: Thank you, gentlemen, for attending today. Could you, in the first instance, talk me through the actual screening and monitoring process of workers who are in high-risk areas for dust disease? What actually happens at Kent Street, for example? What do you do?

ROHIT MANDANNA: In our Kent Street mobile clinic, we provide essentially three tests. Firstly, we have a chest X-ray for workers. Second, we provide a lung function test, and we also gather information on their medical and occupational history. All those are reviewed by the clinical team to assess what the next course of action, based on those set of tests, is.

The Hon. ROD ROBERTS: That takes me directly to the point: I have sat on this Committee for a number of years, along with some of my other colleagues here, and it's been explained to us that the best form of monitoring for potential detection of dust diseases is not chest X-rays; it is, in fact, CT scanning. How would you respond to that?

ROHIT MANDANNA: The Dust Diseases Care team and icare have conducted an extensive review of the deployment of CT scanning capability in both our physical clinics as well as our mobile clinics. What we've found from the review is that there are significant operational, financial and environmental risks associated with having CT scanning capability in both fixed and mobile clinics. There's an external market that provides very easy access to CT scanning services, both in metro areas as well as in regional areas. We act on the clinical guidance of our teams: radiographers and respiratory physicians. Where there's a need for further examination, specifically CT scanning for a particular worker, we can offer very rapid access—in many instances, same-day appointment, where the team looks to coordinate the booking for those workers. We find it very easy to, essentially, arrange access for the services via external providers.

The Hon. ROD ROBERTS: There's a fair bit to unpack in that. I'll put a proposition to you, and you can either agree with it or disagree with it: In this case, we are not adopting best practice in terms of screening for potential diseases in workers. We've been told by the predecessors of both of you gentlemen that CT scanning is the ultimate detection tool, as distinct from lung testing and chest X-rays. The proposition I'm putting to you is that icare is not adopting best practice immediately. How do you respond to that?

ROHIT MANDANNA: As I mentioned, we act on the clinical guidance of our respiratory physicians. Every worker who requires a CT scan to be completed is given access to completing the CT scan. That's something that is paid for by icare as well.

The Hon. ROD ROBERTS: Shouldn't the default position be that you get a CT scan rather than a chest X-ray? Should that not be the default position the moment someone presents at an icare clinic? Let me put this question to you: Is it the best tool to diagnose potential disease?

STUART FARQUHARSON: You need a medical opinion for that.

The Hon. ROD ROBERTS: We've been given the medical opinion, year after year after year, from people who give evidence to this Committee that CT scanning is the best and most reliable way. You don't have to answer now; you can take it on notice. I'm putting to you that icare is not adopting the best practice that it should be. In your answer to it, you said, "There are financial and environmental risks to us conducting CT scans." What's the financial risk to icare in providing CT scans to potentially injured workers?

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

The Hon. ROD ROBERTS: I'll put to you, then, that icare is not adopting the CT scanning method because it's financially too restrictive. Is that what you're saying?

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

The Hon. ROD ROBERTS: Well, Mr Mandanna did say that it is a financial risk. They were his words that I repeated back to you.

STUART FARQUHARSON: Yes—a consideration.

The Hon. ROD ROBERTS: And he has said—again, I'm not putting words in his mouth, and we're not here do that. We're just here to get to the bottom to find the best prevention, diagnosis and treatment to stop workers from being injured.

STUART FARQUHARSON: Absolutely—I agree.

The Hon. ROD ROBERTS: It was alluded to by yourselves that there's a financial risk in CT scans. My concerns are that we've been told that it is the ultimate tool—not a chest X-ray or a lung test, but a CT scan. That's my concern that that has not been utilised. I will move on to one other subject, and that is that we have heard from witnesses here about cross-jurisdictional issues. The tunnelling profession moves from State to State on major infrastructure projects. There's a conflict about where the "injury" occurred: Did it occur when I was a worker on a tunnelling project in Victoria but I'm now on a tunnelling project in New South Wales, where I get screened? Can you talk us through that conflict? How can we resolve that to ensure that workers get the best possible treatment available?

STUART FARQUHARSON: I may need to take that on notice, unless Rohit is able to provide some insight into it. But it's about exposure within business places in New South Wales. I think that's the key trigger in this. That's the important point.

ROHIT MANDANNA: We might take that away on notice.

The Hon. ROD ROBERTS: I urge you to go back over the transcript of the last hearing from a couple of weeks ago to hear what witnesses have said in relation to that particular issue.

The Hon. CHRIS RATH: I want to ask about the relationship between the dust diseases scheme and the workers compensation scheme. You've probably seen employees who have started off in the workers comp scheme and then have been pushed over to the dust disease scheme. Can you walk through with us how that works? Would you say that one scheme is more generous than the other in terms of the financial claims that are made by injured workers?

STUART FARQUHARSON: What I can say is we do have detail here and we can provide you detail on the benefits provided under the dust disease scheme. But I wouldn't be able to comment on a comparison of the benefits today. Practically speaking, I don't really have anything to add to that, so I'm not answering your question. My apologies. Rohit, is there anything we can add to that, to address that question?

ROHIT MANDANNA: We might take that away on notice.

The Hon. CHRIS RATH: Surely you've got examples or there would be many cases of workers who start off in the workers compensation scheme and then are moved to the dust disease scheme.

STUART FARQUHARSON: I can't comment on that. What I do know is what benefits are legislated for the dust disease scheme. I'm not sure about that transition, so I'll need to respond on that. My apologies.

The Hon. CHRIS RATH: When injured workers are not at work and they're claiming the benefit under the dust disease scheme, what proportion of their income are they receiving as a benefit? Some of the other submissions are recommending that it be lifted to around 100 per cent. Is there a ballpark figure of what that figure is?

STUART FARQUHARSON: We could quote the numbers. As a percentage I can't tell you, but I do know that there is often a difference between what is paid and what would be the current wage.

ROHIT MANDANNA: Thanks, Stuart. To provide an indicative—we have the numbers. If you look at our workers who are of non-working age, the current upper limits for fortnightly benefits are approximately on the $5,000 mark for the first 26 weeks. If we look at workers who are of working age, it's similar—approximately $5,000 per fortnight for the first 26 weeks. Then that amount steps down to 80 per cent of that benefit, which is approximately $4,000 for the second 26 weeks.

The Hon. CHRIS RATH: Would you be able to comment on the financial viability of the scheme? There have probably been more problems in the past with the workers compensation scheme in terms of its financial viability than dust diseases. The dust disease scheme seems to be going fairly well from a financial perspective. Is that a fair comment?

STUART FARQUHARSON: Yes, and it comes back to the point that I made earlier around this financial structure of the scheme and the pay-as-you-go mechanism. Effectively, we collect what is required to cover the costs on an annual basis, which means there's always a zero net result and an appropriate financial backing to the scheme. If we look specifically at where we are at the moment, we've got $2 billion worth of liabilities and $1 billion worth of investments. The claims costs that are paid for over the course of this last year are largely subsidised by investment income and a drawdown on the investments.

The Hon. CHRIS RATH: I'll read to you this comment or recommendation from the Thoracic Society, and then you can comment, potentially. They've said:

> The feedback loop between iCare and SafeWork NSW is inadequate, leaving workers exposed to further workplace risk. There is no mechanism to ensure that workers are obliged to be followed up by a healthcare practitioner, nor given appropriate resources and support.

Is that something that you've noticed or that needs to be addressed from your perspective?

STUART FARQUHARSON: I can't comment on that specific example but what I will say—and I mentioned it earlier—is I feel that we are developing and have a very good working relationship with SafeWork. We are proactively engaging to find ways to enhance the collaboration. I'd say it's with SIRA as well. Effectively, we have a tripartite mechanism between the three organisations to explore options and share information so we can be proactive about addressing the risks that we're talking about today, not just in the scheme but more broadly across our mandate.

The CHAIR: Can I return to the line of questioning about data? I'm sorry to do that.

STUART FARQUHARSON: No problem at all.

The CHAIR: Can I commence by putting it in a context? I appreciate that both of you are relatively new in your roles, and I don't say that in any disrespectful way. That's just a statement of fact.

STUART FARQUHARSON: That's fine.

The CHAIR: Do we or don't we have a serious issue in front of us that we need to be dealing with in terms of exposure of workers to silica dust associated with tunnelling in the State of New South Wales? I'll ask you to be frank. If you've not been in the role long enough—both of you—to be able to provide a yes or a no answer, that's fair enough. But I wouldn't find the answer "maybe" as being anywhere near good enough. With that qualification, I'll let you answer.

STUART FARQUHARSON: I believe there is a risk associated with silica exposure, and we're already seeing it. It's coming through the scheme. The extent of the risk is to be determined. The issue that we have here is to work out what that is. I'm not sure if that has helped or answered your question. It's not a maybe. Yes, there is a risk, absolutely.

ROHIT MANDANNA: The SafeWork register that we touched on earlier will really help us to understand and quantify the size of that risk and take a targeted approach in terms of offering our screening services to those employers and employees that are at greatest risk.

The CHAIR: Can I provide you with a copy of a submission made to the inquiry by a stakeholder? It's submission number 14 from the Australian Workers' Union, which is a union that has significant coverage in the area of tunnelling. Could I take you to page 4 of the submission. I haven't independently tested the table and its accuracy, but this union has provided evidence over a long period of time to inquiries of the Parliament, in different areas, and is known for its accuracy. If you look at that table, there are 16 projects. We're looking at the period from 2014 through to the present, so we're talking about 10 years—a decade block.

That's where there has been a very clear, unambiguous spike in tunnelling projects in New South Wales. You'll see a total of 16. Seven are completed and there are nine under construction. They are very large projects, and some of them probably fall into the category of a mega project, from the sheer size. Does icare have an appreciation of that? They would know that this has happened. We're talking about what has happened. We're talking about a 10-year period. In real time, this has happened. It's still going on, and the sheer size of these projects is something to behold. Icare clearly understands the number of workers that have been exposed to silica dust in those tunnelling projects, doesn't it? We're talking about very large numbers, on any fair judgement, even if we don't have accurate figures. Is that a fair statement?

STUART FARQUHARSON: Absolutely. We have spoken about that number of 78,000 people that are exposed to hazardous workplaces and factory dusting.

The CHAIR: I'm not coming at you to attack you personally or organisationally but to simply make the point that, if there is this appreciation of the large dimension, should there not be, dare I say, a stronger response than saying that there is an emerging issue? In fact, there is this complete black hole—or black tunnel, if I could use the phrase—of lack of information around where we are presently in 2024 and going into 2025.

STUART FARQUHARSON: I will let Rohit respond, but what I would just start with is that I think what you are saying is entirely fair. We think of the role that icare plays in this, it's our role to administer the scheme in accordance with the legislation. There are all sorts of legislative considerations that are a matter for governments, and that will impact reporting and safety regulations and those types of things. We, of course, have been proactive and are proactive in terms of our monitoring and the creation of awareness. There is more work that can be done and should be done. I'm agreeing with you and hopefully answering that to a certain extent. Rohit, I know you wanted to add to that.

ROHIT MANDANNA: Building on that part of the role, this is a matter that really fits in the role of SafeWork as you look at prevention and raising the safety standards in these types of environments that have exposure to dust. Our role is how we can really focus on dealing with the diagnosis and the treatment of the claims and ensuring that these workers, once diagnosed, are supported and effectively compensated post diagnosis.

The CHAIR: The challenge we see, or I've been observing, is that, whether we're looking at yourselves and the insuring role you've got, Sira—and, to be fair, we're hearing from them next—and SafeWork, where we had them provide evidence at the last hearing—and you can read their evidence, if you haven't done so already—and the tunnelling industry, which is made up of very large contractors and a whole pyramid of subcontractors, if you take those four component parts, and there might be others, no-one seems to be pretty anxious about this. Everyone is saying, "Well, we've got a role and we're doing our bit." But it just seems to me that it's like each are in their respective corners doing their bit, whatever that looks like, but we don't have a universal understanding of what the issue is and the major component parts working in sync to try and, first of all, get on top of what we're looking at in the first instance, and then obviously the matter of dealing with what's going to be appropriate treatment for the workers affected and, ultimately, compensation over time. Everyone is doing their bit but the bits don't seem to be syncing together. Do you have a comment about that?

STUART FARQUHARSON: I do. We are engaging and collectively looking at the issues that face this scheme and the various other schemes under our jurisdiction. I mentioned some examples of that earlier with the proactive engagement between those three entities in particular. But you're right. There is a holistic review of it required. The more we can do there to provide insights—and we do provide insights and information and data so that different agencies can proactively address it—the better. I would agree and disagree. I think we are engaging and we are looking at it from a system perspective, but there's more that should be done and could be done.

ROHIT MANDANNA: On that system perspective, we're also looking to build the technology that can interface with the register that's being developed. Once we've got access to the data, then we have the opportunity to be even more proactive in terms of targeting some of those employers and continuing to raise awareness amongst those employers on the need for screening their employees.

The Hon. BOB NANVA: Can I ask about the Dust Disease Register? Presumably icare utilises it for its purposes, whether it's projections and modelling and what not. Do you utilise the Dust Disease Register at the moment for your work?

ROHIT MANDANNA: Can you clarify which services?

The Hon. BOB NANVA: The NSW Dust Disease Register—the annual report that comes out and the data that it collects and the incidents of dust disease.

STUART FARQUHARSON: We could come back to you, unless you would like to address that—

ROHIT MANDANNA: The register we're talking about with SafeWork, that hasn't yet been launched.

The Hon. BOB NANVA: The NSW Dust Disease Register, where notifiable incidents of certain conditions have to be reported by NSW Health to SafeWork.

Ms ABIGAIL BOYD: The one that has now gone to Federal.

The Hon. BOB NANVA: Has that historically been utilised by icare for the purposes of its projections and modelling?

STUART FARQUHARSON: It would be. It's a component of a broader valuation exercise. In terms of the specifics of how that flows in, I'm very happy to come back to you on that. I think that's what you're getting at—to what extent we use that to inform our views of the future exposure. We can provide that on notice.

ROHIT MANDANNA: In terms of the existing register, yes. In fact, we also contribute some of the data that goes into that register as well. So, yes, that data is being utilised.

Ms ABIGAIL BOYD: I come back to another one of the specific recommendations that we had in a few submissions around expanding the list of compensable dust diseases. I guess this comes back as well to this issue we're talking about that people are being exposed now but it might take 10 years until they evidence some sort of silicosis. But also we are seeing medical science get better and better and identifying there is actually a huge number of non-respirable diseases coming out of exposure to silica. What is the process then for including those? Have you done modelling around that? What is the potential for the scheme to expand?

STUART FARQUHARSON: And what would be the cost consequences of that?

Ms ABIGAIL BOYD: Yes. Also, what is the process of bringing those diseases on. At what point of causal evidence do we start treating them as being compensable dust diseases?

ROHIT MANDANNA: Firstly, from a process point of view, icare would really welcome the opportunity for greater clarity of the disease as well as eligibility under the scheme. If you think about the current definition, it gives little consideration for diseases of the lungs. From icare's perspective, we are supportive of a periodic review of the legislation because that, essentially, is a process to keep up with, to your point, the increasing understanding of dust diseases. Any update to the definition would also provide greater coverage as well as clarity for workers that have exposure as well.

Ms ABIGAIL BOYD: I guess this comes back to the way that the scheme has been designed. If we have people right now who have illness because of their exposure to dust in a tunnel, or wherever, and then that gets brought into the scheme in three years time, how will the scheme adapt to be able to cope with those extra claims? Is it simply that then the levy will be increased in that year?

STUART FARQUHARSON: To the extent that there's exposure that's covered under the legislation, it's provided for in the current costs. But you're right. There are conditions that emerge that are outside of the current legislation. Yes, that would be a future exposure, so that is an issue.

The Hon. BOB NANVA: I want to come back to the State registry, now a national register. As I understand it, it has historically captured incidents of notifiable diseases rather than exposure above workplace standards. Should the register have been broadened to capture exposure above certain standards, as opposed to just incidents of respiratory illnesses, to give organisations like yours a greater insight into the potential liability faced in the future?

STUART FARQUHARSON: I'll let Rohit respond to that, if he wants to, but my response would be that additional information will always be helpful. It will help inform the various stakeholders, including icare.

The Hon. BOB NANVA: So incidents above a workplace exposure standard should potentially have been notifiable for the purpose of the registry?

STUART FARQUHARSON: As to whether it should be included in that register or not, I think that's an issue not for us to decide. But I think additional information would be helpful.

The Hon. BOB NANVA: It assists with your modelling and projections?

STUART FARQUHARSON: Is that fair, Rohit?

ROHIT MANDANNA: That's right, and it's probably beneficial for other stakeholders that we have spoken about within the broader scheme as well.

The CHAIR: On the issue of the current dust diseases scheme, it was essentially designed at a time when particular consideration was given to workers at the end of their life. That's historically how the scheme has operated. It certainly wasn't, at that time, giving particular consideration to younger workers being exposed to silica-type exposure and what might flow from that. Is that your understanding of how the scheme was set up?

STUART FARQUHARSON: Yes.

The CHAIR: In terms of looking at what could be done to the current scheme, if the Government was minded to make structural changes to reflect better the dust diseases that we are now dealing with as a society, like silicosis or silica exposure, have you got any particular comments—if you haven't, you could take it on notice—about what could be, or arguably should be, some restructuring of the scheme that should be done?

STUART FARQUHARSON: I'll start by saying that one of the dynamics that we need to manage is that when you have younger workers that are entering the scheme, there is an opportunity for them to potentially move into different areas of work. So we do invest time and effort to assist with that, and we spoke about that a bit earlier. There are challenges around that transition, and that's around accepting alternative forms of employment while retraining and the impact of that on current receipts from the scheme. So, yes, that is a tricky area for us to currently navigate within the existing legislation. Would you like to add to that?

ROHIT MANDANNA: Sure. Firstly, the reform is a matter for the Government, but it's something that icare is very supportive of. A few of the opportunity areas from a reform perspective is, firstly, there is an opportunity to undertake holistic review of the legislative framework that the scheme operates, specifically the supports for younger cohorts of workers. We've also seen the changing nature of exposure. With some of the younger workers, there's an opportunity to review entitlements and also to look at areas such as vocational training to help them retrain and transition to other occupations that have no exposure to dust environments.

The CHAIR: On the issue of income replacement for workers that have succumbed to silicosis exposure—we're talking about young workers here—has there been discussion within icare, even informal discussion, about the capacity of the scheme to be able to sustain something in regard to income support? Or is that not something that has been considered as a possibility?

STUART FARQUHARSON: I think it ties back to the point that Ms Boyd was asking about earlier, about how you would fund that, and that would be through future levies. If there was a change to anything, it would have to be funded through a levy mechanism, effectively.

The CHAIR: I think it was in your opening statement, or soon thereafter, that you referred to the 78,000 entities. Are they individual entities?

STUART FARQUHARSON: That's individuals.

The CHAIR: That's from your dust levy data.

STUART FARQUHARSON: Yes.

The CHAIR: They are entities that are being levied presently because the nature of the work they do, or the work they conduct or operate under, provides exposure of their employees or workers to dust. Is that an easy way to summarise it?

STUART FARQUHARSON: No. I think that 78,000 that I was referring to related to workers that have been exposed.

The CHAIR: Sorry, I withdraw. So that's the 78,000 workers. In terms of the number of entities that engage those workers, they could be employers—organisations that have an employer-employee relationship directly with the workers—but they could also be organisations that contract through contract arrangements with the workers. Would you have to take that on notice? I'm trying to understand, for that 78,000, the nature of their engagement with the entities and employers. Sometimes it's an employer-employee relationship, sometimes it's contractual and sometimes there are other more informal arrangements.

STUART FARQUHARSON: I think they could be employed in a variety of manners. I'm not sure if this is helpful, but what I think you're getting at is how those levies find their way to the dust diseases scheme. Effectively, they're collected through workers comp. SIRA sets the allocation and then those levies end up in the dust diseases scheme. In a period of time, if there was a change in the underlying costs of the schemes and the exposures, that would flow through that mechanism.

The CHAIR: Yes. I got the numbers around the wrong way. With the 78,000, on notice, are you able to provide to the Committee the number of entities—I use the word as a generic term—that are paying the dust levy?

STUART FARQUHARSON: Yes, I'm sure we could do that.

The CHAIR: On notice.

STUART FARQUHARSON: Yes, and that will be linked to the entities that are paying workers comp premiums, because the levies are included in that and allocated through a methodology that is set by SIRA.

The CHAIR: The levy is on a per capita basis, I presume. I shouldn't presume, I suppose. What is the levy? If you don't have the specific details—I don't mean to put you on the spot.

STUART FARQUHARSON: I can absolutely give you some information on the levies. I'll just step back a bit. If you want me to rush through, please let me know. I spoke about the pay-as-you-go basis and the net result. Per the legislation, the levy is based on the expected expenses of the scheme. That comprises the benefit payments and the support costs. I spoke about the mechanism and the link with investment income—the drawdown of investment assets. I know you've asked me about per capita, but just to give you an outlook for the next year, for the next financial year the scheme's estimated costs will be $158 million.

Of that, $75 million will be paid by levy contributions and $84 million will be funded through investment income and the scheme assets. If we look at this from last year, $83 million was collected towards funding the scheme costs, so $83 million of the $125 million. What does that mean? I think that's the nub of what you were getting at. Average employer contributions are a percentage of wages, so for the last period, from 2019 through to the outlook for next year, it's 0.3 per cent. In 2023, there was an increase to 0.35 per cent. That levy that has been collected has ranged from about $63 million up to a high of $83 million. In terms of what that means per capita, I can't tell you that. But I can get back to you on that. It comes out as a percentage of wages.

Of course, SIRA sets the arrangements. Icare provides SIRA with a total contributions amount required to cover the costs, as I've just described. SIRA then determines how to acquire the contributions across the industries. It's based on charging at-risk industries with at-risk workers by setting a percentage rate for each dollar of wages paid. So it's back to the percentage of wages. I'm not sure if we could get to a per capita but we can try to come back with that. It's business activity, it's risk profile and it's claims expense. All three of those things link into that percentage. So there is, I expect, some incentivisation out of that to run a safe environment. It's collected as the workers compensation insurance premiums, which is what I mentioned earlier.

Ms ABIGAIL BOYD: A number of the submissions talked about challenges people were having in the scheme in relation to a lack of support to find other jobs, specifically jobs that are going to pay the same amount. That then leads to them staying in their jobs longer than they should and continuing to be exposed. In your opening statement you did talk about the levels of vocational support. I see in the latest annual report, I think, just 20 people received vocational support in 2023-24. Is that standard year on year? What are you doing to try to increase the number of people who are getting that support?

ROHIT MANDANNA: Firstly, icare acknowledges the importance of vocational support. It's not something that's currently mandated within the legislation. Icare has identified this as an issue and has been working closely with SIRA-accredited providers to provide a range of supports, which Stuart touched on in his opening statement, such as skill building, interview preparation, job trials et cetera. They ultimately enable people to transition to other occupations and away from hazardous dust environments. Going forward, this is another area of opportunity as far as future reform is concerned, in order to have the best legislative framework going forward.

Ms ABIGAIL BOYD: So that's a legislative change to try to mandate it so we get higher levels of vocational support?

ROHIT MANDANNA: Higher levels of vocational support, yes.

Ms ABIGAIL BOYD: A lot of the submissions talked about the lack of psychological support. I know you touched on that in your opening statement as well. What do we need to do in terms of legislative reform to ensure that people get psychological support at a very early stage of their diagnosis?

STUART FARQUHARSON: We have made the point that we do provide that. It's a similar dynamic, as I understand it.

ROHIT MANDANNA: Yes. The other thing I would say about psychological support is that in many instances where it's offered to workers who have a mental health condition as a result of the dust disease, it's not taken up. There is an additional barrier there from a worker perspective.

Ms ABIGAIL BOYD: There was a recommendation in one of the submissions in relation to an issue where you can sometimes get payments out of the scheme that then push you out of getting a Centrelink payment or other types of government payments. I understand that under the Federal legislation, they have a thing where basically you can reduce payments to make sure that doesn't happen to a person. Is that something that you think we ought to be doing in New South Wales as well? Is that something that has crossed your path?

ROHIT MANDANNA: I might just take that on notice and come back to you with a position on that.

Ms ABIGAIL BOYD: That would be really useful. Another one of the recommendations was that we increase the 26 weeks of support to 52 weeks. Again, from an icare perspective, has there been any modelling around that? What would that do in terms of those yearly levies?

STUART FARQUHARSON: We could absolutely provide that information. But it's the same principle. As you say, it's not currently built into the existing mechanism. If there was a legislative change on that, there would be a high cost that would need to be funded through this mechanism.

Ms ABIGAIL BOYD: Has there been any modelling done in relation to those other two points: psychological support and the costs of including vocational support as a legislative measure? Is this stuff that is readily available?

STUART FARQUHARSON: I'd have come back to you on what insight we have gleaned and what modelling has been done.

ROHIT MANDANNA: There has been some very preliminary modelling but we will come back to you. In terms of the psychological support, it's also looking at how not just the workers but also their families can be supported and have access to services such as counselling et cetera.

The Hon. BOB NANVA: I have one more question. I know you touched on it in your submission, but I am interested, if you can spell it out in a bit more detail, in how the scheme differentiates income support for younger people who have greater working capacity in the future and those who are of a more mature age who don't? How do you differentiate the income support that you provide to those groups?

ROHIT MANDANNA: Firstly, income support from icare is based on the frameworks that we have within the legislation. As I mentioned earlier, for people who are in retirement, there is income support for the first 26 weeks and then it drops to the statutory rate post that first 26-week period. For the younger cohort who are still of working age, there are two lots of 26 weeks, as I mentioned. Post that 52-week period, the support drops to the statutory rate. But, essentially, the differences in income support are mandated by legislation.

The CHAIR: In regard to Comcare and some of the large companies doing this work having insurance coverage with respect to their workers, what do you understand is happening with these large companies? Do you have any sense, with respect to taking out their insurance coverage for workers with Comcare, what might be the motivation behind that? What are the implications of that, looking at the whole system in New South Wales? We've got the large companies working in a certain way. What's your thinking around all of that since you've come into the role and have you done any assessments about it? I'd be very keen to hear your observations.

ROHIT MANDANNA: Firstly, thank you for the question. That's something we might just take away on notice and come back to the Committee.

The CHAIR: You'll take that on notice?

STUART FARQUHARSON: Yes.

The CHAIR: Hopefully you didn't find that too inquisitorial and too tough. We really do appreciate both of you coming along, first of all, and appreciate you in the roles that you've got. They're very important roles. We appreciate the work you're doing. I'm sure you can see that there is a sense of concern by the Committee, because we don't want to find ourselves and the successors on the Committee over time—and there will be those—looking back and saying, "Why wasn't more done?" or "Why wasn't there more urgency injected into this? Why were people not on the rooftops shouting, if that's what should have been done at the time?"

Some of us have been through—the Hon. Rod Roberts made this point. We have the memory of asbestos, and the legacy of that is still there. Indeed, much of what is supported by the scheme is related to that. We went through the manufactured stone experience and had a number of matters brought to our attention. That is being addressed—not completely, but in a significant way. We just think we're dealing with something quite large here,

and we feel under-informed and potentially are under-appreciating what we're looking at. Therefore, that's making us somewhat anxious. Thank you very much. You've taken some questions on notice. I expect some supplementary questions will flow from the members reading *Hansard* after today's hearing.

STUART FARQUHARSON: Thank you for your time, and I hope that was helpful.

(The witnesses withdrew.)

(Short adjournment)

Ms MANDY YOUNG, Chief Executive, State Insurance Regulatory Authority, affirmed and examined

The CHAIR: I welcome our next witness. I invite you, if you wish to do so, to make an opening statement. Following that, we have members on the Committee from the Government, Opposition and crossbench. Our format is free-flowing, if you are okay with that. We share the questions between ourselves and there is a back-and-forth exchange. Are you comfortable with that, after the opening statement?

MANDY YOUNG: Yes.

The CHAIR: Please proceed.

MANDY YOUNG: Thank you, Chair, and thank you to the Committee for inviting me to attend today. I'm here in my capacity as Chief Executive of SIRA. Before we proceed, I just wanted to take a moment to acknowledge the individuals and families who have been deeply affected by dust diseases. The conditions profoundly alter their lives, and the impacts resonate far beyond the individuals that may have received a diagnosis. It touches loved ones, workplaces and communities. To those who continue to endure these challenges, I give my sincere respect and commitment to making sure that this inquiry is supported by SIRA and we can contribute meaningfully to addressing some of these issues.

The dust diseases scheme plays a significant role in supporting the quality of life for workers who suffer an occupational dust disease, and that support extends to their dependants. The scheme assists with compensation, benefits, medical and health care, and support services, including domestic assistance and mobility aids. It acts to be a critical social safety net for the people of New South Wales who suffer an occupational dust disease. SIRA regulates the workers compensation and motor accident and home building insurance schemes.

As the Committee would be aware, the occupational dust diseases are expressly excluded from the principal workers compensation scheme in New South Wales. Instead, the claims for compensation for any of the 19 prescribed dust diseases are dealt with under separate legislation—that's the Workers Compensation (Dust Diseases) Act 1942—and icare acts for the Dust Diseases Authority and manages the fund. The Minister for Work Health and Safety is the responsible Minister—I don't think I'm telling you anything you don't already know. However, the dust diseases scheme isn't subject to independent regulation of claims, conduct or prudential functions, as would be the workers compensation or any of the other schemes that we have oversight of. We do not have direct regulatory oversight of the scheme.

We play a very limited role in the scheme, though, in two areas. Firstly, as defined in the Act, we are responsible for determining the insurer or classes of insurers required to make contributions to the dust diseases fund, the amount of any such contribution and when the contribution is to be paid. Secondly, we are responsible for indexing the compensation payment for dust diseases, broadly based on the pre-2012 Workers Compensation Act provisions and death benefits prescribed from section 8 of the Workers Compensation (Dust Diseases) Act. Beyond this, we are actively engaged in support for both national and State prevention initiatives through the Heads of Workers Compensation Authorities and SafeWork Australia's workers compensation strategic issues group. We're available to provide support to icare and SafeWork in whatever aspect we can in respect of the important scheme that is the Dust Diseases Authority, and we would do that within the scope of the workers compensation landscape. I thank you for the opportunity to support the Committee, and I'm happy to answer your questions today.

The CHAIR: I acknowledge and thank SIRA for its submission, which stands as submission No. 4 to the inquiry. It has been received, processed and stands as a submission, and is evidence along with your oral evidence. I take you to page 3 of the submission, specifically point 2.1 regarding the dust diseases scheme levy. Are you able to provide some insight and as much detail as you can—and the difference you can take on notice, if you need to do so—in terms of how assessment is made and consideration is given to movement of the levy over time? I say that in the context that the scheme comes from a long history, particularly with respect to dust diseases, some of which are being less contracted today than they once were some decades ago. But now it is moving through and going ahead into the future with dust diseases that are somewhat different. Silicosis in particular is the one that's exercising our mind, and particularly silica dust in the context of tunnelling in New South Wales. I'm interested in the way in which the methodology and the calculation is done, and the underpinning assumptions behind looking at what should be adjustments over time.

MANDY YOUNG: I can give you my best answer. I will note I've been in this role for six months, so I'm still working through how some of these are applied. If there's anything in particular that I don't hit on, please let me know and I'll get that to you on notice. I understand that icare previously gave you some advice in the last session, so if I'm also repeating what they've said then move me on.

The CHAIR: You can answer as you wish to do so.

MANDY YOUNG: The dust diseases care is funded through a combination of the annual dust diseases levy and the employment and investment returns from the Dust Diseases Fund. It operates as a pay-as-you-go funding method, with the annual levy offset by the investment returns from assets built up in past surpluses. It has about a billion dollars under management, as I understand it now. Each year icare informs us of the estimated expenditure from the fund based on the actuarial advice for their financial year ahead. The example that I'd give you, as I think it's often easier to understand in context, is that in 2024 icare estimated the expenditure to be $158 million. Icare also estimated that $84 million should be funded from the existing assets of the fund. That balance of $75 million was to be paid by contributions by insurers, which is often referred to as the dust diseases levy.

We engage our actuaries to assist in setting those levy rates and allocating each of the 535 workers compensation industry classifications into nine levy schedules. There are nine risk bases for the dust diseases levies, so everyone would fit into those. The levy is a percentage of the wages. The actual percentage applied through those nine risk levels ranges from 4 per cent—so they're employers who are directly involved in handling or processing asbestos and other component risk issues—to 0.0045 per cent, which is the lowest risk employers, like a hairdresser or a lawyer or something of the like. Those lower risk industries pay much less in terms of the dust diseases levies. The target average levy collection rate is—

The CHAIR: Sorry to interrupt you. With respect to lawyers, that's interesting. Are you saying that all lawyers—or the profession of law in New South Wales—pay the levy, or just some?

MANDY YOUNG: Every insurer will pay a levy, so every employer will pay a levy through their insurance. There are 535 industries considered. They fit into those nine risk categories, and those nine risk categories will go from 4 per cent to 0.0045 per cent.

The CHAIR: I was not aware of that. Thank you.

MANDY YOUNG: Everyone contributes something. You could be a lawyer working in an office and have some exposure to asbestos, potentially, so there can be a risk. But that's how the scheme is currently set and how we set the levy. We then publish the dust disease notice with the interim contributions, and we then collect those levies through the premiums. That's the short version; obviously, there's a lot of technical detail behind that in terms of how they're calculated, what that is and what that means for everyone. That's how we calculate how much each insurer would pay.

The CHAIR: Specifically with respect to exposure to silica dust, that can occur in a number of ways, as I'm sure you would appreciate. There's been the manifestation of a lot of exposure through manufactured stone, which has been legislatively dealt with now through the banning of it. But there are instances that one would include: stonemasons and stonemasonry work; mining and quarrying—we're talking not about sub-surface work but surface work—building and construction; and then tunnelling. Our focus, obviously, is tunnelling in New South Wales and tunnelling in the main, if not exclusively—except for Snowy 2.0—in the Greater Sydney metropolitan area. If we took tunnelling as an example, I presume it doesn't fit as an industry category by itself—or am I wrong?

MANDY YOUNG: I would have to take that on notice in terms of the technicality, but certainly manufacturing and mining and all of those various other forms would. So it's likely it would be a high-risk category, but I'd take that on notice to confirm.

The CHAIR: That's what I was getting to. I'm interested in the hierarchy of risk in terms of where tunnelling sits. With respect to tunnelling, it's an assumption, and we'll find out from your answer to the question on notice. With respect to tunnelling, let's assume it's a higher risk than, say, above-ground quarrying. Let's make that assumption. With respect, then, to the levy, the employers pay a percentage which is higher than it otherwise would be for a lower exposed industry or sub-industry. Is that correct?

MANDY YOUNG: That's correct.

The CHAIR: And with respect to tunnelling—or, indeed, take some other subcategory—are you aware whether, from time to time, there are internal reviews done by SIRA about the classification grade and whether or not that classification grade, with respect to the levy, should be altered or changed?

MANDY YOUNG: I would again take that on notice in terms of whether we do. It's an annual process that we go through. I would expect that we would look at the risk classifications regularly, but I will take that on notice to see.

The CHAIR: What's behind my question is, if that is done, what criteria gets considered and what is the mechanism for this potential review of the gradation of an industry or a sub-industry with respect to potential risk?

Anything you can provide in regard to that—but I'm very much interested in the mechanism of how that's done, if it is done, and any historical information about where that's been done in the past and those results.

Ms ABIGAIL BOYD: Thank you very much for appearing and giving us the benefit of your expertise. It strikes me that this scheme is quite flawed on a temporal kind of basis. If we're applying, at the moment, nine risk levels to insurers based on what the particular operations are—so, as the Chair was saying, you'd expect a higher risk for tunnelling et cetera—but then those risks aren't realised until much further in the future, my understanding is that you can't bank that money for the future. The amount that gets determined is based on what gets paid out in a year, not what's going to be paid out because of that particular employer in 10 years time. We heard from icare earlier that they have very limited data when it comes to assessing the prevalence of exposure to silica and what it is actually looking like in terms of the worker population. How does all of that factor into SIRA's determination as to whether or not an amount that's being levied that year is really sufficient? Do you think that we need to make more fundamental reforms to the scheme to build in that consideration of temporal risk versus realisation of the risk?

MANDY YOUNG: I think that's a great question. I would say that the dust diseases scheme is funded adequately for each year because of the pay-as-you-go. That's the real advantage of it—we know roughly how much will be paid, and we can get that amount together to be able to do that and put the levy in place for that. We're the only jurisdiction that has a standalone dust scheme, so I think that's an interesting thing to note. There may be other personal injury schemes that have a pay-as-you-go model—I'm not sure; you'd have to look into that—but we're the only ones that have an actual dust scheme. One of the advantages of pay-as-you-go is that we collect enough to meet the cost of the claims for the year ahead and it's fairly predictable, so that's absolutely the advantage. But the disadvantage is that employers in the future may have to pay.

I think that goes to your point of the failings of the current employers in terms of the work that they're doing and the risk to their workers. It's mitigated in part by the ability to draw down on the assets of the fund, so the ability to draw down on what is currently roughly $1 billion—I think it's just under—that current and past employers have contributed to. But I think we'd really need to explore that from an actuarial basis to understand that. So I think there is some work to be done to understand that, particularly given that we are looking at the rise of silica exposure and what that might mean. I think that's definitely something that we should start to think about.

Ms ABIGAIL BOYD: How is it determined, that amount that then sits in assets? Is that just the surplus from the year that gets booked, or is it built into the amount of the levy to ensure that there is a certain buffer?

MANDY YOUNG: I'm not sure of the answer to that. I'd take that one on notice for you. By having what I keep calling a temporal problem, I guess we're creating a bit of moral hazard as well in the scheme in that you've got employers now paying less than perhaps they really ought to be responsible for, but then they could have disappeared by the time we get to the realisation of the harm that they've caused under the scheme. Are there any other aspects of everything that icare is running in New South Wales that has that sort of element in it, or is all of the rest of it—

MANDY YOUNG: The rest of it isn't on a pay-as-you-go levy-based format.

Ms ABIGAIL BOYD: It's just this one.

MANDY YOUNG: It's this one. That's the only one.

The Hon. ROD ROBERTS: Ms Young, following along on a similar thing, I am looking for your advice and guidance here. We won't nominate any particular real-life companies, but let's just say there's company A who is engaged in the tunnelling industry and there's company B. Company A is a cowboy outfit with numerous recordings of high exposure to dust and potential silica dust et cetera. Company B operates to the best possible practice. Am I understanding it correctly that if both are in the tunnelling industry both will therefore pay the same premium, even though company A has demonstrated that they are a much higher risk to workers and the scheme? Am I correct in that?

MANDY YOUNG: Yes.

The Hon. ROD ROBERTS: I don't want to put you in this position—I realise you are new to it and you may not want to answer this or can't answer it, or whatever—but it doesn't seem like a very fair equation then, really, does it, when both pay the same but one is a lot less of a risk than the other one? Can we address that in some way, do you think?

MANDY YOUNG: Again, I think it's probably something I'll take on notice to think more about.

The Hon. ROD ROBERTS: Sure. I understand that. That's no problem.

MANDY YOUNG: As I alluded to before, I think there is definitely a benefit to us looking into this a little further, given the changes in what's happening within the dust diseases component areas.

The Hon. ROD ROBERTS: I'm talking about where there have been notified incidents and SafeWork has been involved et cetera, so we're able to demonstrate that there have been a number of breaches, through negligence perhaps. It is my personal thought that that company should be held a lot more responsible than the good company, and therefore should perhaps be paying a higher premium because of their risk exposure.

MANDY YOUNG: I understand what you're saying but, in the current settings we have, that's not how it works.

The Hon. ROD ROBERTS: I understand—not currently. But perhaps that's something that could be looked at in the future.

MANDY YOUNG: Again, I'll take that on notice.

The Hon. AILEEN MacDONALD: Ms Young, my questions are probably a bit broader. How can SIRA's regulatory expertise contribute to improved outcomes for dust disease patients under the current scheme?

MANDY YOUNG: Under the current scheme, we don't have any authority in terms of a regulatory component. We do work regularly, SIRA with SafeWork. We work closely together on a range of issues, particularly more closely together over the previous months. Since I have been involved, we have a tripartite group that meets—I think we're meeting monthly at the moment—to work through a range of things around all of the schemes on which we work and how we do that. But in terms of dust diseases specifically we have and we do—as I think icare alluded to this morning, they use our approved providers for some of their vocational programs and we will definitely be having further conversations around how can we think about how we do things. Legislatively at the moment, it is quite constrained. There isn't actually anything to do, but from an administrative point of view there may be some things that we can do to support them in terms of where they don't have some of those other broader programs that we might have through the workers compensation scheme and where they can learn from that experience. We're having those conversations quite consistently and also thinking about data and other components which we can share.

The Hon. AILEEN MacDONALD: Are there any insights from, say, other schemes that can directly benefit the dust diseases scheme that you can think of?

MANDY YOUNG: I think when we talk about people who have an injury at work, there are definitely some similarities. As I said, we're consistently working with icare and SafeWork on that and our learnings in that space. I think, certainly, when we talk about return to work or changing vocations or we're talking about psychological injury and accessing services, they're the sorts of things where we do have those collective conversations about how do we actually support that—how do we make sure that the broader ecosystem can support those injuries. I think we're definitely doing that and having those conversations and thinking about where it makes sense for us to work together on those things, and we'll continue to do that. But from a current standpoint and how the legislation fits, this would all be done more administratively in the background rather than within the current legislation.

The Hon. AILEEN MacDONALD: I may be repeating this question, but what measures can improve the alignment of levy contributions with the scheme demands?

MANDY YOUNG: Again, I think that's where we would take that away and have a think about that and about the risk ratings that we have, what that means and what that looks like.

The Hon. AILEEN MacDONALD: Looking at your submission, from what I can gather there are three key recommendations. This is just me summarising. I would say promoting inter-agency collaboration to align the principles and the practices across the jurisdictions; sharing the best practices from other injury compensation schemes; and maintaining sustainable funding while accommodating the scheme's evolving demands. Am I correct in making those assumptions?

MANDY YOUNG: Yes. I think that would be correct.

The CHAIR: I turn to the matter of the levy. As you know, this inquiry is reviewing the dust diseases scheme, which is statutorily one of the requirements of this Committee and it's this scheme's turn in the cycle. We're looking particularly, as sub areas, at the issue of workers' exposure to silicosis, beyond that of manufactured stone, and the impact on young workers. In terms of getting the tone right about what we as a Committee should be saying, reflecting and concluding in the report with findings and recommendations, if the Committee took the evidence from icare, SIRA and SafeWork on the issue of risk or what's potentially coming down the line, so to speak, we get phrases like, "It's an emerging issue," or "It's a matter that we're monitoring and observing and

keeping an eye on." But I have to say it seems there's no sense of urgency to get on top of what I could describe as—using a well-known phrase—the unknown unknowns.

I could use this example. You spoke about the work done by your actuaries in providing advice to SIRA about increases or perhaps changes to the fee. We heard evidence earlier today from icare that on their figures there are roughly 78,000 workers at risk, and icare manages on a rolling basis about 5,000. There's this huge gap in knowledge of, first of all, exposure and how people may have been progressively affected by the exposure. How can actuaries provide you with advice when that has just not been taken into account because we just don't know?

MANDY YOUNG: The actuaries can only work with the data that we have. I think that's an important note. There are definitely ways. I think this is one of the opportunities that we have, particularly with icare and sharing that data, to understand what is potentially coming down the line. If they know that there are 78,000 people who may be impacted in the future, then we can start to work with our actuaries and their actuaries to think about what that means for the future of the scheme and do some data modelling on that. The more information that we have, the more that we can do. I'm very new to this, but it seems to me that us really getting to the bottom of the detail of this scheme has been really helped, one, by this Committee looking into that and, two, by us having more conversations about how we work, what we do and the data that we share. I think, as we progress, we will continue to get better at that predictive modelling as we get more information at hand.

The CHAIR: I take it as read that you're new in the role in the organisation. Were you in the organisation before you were promoted?

MANDY YOUNG: I came across: I was at the same level but in a different role.

The CHAIR: Within the organisation itself, SIRA, would you say there is a heightened sensitivity about the issue of exposure to silica dust compared to other matters that it might be dealing with in terms of threats to employee occupational health and safety?

MANDY YOUNG: Because we have such a limited role in this particular scheme, there are probably very few people working in SIRA who actually work on silicosis. It would only be those who help provide the support around the dust and diseases and how we set the levies because it is such a—

The CHAIR: On notice, could you provide the Committee with a headcount?

MANDY YOUNG: I could provide that on notice. I think it would be quite small because we set the levy once a year. But, from a broader perspective around silicosis awareness and what that means and what that looks like, there's definitely a heightened awareness and a heightened view of what we're doing in that space, and particularly the work that we've been doing nationally with the heads of workers compensation. We've been working together to develop some key principles for working across Australia, and compensation schemes across Australia, particularly for the use of silica, but any dust-related diseases. That's certainly heightened the work that we've done. Obviously because we work closely with SafeWork and they've got a very heightened experience in this area, some of the conversations that we have are also around how we support that work and what that looks like. So whilst the role that we have in the current scheme is very small, the broader issue around the impacts of dust and diseases is very clear within SIRA. We do have those conversations and think about where and how we can support.

The CHAIR: With respect to what I would describe as the tunnelling operators, those that do the tunnelling construction—let's call it an industry or sub-industry, however you'd like to define it—there are a number of large players. I'll use the vernacular. With respect to those large players, the evidence is that, in general terms, there has been somewhat of a reluctance or lack of cooperation—my words—to provide information and detail about matters to do with exposure, or potential exposure, of workers to silica dust. Through its process of setting the levy, does SIRA deal directly with what I would describe as tunnelling operators in its discussions? In other words, say for example that you're going to increase it. Do you go out to market and say, "This is what we're proposing to do," and provide a consultation mechanism?

MANDY YOUNG: I'll come back to you on notice just to be clear around that but, as I understand it, we set the levy but we don't have a consultation process within that.

The CHAIR: I was just interested in whether or not you're receiving any sort of—if "feedback" is not the word—flow of information back from the operators, in terms of what they're saying about the industry or sub-industry.

Ms ABIGAIL BOYD: I wanted to pick up on those principles as part of the HWCA working group. The submission in October was made prior to the October and the November meetings where they were discussed. Do you have an update on what's happening with those principles?

MANDY YOUNG: The chair of the heads of workers compensation has provided them to SafeWork Australia, and proposed that they do some consultation on the principles that were provided to them. That happened in November, as I understand it. It's back with SafeWork Australia to go on and do that consultation.

Ms ABIGAIL BOYD: Given the heightened awareness of silicosis and the risk to workers, is there also growing awareness around that Federal table about the risk from tunnelling and everything else, and not just manufactured stone?

MANDY YOUNG: I'm not at the table necessarily, because the Minister for Work Health and Safety and SafeWork are the representatives. However, in my conversations with the head of SafeWork, Trent Curtin, and definitely in terms of the heads of workers compensation, we are absolutely having those conversations around raised awareness around silica and dust diseases.

Ms ABIGAIL BOYD: To your knowledge, has there been consideration in the other States around including non-respirable dust diseases? I understand that, in a lot of the submissions, there's a bunch of other diseases that have now been associated with silica exposure. To your knowledge, is that appearing on the list of compensable diseases of the other States and Territories?

MANDY YOUNG: I'll take that one on notice. We can certainly come back to you. There are definitely conversations about it, but I take on notice whether it's actually appearing in compensable injuries.

The CHAIR: You may have answered this question, but I will ask it again just to be certain: With respect to the regulatory role of SIRA in the dust diseases scheme, other than the work done to set the levy, does it have any other regulatory role?

MANDY YOUNG: No, it does not.

The CHAIR: The actual setting of the levy is the only role.

MANDY YOUNG: Yes. Sorry, could I just correct that? It's the setting of the levy and also the indexation.

The CHAIR: Yes, and its movement over time. Forgive me; that's understood.

MANDY YOUNG: It's very limited.

The CHAIR: With respect to what might be described as the ongoing work, cooperation or engagement between SIRA, icare and SafeWork, are there occasions where all three entities are in the same room, meeting to discuss issues, or is it paired off where you might speak to one or the other but not the three of you?

MANDY YOUNG: We meet regularly. The three heads of the organisations meet monthly at the moment. We have regular discussions. The topics might range depending on what's happening at any given time. So, yes. Generally, as well as that, our officers will meet regularly to discuss any issues.

The CHAIR: May I ask who prepares the agenda for those meetings between the heads?

MANDY YOUNG: I'm the currently the chair of that group, so we prepare those meeting minutes.

The CHAIR: Has the matter of silica dust exposure and tunnelling been on your agenda in recent times?

MANDY YOUNG: As a specific issue, no, it hasn't.

The CHAIR: Given that this inquiry has been going for a few months now and people have been belling the cat for a lot longer than that, I find that a bit surprising. The caveat would be that you've been in the role for a relatively short period of time, so I acknowledge that.

MANDY YOUNG: Could I just add there—yes, I have been in the role a relatively short period of time, as has Stuart Farquharson and Trent Curtin, so we're all relatively new. In saying that, it hasn't necessarily been its own agenda item, but we have discussed it. In fact, at our last meeting we did discuss it.

The CHAIR: May I ask, what did you discuss?

MANDY YOUNG: We discussed that the inquiry was coming up, and we were having conversations about what key issues we had in these areas.

The CHAIR: With respect to SIRA's thoughts and reflections about key issues in this area, what were they?

MANDY YOUNG: For us, again, we have such a limited role. It was around the levy. We also had some discussions around the previous law and justice recommendations that have been out.

The CHAIR: You were present at this meeting?

MANDY YOUNG: I was.

The CHAIR: With respect to SafeWork NSW, what did they identify as important issues, as best you recall?

MANDY YOUNG: A lot of the conversation that we would have had would have been around the work that they've been doing to date, and the new legislation that has come into effect for them and how they regulate.

The CHAIR: What did icare have to say, as best you recall?

MANDY YOUNG: It was primarily about how they're managing the scheme. Ultimately, the scheme is being managed quite well. It's funded. There are few complaints and they're dealt with quite well. It is done in-house, so we were having lots of conversations about some of the lessons in that. But we also talked about some of the issues around younger people and that being an issue for us all.

The CHAIR: But to confirm—and I'm not reflecting on you personally—the matter of silica dust exposure for tunnelling work wasn't on the agenda explicitly? Perhaps it was dealt with at a more implicit level, where it was picked up and discussed as you went back and forth on other issues.

MANDY YOUNG: Yes, as I understand it. I'd have to check, but I do think it was listed as an "other item".

The CHAIR: Could you please do that on notice? I'd like to know whether or not it was expressly listed.

MANDY YOUNG: I could probably come back to you quite quickly, I think.

The CHAIR: I'll allow you to do that.

The Hon. BOB NANVA: Coming back to the issue of more data collection being of some utility to SIRA, as I understand it, the State and national dust and respiratory registers require health authorities to notify of a diagnosis of a patient if they have a particular dust disease or respiratory illness but not necessarily if a worker has been exposed to dust levels that are above a workplace exposure standard. Do you have a view as to whether or not that exposure data should also be collected to assist organisations like SIRA and icare with respect to modelling and projecting potential exposure down the track?

MANDY YOUNG: As I said, the more data we have, the better we're able to do predictive modelling and understand the issues that may come up. So I think it would be helpful.

The Hon. BOB NANVA: Particularly with respect to the exposure of the scheme to liability down the track?

MANDY YOUNG: Yes, particular with respect to exposure.

The CHAIR: Once again, thank you for your submission. On page 4 of your submission, item 2.3 is about SIRA-funded support programs. Explicitly, it is referring to a workers compensation scheme regulator. Then it drops down to the dot points in the final paragraph about the $5.3 million in funding. I take it that $5.3 million is not for the dust diseases scheme; that's for the overall workers compensation. On notice, I'm wondering if it is possible—and it may not be, but please try anyway—to disaggregate that $5.3 million and see if there's a specific amount that was allocated for programs and works et cetera inside the dust diseases area specifically.

MANDY YOUNG: I'll take it on notice to confirm, but they would not have been, because we don't have the legislative ability to fund dust diseases specifically. They would all be broader workers compensation vocational programs that we would fund, and icare would fund any dust diseases specifically.

The CHAIR: So, without being cute about it, none of that $5.3 million would have gone into dust diseases.

MANDY YOUNG: No would be my answer, but I will confirm that.

The CHAIR: Thank you for the work you've done in your first six months. I hope we didn't give you too much of a hard time. If we didn't, you should tell us; we'll give you more of a hard time next time you come back. You took some questions on notice, so thank you very much for that. We are very grateful. Following the opportunity to read the transcript, I suspect members may have some supplementary questions, which we'll send to you.

(The witness withdrew.)

(Short adjournment)

Mr DAVID MULLINS, Director, Health and Safety (Eastern Harbour), Transport for NSW, sworn and examined

Ms CAMILLA DROVER, Deputy Secretary, Infrastructure, Projects and Engineering, Transport for NSW, affirmed and examined

The CHAIR: Welcome back, everyone. I thank our witnesses for appearing before us for the next and final session, which will take us through to the end of this hearing. As we progressed through our witnesses at the previous hearing and other exchanges and discussions we were having, we came to the realisation that we probably did need to hear from the tunnelling experts from the point of view of the State—that is, the Government, the department and the agency—to give us a sense of the work it does in regard to tunnelling techniques.

Beyond that general explanation about our interest, I'm not sure what else you can provide us to help us understand the matter. I can give you a more elaborate explanation of what else we're looking for, but certainly an explanation about tunnelling, the machinery used and related matters would be a great start. We then have members from the Government, crossbench and Opposition. After making an opening statement, if you wish to do so, we'll share questions back and forth to elucidate on some of the points you've made and take us through until about one o'clock, if you're agreeable.

CAMILLA DROVER: That sounds good. We have a bit of an opening statement; it's very short. Then we are very happy to talk to different tunnelling methodologies, if that's of use, and to answer any questions you've got. We appreciate being invited here today. As I said, I am the deputy secretary of infrastructure, projects and engineering. We deliver a diverse range of public transport road projects, rail fleet, active transport and property development projects across New South Wales. Dr David Mullins, my colleague here with me, is, as he said, the director of health and safety for the eastern harbour region. He is part of the Safety Policy, Environment and Regulation Division of Transport for NSW. We are actually from separate divisions, but we work very closely together.

The CHAIR: Sorry, Doctor, I didn't recognise that.

DAVID MULLINS: Sorry, a correction—it's not doctor; it's mister.

CAMILLA DROVER: It is mister.

The CHAIR: I wanted to recognise it correctly, so thank you.

CAMILLA DROVER: David leads a team of health and safety professionals. He supports project delivery but also road maintenance activities and transport operations. That portfolio does include major road tunnel projects. We want to state that the safety of our own people but also our contractors' workforces is our first priority. There's no point delivering these projects unless they're done in a safe manner. We do understand that dust, including silica dust, is a major hazard for workers and can lead to serious and potentially fatal lung diseases, including silicosis.

We do acknowledge that some of our work on our tunnelling projects has the potential to expose workers to respirable crystalline silica, but this exposure is not necessarily just limited to tunnelling activities. It can also occur through laboratory, surveying and geotechnical activities as well. Our principal contractors for our work on a construction project are responsible for the safety and health management and control of the workplace—the construction site. But we do require our principal contractors to have accredited safety management systems as well as adequate resourcing to manage the health and safety risks commensurate with the scope of works they are delivering. The principal contractors must abide by the work health and safety laws to eliminate or minimise the risks of crystalline silica exposure so far as it is reasonably practicable and to have a federally accredited safety management system.

Transport manages risks associated with silica exposure for our own direct employees through the standards, procedures and guidance within our Safer Together safety management system. We recognise the seriousness of exceedences on worker safety. For our major construction projects, the principal contractor is responsible and accountable for actioning any identified exceedences, but we do obviously oversight that process. Since 1 September this year, there is a legal requirement for both controlled and uncontrolled exceedences to be notified to SafeWork NSW. If there are any exceedences, they are addressed immediately, with actions and requirements implemented to ensure the risk is being managed and adequate controls are in place to prevent any reoccurrence. Actions are recorded in the principal contactor safety information system and/or Transport for NSW's own systems.

For our own employees, Transport also has its own occupational hygiene team that undertakes health risk assessments that anticipate, identify and assess the risk of workplace health hazards, including silica, and assist with reviewing and improving controls. More broadly, Transport also supports its principal contractors to consider

opportunities to further safety improvements, such as through contractor workshops and the adoption of innovation and innovative trials, many of which are underway on the Western Harbour Tunnel tunnelling project, including a world-first trial of what we call a teleremote or remote-controlled roadheader. I'm happy to talk to that a little bit more. We thank you for the opportunity and we are very happy to answer any questions.

The CHAIR: Before we open up for questions, I go directly to the primary reason we thought it would be valuable to have you both come here: to give us an explanation in layperson's terms as best as possible about equipment, machinery and technology used presently, and perhaps looking forward as well—you have already foreshadowed this—for tunnelling work with respect to infrastructure projects here in New South Wales, in general terms.

CAMILLA DROVER: I might start with a little bit of history. There are many road motorway tunnels in Sydney. All of them were mined or tunnelled with roadheader technology. The only exception to that is the Sydney Harbour Tunnel, where, for the harbour crossing underneath the harbour, they used immersed tube tunnel technology. Roadheaders are generally what we use, and I'll explain why in a minute. They're an evolution of mining technology. They're individual pieces of equipment, and they have a cutting arm on them and they cut through the rock. They're particularly applicable in Sydney sandstone, which is a relatively soft rock and so roadheader technology works very well.

We have one project at Coffs Harbour where we're using drill and blast technology and not roadheaders. That's because the rock up there is very hard; it's not Sydney sandstone. They're very short tunnels at the Coffs Harbour bypass. There are only three of them. One of them is only 160 metres long. Under European guidelines, it's actually not considered a tunnel. But we're using drill and blast technology. We drill a hole into the rock, we put in the blast and then it is detonated. There are obviously no workers in the tunnel when that occurs, and there is a significant period of time after the blast where the dust settles and the material that has been blasted settles. When a threshold is reached, workers are allowed back into that tunnel after the blast.

But I return to roadheaders and why we use them. I might do a little bit of a comparison with the tunnel boring machines, which are more applicable and used in the metro tunnelling space. Roadheaders are individual units of machinery and, therefore, they're quite nimble and agile. That's important because, for a road tunnel, we have a semicircle profile. Road tunnels are generally much wider in diameter than, say, a metro tunnel. A metro tunnel is round and usually a small diameter, and that's why the tunnel-boring machine is appropriate. In a metro tunnel, too, you tend to have long straight sections, where you have a very even profile. You can set up a tunnel-boring machine and they cut a circle—a homogenous circle—for a long stretch of length. That's appropriate.

But in a road tunnel environment, you've got a semicircle profile. If you were to use a tunnel boring machine, you would have to cut twice as much area and then half of it would be not required and you would have to backfill it, and you would also end up with twice as much spoil as you need. You would be cutting twice as much volume and you don't need to. Also, it has only been in recent times that tunnel-boring technology has been able to provide a tunnel-boring machine of the right diameter to actually cut the diameter we need. For example, the Western Harbour Tunnel is three lanes wide in each direction. That's a very large diameter of tunnel-boring machine that is required. We are actually going to use a tunnel-boring machine to tunnel part of the Western Harbour Tunnel, and that's the bit underneath the harbour, and that's because of geology under the harbour.

But we primarily use the roadheaders—firstly, because they're nimble and agile. That's another feature of motorway tunnels: You have many more changes of lane. You're offering three lanes and it goes down to two and it might come up to three again, because you've got an on and off ramp, and there are more on and off ramps. You've got a much more uneven profile in a road. That's why you need the agility of a roadheader machine to cut that uneven geometry. That's why we don't use a TBM, plus the diameter.

The diameter of the tunnel boring machine that we're going to use on the Western Harbour Tunnel will be the largest ever in the Southern Hemisphere. It hasn't been around at that diameter for very long. Also, it's good to cut through fairly soft Sydney sandstone. There are some rationales as to why we use roadheaders. As I said earlier, roadheaders have been used on every motorway tunnel in Sydney since they were first built. Even for metro, we'll be using roadheader technology to cut their cross-passages. Where they haven't got a long, contiguous circular profile, they'll be using roadheaders to cut in other areas.

In terms of what it means for the worker, there is a cutting face which the roadhead is obviously cutting that does generate dust through the cutting process. There are control measures in place to manage the dust that is generated at that cutting face. The primary measure, and the engineering control, is ventilation systems. There are mechanical ventilation systems that suck the dust from the cutting face and take it through a whole series of cleaning mechanisms—the scrubbers, they are colloquially called. That cleans the air and also takes it away from

the cutting face. That's one of the measures. There are also dust suppression systems, including wetting systems. If there is any dust in the air, water is applied to it and it obviously settles to the ground.

The other control is the fact that the worker controlling the roadheader is actually within a sealed cab and that cab is sealed. It's pressurised and there are also filters in that cab. They are the HEPA filters, so a high degree of filtration. That keeps the cab enclosed, but also, if air gets into it—and it obviously does as the worker gets in and out of the roadheader cab—the air is cleaned.

Over and above that, the worker is also wearing a mask. In recent years, P2 masks, of course, were mandatory. In more recent years, the technology has improved and we're now using Versaflo masks. They are a full-face mask. It also means that workers who are not clean shaven can wear this mask. It also provides eye protection. It acts somewhat as a hard hat as well. It's fully enclosed. The air is filtered that they're breathing in as well. There's a whole level of controls in place to make sure that the air that is going into that worker's lungs is managed and controlled and mitigates the risks of silica. Of course, over and above that, there is monitoring and reporting of the ambient air quality in the tunnel at the same time. If there are any exceedences of the standard—and we don't set the standard; that is set at a national level—those exceedences are reported.

It is reported whether it is a controlled exceedence or an uncontrolled exceedence. A controlled exceedence is where the ambient air quality has breached the threshold but the other control measures, including the worker being inside the cab and wearing the appropriate mask, have managed that situation. It's still an exceedence, but there are sufficient controls in place to make sure that the air getting into the worker's lungs is not subject to the background air. The uncontrolled exceedence is generally when there has been a breach of one of those controls. The most common examples of those breaches is where the worker has taken off their mask—that is classified as a breach; and an uncontrolled exceedence—or where they have had an incorrectly fitting mask. That is still reported and managed. That's why we use roadheaders. Can I just talk about some of the innovations that we are trialling on the Western Harbour Tunnel?

The CHAIR: Please do.

CAMILLA DROVER: One of them was actually initiated by one of the roadheader workers. It sounds straightforward but, actually, it's an important control. There is now a boot wash. As workers get in and out of the cab, we want to keep all of the dust and silica outside. They now wash their boots before they get into the cab so they are not taking any particles into the cab. That's something we are trialling for the Western Harbour Tunnel. The most innovative trial, and a world first, is actually using a tele-remote roadheader. At the moment we have one of these working in the Western Harbour Tunnel. It's controlled by a worker 200 metres away from the cutting face in a sealed shipping container. It is still, at the moment, underground, but they are a long way away from where the dust is being generated. They are controlling that roadheader.

With time, we are actually hoping that can occur with the worker on the surface. The worker won't even be in the tunnel. They will be controlling the header from a surface location and, therefore, well away from the dust. The other initiative that we're trialling on the Western Harbour Tunnel is called jet black. It's a room that the worker goes into to thoroughly extract dust from their clothes, hair and body. Again, they are not taking home or into their car any of that dust, including silica. There is a whole range of measures that we continue to trial. We've had a couple of workshops with contractors in the tunnelling space in the last year to look at whether there are other things we can do to improve worker safety. More broadly in tunnelling generally, not just to do with silica, but one of the focus areas was the management of dust and silica.

We continue to innovate. As I said earlier, the Versaflo technology has only been introduced in recent years. It's being applied for the M6 stage one and Western Harbour Tunnel. Just a few years ago, the P2 masks were the only masks available. They are still satisfactory and they provide a good level of protection, but the Versaflo is an improvement on that. Particularly for those who don't want to be clean shaven, they can work safely with a properly fitted mask. Those masks are custom fitted to each worker in the Versaflo instance. Even with the P2 mask, a lot of attention and focus is on education on how to wear a mask appropriately. There is good surveillance on ensuring that workers are wearing them appropriately because that ensures their efficacy.

The CHAIR: Ms Drover, that was very helpful and very useful background information. Before I ask some questions, Dr Mullins, do you want to add anything to that? It was obviously very comprehensive. Do you have any additional information that you would like to put on the table before we open up for questions?

DAVID MULLINS: I suppose the key content put forward by Camilla has been around some of the innovations. Beyond that, we have a number of standard, if you will, safety controls around OHS accreditation. When we engage a partner or contractor to perform tunnelling works, we are looking for a very high standard of safety management and safety management systems. We go through a fairly rigorous procurement process with

those contractors, making sure they have got the capability to perform the work safely and that they have the depth of knowledge and skillsets we need to perform the tunnelling in a safe fashion.

Beyond that is the general health risk assessment process, where they go through a pre-assessment and a safety and design assessment, looking at all of the components of the tunnelling activity or construction activity and seek out any of those hazards that could present as a result of the tunnelling operation, both with silica and beyond. Obviously with tunnelling there is quite a number of potential hazards that need to be addressed. Obviously there is a keen focus on silica as probably the number one key issue that we need to manage consistently across all the tunnelling works in all locations. Thank you.

Ms ABIGAIL BOYD: Good afternoon and thank you for coming to answer our questions. Ms Drover, you talked about a controlled exceedence versus an uncontrolled exceedence. My understanding is that the monitoring that is done already applies a discount according to what the worker is wearing, but there can obviously still be exceedences despite what the worker is wearing in terms of respiratory protection. Does that fit within this uncontrolled exceedence that you talked about?

CAMILLA DROVER: There are two types of measurements done. There is one on the ambient air quality within the tunnel environment and there are exceedences that can't be breached in that regard. There is another measurement—and David can help me out here—that applies to specific workers. There is a requirement and threshold based on the duration of exposure. It's a weighted time level. That is calculated for individual workers. Do you want to explain that?

DAVID MULLINS: I suppose the controlled and uncontrolled is a clarification point as to whether or not the last line of defence—the PPE—is being effective or not. So whilst you have the personal monitoring and the background monitoring, if you have an exceedence, that doesn't necessarily relate to a direct inhalation of dust if the person is wearing, for example, a Versaflo pressurised mask.

Ms ABIGAIL BOYD: And has worn it correctly the entire time and not taken it off for any reason et cetera.

DAVID MULLINS: Correct.

CAMILLA DROVER: And they remain within the cab, which is sealed. The ambient air quality in the tunnel may have breached the exceedence. We hope it doesn't, but if it has, if they are within that cab, which is pressurised and sealed, and they are wearing their Versaflo, the impact to them should be negligible. It's still an exceedence, because the background air quality shouldn't have been at that level. But because the control measures are in place, the impact to the worker means that that exceedence is negated.

Ms ABIGAIL BOYD: The Australian Workers' Union—I am not sure whether you have read their submission or are familiar with it—but basically tried to get air quality data out of contractors. They were unable to. They were also trying to get it out of SafeWork but were unable to. They got it out of Transport for NSW in relation to certain projects. In relation to the Metro tunnel project and the air monitoring data they received, there was a huge number of exceedences that had been reported under those contracts. My understanding is that under an ordinary contract for this sort of thing—something like the Western Harbour Tunnel—you would have a provision in there that said the contractor needed to immediately notify if there was a work health safety issue.

CAMILLA DROVER: That's right, and they do.

Ms ABIGAIL BOYD: Does that mean you also have all of this data on exceedences from the contractors in relation to all of these projects?

CAMILLA DROVER: We have a lot of data. I think one of the challenges we have had is if the data isn't ours—it's contractor data—we have no issue with sharing it, but we need to seek the approval of the owner of that data before we release it because it's not our data. I think that's caused some problems, as I understand it.

Ms ABIGAIL BOYD: I see.

CAMILLA DROVER: If we have the data but it's not ours, we're happy to share it, but it's subject to the consent of the owner of the data.

Ms ABIGAIL BOYD: In relation to the exceedences you've received notice of, what do you then do in relation to that?

CAMILLA DROVER: David?

DAVID MULLINS: We have embedded safety partners within each of the project teams from Transport for NSW employees. Those safety professionals work very closely with the project teams, and obviously their safety teams and the occupational hygienists. The exceedence data or the air quality monitoring data is discussed

weekly or monthly, depending on the meeting cadence for the project. That's also posted at the entry of all of the projects for the workers as well. It's fairly transparent. The data is provided to the workers and it's also provided in reports to us. We don't necessarily compel the contractor to provide us the monitoring data. We don't collect or harvest data, but we do go through exceedence and expect that we're notified of any exceedence, and then we work through a process of corrective action. We work through what caused the exceedence, what were the control measures that were in place at the time and what are the potential improvements that can be put in place.

Ms ABIGAIL BOYD: When you say the data is available for workers—it's posted up—is that just in theory or have you seen that yourself?

DAVID MULLINS: I have seen that myself.

Ms ABIGAIL BOYD: Okay, because we heard a lot of evidence that workers were unable to obtain this data themselves and that it wasn't something that was being posted up. The very fact of a GIPAA request for the information shows that it was not able to be obtained readily. Does that concern you? Does that not accord with your understanding of all of these—you say you've seen it. Have you seen it in all locations?

DAVID MULLINS: I can't say that I have seen it in all locations. But what I can say is that, depending on the interpretation of the data—the raw numbers are often published on safety notice boards. Interpreting that data, being able to apply that, may be a question that workers have further. I can't really speak to how the contractors manage that, but I know that the data is available—and certainly to us. As Transport, if we request details of the activities being undertaken, that's provided through reporting.

CAMILLA DROVER: Am I right, David, if there is an uncontrolled exceedence, so potentially there is actually an impact on the worker, we do log that in our own safety management system?

DAVID MULLINS: We do.

CAMILLA DROVER: And we report on it. In that instance, I would get notification of it.

Ms ABIGAIL BOYD: Do you then tell SafeWork?

CAMILLA DROVER: It may have already—

DAVID MULLINS: It's the responsibility of the PCBU, which is the principal contractor, to make that notification. We don't personally notify SafeWork in those situations.

Ms ABIGAIL BOYD: But you don't check to make sure that they have?

DAVID MULLINS: No, there isn't a feedback loop that comes back to us, so we don't get anything from SafeWork.

Ms ABIGAIL BOYD: At what point does Transport get involved to say, "Actually, come on, there's a risk to workers here."? There have been a lot of exceedences. This keeps happening year after year, month after month. I hear what you're saying about sending in your own safety person et cetera, but it's not the same as having an external regulator coming and inspecting and looking at it. At what point do you take that responsibility to make that sort of notification?

CAMILLA DROVER: We are getting the data and our safety professionals are reviewing the data. The way it operates is, if there are safety incidents, particularly on a site, people—including ourselves—generally know about it. I know I'm often told, "Yes, SafeWork has been notified." There's that culture of checking. Okay, something has occurred. Has it been reported in the correct place and have the relevant regulating parties like SafeWork been notified?

Ms ABIGAIL BOYD: We have received significant evidence to this inquiry, including at our hearing the other day, where we have heard of workers not being adequately protected, it being not being feasible to work long shifts with masks on the entire time in all circumstances. We have heard of employers not sharing data readily. We have heard a real picture—it's ironic that it's not really a clear picture, but a very polluted picture—of what workers are experiencing in these tunnels. It doesn't seem to accord with what you're saying to us here. You do have the power under those contracts to ensure that the contractors are doing the right thing. Given the evidence we have received, is there more action that you think you can take under these contracts to ensure that these work health and safety standards are being met?

CAMILLA DROVER: I think one of the examples we did do—as I said earlier, we have held these workshops with all our contracting parties in a non-compete zone so they all come together and the focus was on how can we improve overall safety in the tunnelling environment. As we said earlier, it wasn't just about silica. There's obviously an interface between individuals, personnel and plant. That's a key risk in a tunnel. There are obviously electrical risks et cetera. But on the silica case, they did come together with a committed effort to see

what we can do better to improve the outcomes for workers. I think the evidence of those innovations that are being trialled, particularly on the Western Harbour Tunnel, but even the introduction of Versaflo on the M6—on the prior projects, they weren't offered to workers, in part because the technology wasn't there, but now they are offered to all workers. They are custom fitted to that individual worker. As we go forward, there are always opportunities for improved technology adoption and that ongoing review of are there better controls that we can put in place.

Ms ABIGAIL BOYD: Is there a potential for financial penalties on the contractor if they do continue to breach work health safety standards?

CAMILLA DROVER: If they breach their accreditation, they can't work at all.

Ms ABIGAIL BOYD: I mean under the contract.

CAMILLA DROVER: We do performance scores of contractors. We're looking at a range of measures. One of them is safety. If they get a low score—it may be behaviour or safety and a range of other things—it will impact their ability to work with us again. There are secondary impacts, but there are more direct consequences. If they've breached an exceedence, it has to be reported and addressed with SafeWork. If it's obviously serious, then their accreditation is breached and they cannot tunnel.

The Hon. ROD ROBERTS: Thank you very much for attending today, in particular for your evidence, Ms Drover, in terms of roadheader machines versus tunnel boring machines. I had absolutely no idea. I don't think I have much more of an idea, but I have a little bit more now, thanks to you. We heard evidence that the tunnel boring machine is probably safer from a worker's viewpoint in terms of dust extraction and distance from the actual cutting place et cetera. You've cleared a lot of that up. You've said along the lines of the data you received from the principal contractor, you can't—let's say the word "air", because you don't own the data, or something along those lines. It's hard to adjust a contract once it has already been written. But, going forward, is there the potential to have in the contracts that although the principal contractor records the data and it's their data, that it can be, and should be, shared by you, if you desire?

CAMILLA DROVER: Happy to take that away and have a look at it. I would hope that the contractors are sharing data with their workforces. I think we've got some evidence that they are. Entry to site is a good location. But if there's more we can do in that space, very happy to take that away and have a look at it.

The Hon. ROD ROBERTS: We raise that because we've received evidence, sworn testimony, from people saying that they can't get access to that data. Data is powerful, as we know. Information is powerful, so we're looking to be able to provide the worker with access to that information. We know it's the role of the PCBUs to provide information on overexposures to SafeWork. It's their role. They also notify you. Perhaps you could take this away, look at it and come back on notice, with you being a mandatory reporter of that information to SafeWork, so we ensure that it's there. I think it might have been Mr Mullins who said there's no feedback loop. We're entrusting the principal contractor to provide that to SafeWork. If they're already providing it to you, can't we just ensure that it's forwarded by your organisation and therefore we're safe in the knowledge that SafeWork has been informed?

CAMILLA DROVER: I wouldn't want to cut across the obligations and responsibilities of SafeWork. They're obviously an independent party. That is their role, to regulate what happens in terms of safety on sites. But I think there are more informal processes. As I said earlier, if there's an incident onsite, many of us are checking that SafeWork has been notified. Of course, we're all doing our own assessments and investigations about what occurred, particularly if there's something that we can do immediately that will address the issue. That's the nature of the behaviour and culture onsite.

The Hon. ROD ROBERTS: Most certainly, and I understand that. I'm not asking you to cross over into SafeWork's patch. What I'm suggesting is that I have grave fears that I have spoken about personally and publicly and aired here before about the ability of SafeWork to regulate. What I'm suggesting is that if you are mandatorily notified by the principal contractor, perhaps you should just provide it to SafeWork and then we know that they've got it. It's just one more email further down the line. I don't expect you to comment on it now, but take that away and come back to us about whether you think that is a simple and reasonable proposition.

CAMILLA DROVER: Yes.

The Hon. MARK BUTTIGIEG: In earlier evidence, you mentioned that not all the incidences of overexposure or exposure were necessarily reported. You said there was a lot of data going on, but not necessarily everything is recorded. Can you elaborate on that a bit?

CAMILLA DROVER: Okay. All exceedences of the background air quality are reported.

The Hon. MARK BUTTIGIEG: By the principal contractor?

CAMILLA DROVER: By the contractor, yes, because they are accountable and that's their responsibility. They are responsible for the safety on that site. They are the principal contractor. However, if it's uncontrolled—for example, the background air quality wasn't satisfactory—and the worker took off their mask or left the door open of the cab or something, and therefore there was actual exposure to that worker, we log that in our safety management system.

The Hon. MARK BUTTIGIEG: The principal contractor would still have to record that, but you also log it.

CAMILLA DROVER: Yes. If there is an ambient air quality exceedence but the control measures in place were effective and there is no impact to the worker, then we don't include it in our safety management system. Although we're not the principal contractor, we do record safety incidences on sites.

The Hon. MARK BUTTIGIEG: That whole hierarchy of PCBU, is that by virtue of the regulation or the Act? Essentially, Transport for NSW has engaged a principal contractor and then, if you like, transferred to them the liability to report—not transferred, but by virtue of. I'm just trying to understand the legislative framework. How does that separation occur if Transport for NSW is essentially paying the money to get it done? I am trying to understand the disconnect.

CAMILLA DROVER: We contract a contractor, a construction company, to deliver a project. In that instance, they are the nominated principal contractor, so they have overall accountability for the safety and the security of the site as well. They control who comes into the site and who doesn't. They are responsible to ensure that that is a safe workplace at many levels, so that the design of their temporary works is safe, the design of their permanent works is safe and the design of the environment in which those workers are working is safe.

The Hon. MARK BUTTIGIEG: The thought occurs to me that perhaps there is a little bit of a disconnect there between the person who's ultimately paying for the work and there's a potential conflict of interest. I'm just thinking in terms of legislative reform. If Transport for NSW was responsible for the collection and reporting, there's a potential elimination of conflict of interest there. It sounds to me like some of the evidence indicates that not all the data is available. Could you elaborate for my benefit on the requirements upon the principal contractor to share the data with the employees? Is it a requirement that they must share it?

DAVID MULLINS: It's nothing specific in our contracts. I'd suggest it's probably just best practice to provide that information and be transparent with employee groups.

The Hon. MARK BUTTIGIEG: And, from a WHS point of view, regulation and legislation, there's no requirement for them to share that data?

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

The Hon. MARK BUTTIGIEG: It's more consultative rather than a mandatory practice. It sounds like things need to be tightened up a fair bit.

CAMILLA DROVER: I think there are some other controls that we probably should talk to. For example, at the start of every work shift, there is what we call a toolbox talk or a pre-start where the works to be undertaken in that shift are stepped through with particular focus on the safety requirements of that individual bit of work. There are also safe work method statements, or SWMS. Before you do anything, you have to have that safe work method statement. Again, all the workers are stepped through that before they start the work. A part of that is what PPE you must be wearing and how you must be wearing that. That happens before every bit of work is undertaken on a site.

The Hon. MARK BUTTIGIEG: Just one more thing before I hand over to my colleague. You mentioned the use of P2 masks. Can you reiterate or elaborate for me in what situations those P2 masks would be used?

CAMILLA DROVER: Everyone must wear a P2 mask in a tunnel, or a Versaflo mask. The problem with a P2 mask is you want a perfect seal between the skin and the mask.

The Hon. MARK BUTTIGIEG: Yes. In the electricity industry, which I originally came from, we were always told that they were a substandard use of PPE because you don't have the positive airflow and because of the seal being not that great. For want of a better phrase, they were very much looked down on as a form of PPE for respiratory airborne particles.

CAMILLA DROVER: Yes, which is why our contractors have shifted to the Versaflo. There are some workers, however—

The Hon. MARK BUTTIGIEG: But it's not mandatory to have the Versaflo.

CAMILLA DROVER: It's my understanding it was mandatory on one of the projects, but there was a workforce preference for it not to be mandatory. There are some people who want to maintain a beard, for example. They have to wear Versaflo, but there are a few others that preferred the P2 mask. As I understand it, it no longer mandatory but there's a preference.

The Hon. MARK BUTTIGIEG: It's an industrial relations issue, yes.

CAMILLA DROVER: But they're certainly provided and they are an improvement on the technology because it does mitigate some of that fitting-wearing risk. I know that when I go underground, if I'm in a bus, for example, I have to put my mask on as I get in the bus on the surface before I go underground. In my experience, there are always checks that everyone on that bus is wearing the mask correctly because that is part of the safety provision.

The Hon. AILEEN MacDONALD: Have you had the opportunity to read the transcript from the previous hearing on 29 November?

CAMILLA DROVER: Unfortunately I haven't.

The Hon. AILEEN MacDONALD: If I briefly summarise it, proposed reforms would expand the disease coverage under the scheme, strengthen SafeWork's regulatory role, streamline air quality data access, ensure real-time publishing of safety data in workplaces, and promote inter-agency collaboration for prevention and treatment. How is Transport for NSW preparing for potential legislative or regulatory changes regarding dust exposure or anything that we've spoken about today?

CAMILLA DROVER: There's a couple of things, and I will get David to help me out. We got new requirements on 1 September this year. We have obviously supported their implementation and we haven't had any issues, to my knowledge, of the implementation of those new requirements. There's obviously the regulation and procedure dimension but, over and above that—as I said, we're doing our own initiatives with industry, and not individual contractors but with all our contractors in the tunnelling space, to look at tunnelling safety. We also work quite collaboratively on a number of issues with metro where we can—where that's applicable—because if there's anything we can do to improve overall workplace safety, we will. That's our commitment. I can't speak to what changes may be recommended for SafeWork et cetera, but what I can say is we obviously support the transparency of information for workers.

The Hon. AILEEN MacDONALD: Do you see any barriers that hinder the implementation of best practices in the prevention of dust diseases on your projects?

CAMILLA DROVER: I think it would depend on the specific measures in place. Obviously, as you mentioned, there was an IR dimension to the Versaflo. I think the good intention was "Let's mandate it," but there was some feedback that perhaps it wasn't right for everyone. It would just depend on what the measure is. The trials we're doing at the moment are trials. We want to look at the efficacy and, yes, absolutely if they work, we'll be rolling it out more broadly. We've got one of those tele-remote roadheaders, but that would be a bit of a game changer if we've got workers tunnelling from the surface down the track. There'll still be some workers, of course, in the tunnel. But, for the roadheader operators who are operating for long shifts, the more we can do to support them and make it safe, that would be of benefit.

The Hon. AILEEN MacDONALD: How do you audit and enforce compliance with dust management protocols?

DAVID MULLINS: We have a number of initiatives. Critical control monitoring is one of them. We have teams that are actively undertaking surveillance within the tunnels. That's on a daily, if not weekly, situation. We perform the critical controls monitoring through observation and validation of the monitoring reports that come back after interpretation from the lab and the occupational hygienist. Where there are exceedences, we sit down with the contractor and ask them to go through the requisite controls and their improvements, identifying what the failure point was and what the control failure might have been. Then we work with them on what the resolution to the non-conformance might be and close that out as a conformance—so a standard safety auditing and associated investigative process.

In addition to that, we spend a lot of time trying to focus on what improvements we can—as Camilla mentioned, trying to seek any opportunities. For example, on the Western Harbour Tunnel, it isn't the panacea but it is an improvement in that they're using a handheld air monitoring device on each of their safety walks. When

they go for a safety walk, they'll grab a handheld device. It's obviously very low-tech. It doesn't have the same oversight as an occupational safety hygienist in the reviewing process, but it is an indicative activity that provides another data point. It provides us with an indicator. Some of the air quality monitoring situations take a number of days to return the details and then take action, so this is a more tactical initiative that can be utilised to gather immediate information and give an indicator that there may be an issue or that action needs to be taken.

CAMILLA DROVER: On our road projects, too, we have two levels or different types of surveillance. There are surveillance officers. They're wandering around inspecting the works looking at quality, but they are often looking at safety, particularly safety risks. It's very common for them to raise a concern. Then we have our safety partners as well onsite. They're coming at it purely from a safety perspective, but it's often those surveillance officers who are onsite, more often than not, who are inspecting all the works. They're seeing what's going on. They can see where there's non-compliance with PPE wearing. That's our own team. Of course, the contractor has their own teams doing that as well.

The Hon. AILEEN MacDONALD: When you're conducting the audits, are you also addressing worker concerns? In doing that, are they investigated and resolved in that working environment? If they're saying to you that they want access to the air quality and in real time, how is that being addressed?

CAMILLA DROVER: We don't have a direct relationship with the contractor's workforce because they're the employer and they are responsible for safety outcomes on that site. Our role is more of a review, supervision and oversight role as opposed to a direct relationship with their workforce and their subcontractors' workforces. On any construction project, a lot of the work is subcontracted and then those subcontractors have their workforces.

The Hon. AILEEN MacDONALD: So they would report to their employer and then their employer would hopefully pass on those concerns?

DAVID MULLINS: There's probably a couple of activities that bridge that gap, if you will. Our principal contractors will invite leadership walks—for example, it's not uncommon that we will attend site. We'll have a walk around the site, and they show us what's going on. It gives us an opportunity to observe but, more importantly, to speak to workers, ask about the situations that they're dealing with and what their safety hazards and risks are. It's fairly common on all of our projects to undertake that. That provides us with insights and opportunities. We'll take those back. We generally won't make direct comment to workforce, but we'll certainly have those discussion with the principal and opportunities to improve from there.

The Hon. AILEEN MacDONALD: You were talking about the toolbox talks that you do in the morning and you mentioned the PPE usage. Is that where you'd be looking at ensuring that they fit, all of those kind of things?

CAMILLA DROVER: Those pre-start toolbox talks are undertaken by the contractor, because they're supervising the work and with the workforce or subcontractors, but it is not uncommon for us to attend those.

DAVID MULLINS: No.

CAMILLA DROVER: Particularly if there's a particularly special bit of work going on, Transport for NSW resources attend. If we are part of those works in any way, we have to attend that pre-start as well.

DAVID MULLINS: The only thing I would add is that, whilst the toolbox talk is very tactical about the day's work and the activities of the moment, in addition to that, all of the contractors undertake additional training—which isn't necessarily related to the toolbox—around mask fit testing, how you actually wear your mask correctly and any technicalities, particularly with Versaflo, how they're utilised and so forth.

The Hon. BOB NANVA: There has been a significant body of infrastructure work that's taken place, particularly tunnelling, in the last decade—certainly since 2014. Have there been examples where contracts have not been awarded to bidders on the basis of non-compliance in a safety sense, or exceedences—where those things have been a contributing factor to not awarding a contract?

CAMILLA DROVER: Not to my knowledge. Because of the tunnel environment—and it's not just because of dust in the tunnel environment—they are highly managed, regulated environments. We actually often get a better safety outcome overall because it is so managed. If I look at the statistics for road maintenance, for example, compared to a construction tunnelling environment, statistically, it's actually a safer place just because it's a very controlled environment. But in terms of procurement, it's a small market of tunnellers in Australia. They are the tier-one players. There are quite a few overseas participants that have been attracted to this market because of the amount of tunnelling work. They are specialists. You don't get just any construction contractor operating in the tunnelling space because of the speciality required but also the accreditation requirement. As David said, it's quite tough to get that tunnelling accreditation. We haven't seen significant, major safety issues of late.

The Hon. BOB NANVA: I'm interested in what would be informing that outcome where there haven't been instances where contracts haven't been awarded on the basis of noncompliance and exceedences. What would be informing of that is more the fact that there aren't those issues of noncompliance and exceedences that would be of concern to Transport? Or is it that there just isn't enough of a pool of contractors to award these jobs to?

CAMILLA DROVER: It's not because of safety issues. As I said, overall, the safety outcomes on tunnelling projects—there are always some anomalies and there definitely have been exceedences of air quality. There have been other issues—injured workers, et cetera.

The Hon. BOB NANVA: But the control measures have been adequate where there have been exceedences?

CAMILLA DROVER: Or, where issues have occurred, they have been investigated and addressed—if they're of any severity, including by SafeWork NSW. But I'm not aware of any contracts because there's an EOI process. Before you even get the right to tender, you have to be pre-qualified and have the necessary accreditations. They're a function of your capability but also your past work. Even in the procurement phase, part of your tender submission is a whole lot of safety management systems and other plans which explain how you're going to do the works safely. There are subplans below that. There would be a silica management plan. There would be a plan of how you're going to manage other particulates. For example, getting back to roadheaders, roadheaders are electric because we don't want diesel particulates in tunnels if we can have electric equipment. There is a whole lot of checks, balances and measures before a contract is awarded.

The Hon. BOB NANVA: Presumably, the data that Transport collects during the construction phase when it's reported to you forms part of your assessment during the procurement phase for any future infrastructure?

CAMILLA DROVER: Yes. If we had concerns about any contractor, tunnelling or otherwise, and if we felt they had an unsafe culture and, certainly, unsafe outcomes, we wouldn't pre-qualify them. We wouldn't shortlist them for projects. We do look at that. That's why we do those contract performance scores. Part of that is assessing whether the behaviours are right. Is their safety outcome right and appropriate? Are they easy to deal with? Are there commercial matters? That goes into our assessment of their appropriateness to work with us.

The Hon. BOB NANVA: The infrastructure boom over the last decade hasn't been confined to New South Wales. Certainly Victoria and Queensland have had many similar infrastructure projects. Do you share intelligence with your State-based counterparts with respect to the safety records, noncompliances and exceedences that may have taken place in those jurisdictions as well?

CAMILLA DROVER: Not so much data and exceedences with other jurisdictions. One of the things we have done, which came out of the legacy RMS organisation, is the safer initiative. This has been running for quite some years, and David can help me here. Basically, we've taken all the safety data from all our contractors. It's well beyond silica, of course, and includes their TRIFRs and LTIFRs. We put that into a reporting mechanism, and we share that with industry. It was de-identified data; I think it's now identified.

DAVID MULLINS: Yes, it is identified now.

CAMILLA DROVER: They can see each other's safety performance. That, to me, shows a degree of maturity—the fact that they are willing to share with their competitors. The fact that we're facilitating that demonstrates that we value good safety outcomes. It also means that we can see if there are particular issues in industry. Probably our highest risk on construction projects in terms of safety is the conflict between people and plant. That generates a high number of incidences. Therefore, the programs that we will focus on and the programs they will focus on will be targeted towards that. Another area of concern is workers in live traffic environments. We've been doing a lot of work with industry and contractors to address that particular issue. There's an example of where, for Transport projects, we're aggregating all of that contractor data, sharing it and being very transparent. Then, with that body of data, we are looking at what we are going to target to address ongoing safety risks. We meet with the contractors. In fact, the forum was about six weeks ago. They all come in. We look at that data, as an industry. We share those lessons learnt, and then out of that are generated initiatives for the next period of time.

The Hon. BOB NANVA: Is that data accessible publicly?

DAVID MULLINS: I don't think it's shared broadly, other than with the providers of the data. But, as Camilla mentioned, we present that data to the industry forum and discuss opportunities for improvement. We also have experts in to talk about subjects such as silica, to provide broad understanding, bring minds together and contemplate next steps for improvement across industry at a fairly strategic level, obviously. What those executives bring is not just transport intellectual property but also their broader operations. The larger contractors work both in Australia and overseas, and they bring that wealth of information to those forums and share some of

the improvements and opportunities there. That's where some of the Western Harbour Tunnel initiatives have really come to the fore.

CAMILLA DROVER: We also see the benefit. It is often the tier-one contractors—the larger contractors—that have the resources to trial the new methods, new equipment or new technology. But if we can share that with the lower-tier contractors—the smaller ones—that's educating and bringing the whole industry up. That's the other purpose of sharing that information, particularly around traffic control. There have been some recent innovations in that space that we are wanting to roll out more broadly.

The CHAIR: Thank you for being generous in taking those additional questions. It's much appreciated. I found this session very interesting. If I had my time again, I think we would have got you in first up to give us that very contextual, broad information about tunnelling work. Thank you very much for that. I think there might be some questions on notice; I'm not sure. I expect there might be some supplementary questions that arise from members having a chance to read the transcript once it becomes available. If there are, the secretariat will liaise with you. On behalf of the Committee, thank you very much, and have a good afternoon.

(The witnesses withdrew.)

The Committee adjourned at 13:20.