



INDEPENDENT REVIEW OF SAFEWORK NSW – SUBMISSION BY THE ASBESTOS DISEASES FOUNDATION OF AUSTRALIA

On 25 October 2022 the New South Wales Government announced an Independent Review of SafeWork NSW (the Review). This submission is made on behalf of the Asbestos Diseases Foundation of Australia (adfa). adfa is a not for profit organisation providing support to people living with asbestos related diseases, family members, carers and friends. adfa supports people effected by a range of dust diseases and since the rise of the silicosis epidemic this increasingly includes members living with respirable crystalline silica (silica) related diseases.

There is no safe level of asbestos exposure. No cures are available for asbestos related diseases. One in three homes constructed before 1992 contain asbestos building products. Despite the ban on the manufacture, importation and use of asbestos, asbestos products and waste remain present in a wide range of industrial, domestic and public settings. The legacy of asbestos mining and manufacture continues as a cause of disease, disability and death in Australia, and this will remain so indefinitely. We are now experiencing a silicosis epidemic associated with a boom in tunnelling infrastructure projects, increased mechanisation in building and construction, and the continuing installation of toxic manufactured stone products in both home and commercial buildings.

The people of NSW rely on SafeWork NSW to function as the principal safety regulator protecting our population from dust exposure. We trust SafeWork to implement effective preventative and prosecutorial measures through the powers, functions and responsibilities established under the *Work Health and Safety Act 2011* (NSW) (WHS Act). adfa is concerned that SafeWork is not adequately performing these duties and has a dysfunctional culture impairing the regulator's ability to adequately address workplace hazards and respond to complaints.

Term of Reference 1: The performance and effectiveness of SafeWork NSW's compliance and enforcement function, including complaints, inspections, investigations and prosecutions together with consideration of SafeWork's triaging and Investigation Decision Making Panel processes

adfa members complain there is a lack of policing by SafeWork targeted at unlicensed asbestos demolition and removal work. Responsible licensed operators invest significant time and resources complying with pre-demolition notification requirement and are often undercut by unlicensed operators quoting and performing work based upon immediate demolition and removal. The informal nature of the unlicensed market requires SafeWork to respond promptly to complaints from neighbours and community members. adfa is concerned that SafeWork's responses are either too late or are ineffective.

adfa commonly receives calls from members of the community who come to us regarding their complaints after having received inadequate support from SafeWork.

adfa is not confident SafeWork has a sufficient focus on prosecutions. It is unclear whether this is due to a lack of resources or lack of willingness. adfa supports the separation of the prosecutorial service from SafeWork's broader regulatory functions.

adfa is particularly concerned regarding SafeWork's conflicted approach to the silicosis epidemic. adfa is now supporting members living with this incurable disease - these members are generally young, are at the peak of their careers and are often supporting a family. Members are dying from a disease that is largely preventable.

Members complain that SafeWork simply does not respond to complaints of on-site dry cutting. Dry cutting remains common, and particularly so at installation sites.

Attachment A to this submission is a statement from adfa member ██████████ outlining his experience in making a complaint about on site dry cutting of manufactured stone at ██████████ Marketplace on 11 November 2022. ██████████ observed the dry cutting of manufactured stone which was occurring in a way that exposed workers and members of the public to respirable dust. ██████████ called SafeWork, he also called the local council and the police because he was not confident that SafeWork were not going to act promptly on his complaint. Attachment B is the SafeWork record regarding ██████████ complaint, showing that ██████████ gave a detailed and actionable account of the circumstances. Attachment C outlines SafeWork's interaction with ██████████ Council about ██████████ complaint. SafeWork did not attend the site on the day of the report, however a council ranger did. The council then contacted SafeWork noting that while they tried to do something about the on site dry cutting they could not direct the employees to stop the work.

SafeWork's response to the ██████████ complaint raises several concerns. Why did the initial interview/triage take so long when what was needed at the time was an urgent on-site attendance? On one view the triage process is so detailed it deters complainants from following through with the process. Why did SafeWork not get someone out there on the day the complaint was made? Why did it take three days to get to the site? Given the seriousness of the consequences why was there no follow up with the business owner and shopping centre occupier – both of whom were clearly identifiable and traceable. Why was not action taken despite ██████████ report being corroborated by the council ranger?

Of serious concern is the observation by the council that, due to an absence of powers, the ranger was unable to direct the installers from continuing the work. As the regulator SafeWork is the only body with the authority and the responsibility to issue prohibition notices to keep the community safe. The case study demonstrates that SafeWork is simply not meeting the requirements of its statutory role. Further the case study highlights the duplication and inefficient use of resources when council rangers have to step in to fill the gap left by SafeWork.

The case study also demonstrates that dry cutting of manufactured stone continues to occur at on-site installation settings, putting the health and safety of workers and the community at risk.

Term of Reference 2: The performance and effectiveness of SafeWork NSW's educational functions.

From about 2007 adfa worked in conjunction SafeWork and several other organisations on an Asbestos Education Committee. At the time this was a close relationship and was beneficial given adfa's connections with workers, families and employers and our ability to assist in developing and reviewing education resources and disseminating information and materials. The Asbestos Education Committee provided a formal structure through which a relationship was developed and maintained between SafeWork and adfa.

Over a period of time this relationship has dwindled to the point where there is not really a relationship between the two organisation anymore.

Term of Reference 3: Governance and culture of SafeWork NSW, including complaints as to alleged unlawful or undesirable conduct in the workplace

adfa has concerns regarding what appears to be a dysfunctional culture and governance structure within SafeWork. One problem is lack of accountability. Since SafeWork was amalgamated into a mega-department, responsibility for oversight of the organisation's functions has been diluted such that SafeWork appears to have lost the will to regulate. While lack of resources may be an issue, there does not appear to be a strong focus on identifying and following through on contraventions, and very few prosecutions.

Beyond these structural and resource issues adfa is concerned about what appears to be a weak regulatory culture within the organisation and a lack of community engagement. This is particularly apparent with SafeWork's approach to the silicosis crisis. SafeWork has had a high level of engagement with the manufactured stone lobby. Industry engagement is necessary for consultation and education purposes. However, in the case of the manufactured stone lobby SafeWork went so far as to provide a letter of support in relation to the (since abandoned) application by the ██████████ ██████████ to the Australian Competition and Consumer Commission (ACCC) for ██████████ to self-regulate the industry.¹ Should ██████████ self-regulation proposal have been successful ██████████ would have obtained effective monopoly rights over the distribution of manufactured stone throughout Australia. This would have impacted significantly upon SafeWork's ability to perform it's key function as the independent safety regulator. This misjudgment regarding the ACCC application is indicative of underlying governance issues within SafeWork.

adfa is also concerned about the reticence on the part of SafeWork to conduct a proper case finding study of silicosis sufferers as required by section 276A of the WHS Act. While SafeWork has inspected dust control measures at major fabrication sites, there is no evidence SafeWork has taken an appropriately forensic approach to tracing crystalline silica exposure to the high risk domestic and smaller commercial installation sites from where so much dust disease and disability originates. It does not appear that SafeWork conducted the required s276A case finding study initiative at all, and instead engaged a consultant to perform a desktop data review.² The ██████████ case study indicates this area warrants proper attention.

adfa is concerned SafeWork has remained too close to the manufactured stone lobby. This is problematic given the controversy over the inability by ██████████ to obtain comprehensive personal injury insurance.³ With global liabilities for silicosis claims estimated at \$42 million⁴ there is a possibility that the devastating ██████████ experience could be revisited upon silicosis sufferers. In this context it is all more important for the government regulator to be seen to have a relationship at arm's length from industry.

The weak governance culture within SafeWork may have contributed towards the New South Wales Government not receiving the best policy advice regarding the harmful impact of silica exposure and

¹ SafeWork correspondence dated 17 February 2020 concerning ACCCANDAER.FID198823, ██████████ Application pursuant to the *Competition and Consumer Act 2010* (Cth) 29 November 2019; <https://www.accc.gov.au/system/files/public-registers/documents/Submission%20by%20SafeWork%20NSW%20-%202017.02.20%20-%20PR.pdf>

² Golder & Associates (for SafeWork), Case Finding Study – Respirable Crystalline Silica Exposure in the New South Wales Manufactured Stone Industry, May 2021.

³ Coss-examination ██████████ *Inquiry into the 2021 Review of the Dust Diseases Scheme, Parliament New South Wales Legislative Council Standing Committee on Law and Justice*, Transcript 16 February 2022 pp 52-53.

⁴ Ibid.

underestimating the need for urgent reform in this area. For example, the existing Workplace Exposure Level (WEL) for silica exposure from 0.05 micrograms per cubic metre ($\mu\text{g}/\text{m}^3$) needs to be reduced to a health based standard of 0.02 $\mu\text{g}/\text{m}^3$. Nor has SafeWork responded proactively to increasing calls for a ban on the importation and use of manufactured stone in Australia.⁵

Term of Reference 4: Appropriate measures to ensure that workers and their representatives (including health and safety representatives), and the families of injured and deceased workers, have a genuine voice in the complaints, investigations processes.

adfa is a small, specialist support organisation operated by volunteers who focus on practical ways to assist people living with dust diseases. The grassroots nature of our organisation means we are in a good position to reach out and connect to the families and workers living with dust diseases and working in dust disease related industries. These types of informal community based communication networks are simply not available through formal structured governmental processes. adfa continues to support the NSW Government through support by and participation with the NSW Dust Diseases Board.

We look forward to working with the Government with respect to the Review and continuing to raise awareness about the deadly impact of dust diseases.



adfa

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⁵ For example, Cancer Council and Lung Foundation Australia, "We jointly support the call for a ban on the importation of manufactured stone (high silica content) because workers handling and processing this product have close to a one in four chance of developing silicosis, a disease which is progressive, incurable and can be fatal in addition to an increased risk of lung cancer... Banning its importation is a practical solution and the most effective way to prevent this dangerous product causing more devastating disease." Cancer Council and Lung Foundation Australia, *Submission to the 2021 Review of the Dust Diseases Scheme*, p1.