

Memorandum of Understanding

between

SafeWork NSW

and

NSW Health

**Notifications of cases of
occupational dust diseases
(silicosis, asbestosis and
mesothelioma)**

1. Parties

SafeWork NSW of 92-100 Donnison Street Gosford NSW 2250, ABN (81 913 830 179)

and

Health Administration Corporation of 1 Reserve Road, St Leonards NSW 2065 (herein referred to as NSW Health)

now jointly referred to as "the parties".

2. Recitals

- 2.1 SafeWork NSW is the regulator established under the *Work Health and Safety Act 2011* (**WHS Act**) and is responsible for administering the following acts and where applicable their associated regulations and codes – the WHS Act except at mining and petroleum sites; the *Explosives Act 2003*.
- 2.2 NSW Health is responsible for administering the *Public Health Act 2010* (**Public Health Act**), including receiving notifications under the Public Health Act about scheduled medical conditions and notifiable diseases and taking appropriate public health action in relation to the notifications.

3. Definitions

Comcare means the body corporate established under section 68 of the *Safety, Rehabilitation and Compensation Act 1988* and defined as the regulator under the *Work Health and Safety Act 2011* (Cth).

MOU means this Memorandum of Understanding and includes any Protocols and Schedules as well as any documents to the extent that they are incorporated by reference.

NSW Resources Regulator means the Work Health and Safety Regulator established under clause 1(b) of Schedule 2 to the WHS Act in relation to mining and petroleum sites and the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*.

WHS Regulators means SafeWork NSW and the NSW Resources Regulator.

Person conducting a business or undertaking (PCBU) has the meaning given in section 5 of the WHS Act.

4. Background

Amendments to the WHS Act which came into effect on 27 October 2020 establish an information-sharing framework between NSW Health and SafeWork NSW to support a Dust Diseases Register. The Secretary of the Ministry of Health must, as soon as is practicable after being notified under the Public Health Act, give SafeWork NSW the information contained in a notification of a case of an occupational dust disease or of a death resulting from an occupational dust disease.

The occupational dust diseases which are currently notifiable under the Public Health Act are silicosis, asbestosis, and mesothelioma.

SafeWork NSW must keep a register of this information provided by NSW Health, to be known as the Dust Diseases Register (**the Register**). The purposes of the Register include monitoring and analysing the incidence of occupational dust diseases. SafeWork NSW will provide an annual report on the Register to the Minister for Better Regulation and Innovation. The Minister must table the report in Parliament.

SafeWork NSW must publish the report on its website, along with other information about the cases and deaths as notified by NSW Health.

Changes to the WHS Act also allow SafeWork NSW to lawfully use any information provided by NSW Health. Information will be provided by NSW Health if it considers the provision of the information is necessary to enable SafeWork NSW to exercise its regulatory functions.

SafeWork NSW's information-sharing powers under the WHS Act permit it to share information received from NSW Health with the NSW Resources Regulator if it relates to a workplace regulated by the NSW Resources Regulator, or with Comcare if it relates to a workplace regulated by Comcare.

5. Purpose

Purpose of the MOU

This MOU sets out how NSW Health and SafeWork NSW will share and use information about occupational dust diseases. It specifies the method by which NSW Health will share the information, how information will be received, processed and stored by SafeWork NSW, and how and when sensitive information will be destroyed.

The MOU will be published on the SafeWork NSW website.

Purpose of each party

NSW Health will receive notifications of cases of occupational dust diseases and deaths resulting from occupational dust diseases under the Public Health Act. Three occupational dust diseases are currently notifiable under the Public Health Act: silicosis, asbestosis, and mesothelioma.

At intervals of not more than three months, NSW Health will share the information on notifications for these conditions with SafeWork NSW. Information on cases of occupational dust diseases will include: electronic copies of the notification form (for silicosis and asbestosis) and relevant data elements reported to the NSW Cancer Registry (for mesothelioma), along with patients' names and addresses.

At intervals of not more than three months, NSW Health will share death registrations from the Deaths Registrations Unit Record File (DRURF) where the death certificate mentions the terms 'silicosis', 'asbestosis' and 'mesothelioma' with SafeWork NSW. The DRURF includes all deaths registered with the NSW Registry of Births and Marriages, including residents of NSW and non-residents. Deaths registration data are timely, with the median time from death to registration being 14 days currently.

However, the diagnoses for death registrations data in the DRURF have not been formally coded for the underlying and contributing causes of death. The Australian Bureau of Statistics is responsible for this coding, and it can take up to two years for this to occur. It is therefore not possible to conclude from the 3-monthly reports provided through the DRURF that a certain dust disease was the cause of death, though it could be a contributing factor. Deaths certified by a coroner may take longer than those certified by a doctor to have the medical cause of death text available.

It is intended that the information on notifications (but not deaths) provided by NSW Health to SafeWork NSW will include, for each occupational dust disease, each patient's address, date of birth, type of diagnosis, and treating facility.

SafeWork NSW will receive and securely store any information provided by NSW Health.

SafeWork NSW will then use the information received to perform its functions under the WHS Act. These include keeping the Dust Diseases Register, reporting to the Minister, publishing information on its website, investigating exposure to dust diseases and sharing information with the NSW Resources Regulator or Comcare.

Relevant Acts and Regulations

The WHS Act provides for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by protecting workers and other persons against harm to their health, safety and welfare through the elimination of risks arising from work. It establishes a regulatory framework which sets out the rights and duties of workers and PCBU's. The WHS Regulators secure compliance with the WHS Act through effective and appropriate compliance and enforcement measures.

6. Principles

- 6.1 This MOU is not intended to create, and does not create, any legally binding obligations between the parties, nor is this MOU enforceable in any court or tribunal.
- 6.2 The parties acknowledge that this MOU is a voluntary statement of the intent of the parties at the time of signature and they will endeavour to conduct themselves in a manner consistent with the intention of the MOU.
- 6.3 Legislation, as amended from time to time, takes precedence where there is any inconsistency between this MOU and the legislation.
- 6.4 This MOU provides the framework for cooperation between the parties in relation to their statutory, operational and administrative interactions.
- 6.5 The parties acknowledge that they each have separate and independent regulatory mandates and roles and nothing in this MOU can affect respective statutory duties, discretions and powers under relevant legislation.
- 6.6 While recognising each party's independent regulatory mandate and role, the parties are committed to a constructive and cooperative relationship in the common pursuit of public and workplace health.
- 6.7 The parties share an understanding of the scope of their individual obligations under this MOU.
- 6.8 The parties shall each bear their own costs of administering this MOU.
- 6.9 This MOU supersedes all previous arrangements in relation to the same or similar subject matter whether or not such previous arrangements were recorded or reduced into writing and signed by the agencies that are party to this MOU.
- 6.10 Any identified conflicts of interest, whether they be actual or perceived, must be immediately disclosed to the other party for consideration and appropriate action.
- 6.11 The parties agree to act ethically and comply with all applicable legislation, directives and policies.

7. Term

- 7.1 The MOU will commence on execution by the parties.
- 7.2 This MOU will remain in effect from the date of commencement until such time as terminated by the Parties effected by the exchange of letters signed by the appropriate officers.

8. Roles and responsibilities

NSW Health will:

- Receive, collect and store notifications of cases of occupational dust diseases and deaths resulting from occupational dust diseases provided to NSW Health under the Public Health Act.
- Share the information on notifications for these conditions with SafeWork NSW via secure file transfer at intervals of not more than three months, or inform SafeWork NSW if no information has been received in the previous three months.
- Share the information on deaths resulting from occupational dust diseases with SafeWork NSW via secure file transfer at intervals of not more than three months.

SafeWork NSW will:

- Receive information from NSW Health via a secure file transfer.
- Notify NSW Health of the receipt of the information.
- Transfer the received information to the SafeWork NSW secure database.
- Use the information to keep the Dust Diseases Register.
- Receive, store and destroy personal and health information from NSW Health in accordance with relevant legislation and SafeWork NSW WHSDOM Obtaining Health Information (Medical Records and Reports) Procedure D20/130527.
- Use and disclose the information provided to it under this agreement only for its purposes as the WHS Regulator under the WHS Act.
- Share personal and health information it receives under this agreement with the NSW Resources Regulator under section 271A of the WHS Act, if the worker is from a workplace regulated by the NSW Resources Regulator.
- Share personal and health information it receives under this agreement with Comcare in accordance with section 271 of the WHS Act, if SafeWork NSW believes it is necessary for the administration or enforcement of the *Work Health and Safety Act 2011* (Cth).
- Report annually on the information received to the Minister for Better Regulation and Innovation and publish information on its website as required by the WHS Act.

9. Key contacts

9.1 The key contacts will manage the day to day operations of the MOU and be the main contact point for any enquiries.

SafeWork NSW		NSW Health
Name	[REDACTED]	[REDACTED]
Position	Director, Chemicals, Explosives and Safety Auditing, SafeWork NSW	A/Director, Environmental Health Branch, Health Protection NSW
Phone number	[REDACTED]	[REDACTED]
Email address	[REDACTED]@safework.nsw.gov.au	[REDACTED]@health.nsw.gov.au
Name	[REDACTED]	[REDACTED]

Position	A/Executive Director, Compliance and Dispute Resolution, SafeWork NSW	A/Executive Director, Health Protection NSW
Phone number	[REDACTED]	[REDACTED]
Email address	[REDACTED]@customerservice.nsw.gov.au	[REDACTED]@health.nsw.gov.au

10. Reviews

- 10.1 The parties agree to review this MOU on an annual basis or more frequently if the circumstances so require.
- 10.2 SafeWork NSW will initiate the annual reviews.

11. Issue resolution

- 11.1 Any issue that is related to the content or operation of this MOU will be referred to the agencies' main contact person for resolution promptly and in good faith.
- 11.2 Issues that cannot be resolved by the main contacts either within an agreed timeframe (to be established when the issue is identified) or to the satisfaction of the parties, are to be escalated to the Manager/Coordinator, as identified in the Key Contacts above.

12. Information sharing, privacy and confidentiality

- 12.1 The parties will ensure that any information exchanged or provided under this MOU will be kept confidential and only used and disclosed for the purposes specified in this MOU and relevant legislation.
- 12.2 The parties will consult with each other before issuing any media release or other public statement that relates to this MOU.
- 12.3 SafeWork NSW will keep any information obtained under this MOU securely.

13. Termination

- 13.1 This MOU can be terminated with 30 days' notice at any time by either party and will be effected by the exchange of letters signed by the appropriate officers.

14. Variation

- 14.1 Extensions, Schedules and other amendments and variations to this MOU, or pursuant to this MOU, must be evidenced in writing and signed by the appropriate officer of each party.
- 14.2 Should the parties seek to vary the MOU in accordance with this Part, the parties agree to consult the NSW Information and Privacy Commission.
- 14.3 The exception to 14.1 and 14.2 is the change of Key Contacts which can be effected by the exchange of emails between the parties.

15. Execution

Execution by SafeWork NSW

[Redacted Signature]

Signature

ROSE WEBB

Name

Deputy Secretary, Better

Position

Regulation Division

8.4.21

Date

Execution by NSW Health

[Redacted Signature]

Signature

DR KERRY CHANT

Name

CHIEF HEALTH OFFICER & DS

Position

POPULATION & PUBLIC HEALTH

22nd March 2021

Date