



Government of **Western Australia**
WorkSafe Western Australia Commissioner



Your ref
Our ref A56135291
File DMS/2129/2022
Contact Mr Darren Kavanagh

Ms Pothida Youhorn
Committee Secretary
Standing Committee on Community Affairs Legislation Committee
Via Email: Community.Affairs.Sen@aph.gov.au

Dear Ms Youhorn

**INQUIRY INTO THE NATIONAL OCCUPATIONAL RESPIRATORY DISEASE
REGISTRY BILL 2023 AND THE NATIONAL OCCUPATIONAL
RESPIRATORY DISEASE REGISTRY (CONSEQUENTIAL AMENDMENTS)
BILL 2023**

Thank you for your email correspondence of 4 August 2023, advising that the Senate referred the provisions of the above Bills to the Community Affairs Legislation Committee for inquiry and report by 30 August 2023 and inviting me to make a submission to this inquiry.

On 31 October 2022, Professor Brendan Murphy AC from the Department of Health and Aged Care wrote to Mr Richard Sellers, the Director General of the Department of Mines, Industry Regulation and Safety (DMIRS), requesting feedback on the two draft National Occupational Respiratory Disease Registry (NORDR) Bills. Mr Sellers provided DMIRS's feedback via email in a letter dated 25 November 2022.

The NORDR page on the [Department of Health and Aged Care website](#) was last updated in February 2023, indicating the Department was reviewing stakeholder feedback on the November 2022 draft NORDR legislation. The website does not include stakeholder submissions and/or a summary of the feedback.

The WorkSafe Group of DMIRS has reviewed the latest drafts of the NORDR Bills, and it appears that the concerns raised in the previous feedback provided were not addressed. An updated version of the November 2022 feedback with additional comments is included in **Attachment 1**.

Apart from the issues with the legislation, it is important that the WHS regulators are provided full, live access to the raw data, to avoid the issues which have occurred with the Australian Mesothelioma Register.

If these matters can be satisfactorily addressed, the NORDR will be a valuable tool in helping to prevent occupational respiratory diseases.

I thank you for the opportunity to comment on the draft NORDR legislation.

Yours sincerely

Darren Kavanagh
WorkSafe Commissioner

14 August 2023



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ATTACHMENT 1

WorkSafe WA Commissioner submission to Standing Committee on Community Affairs – Legislation Committee

1. WorkSafe WA supports the policy intent of the initiative to establish a National Occupational Respiratory Disease Registry to monitor the incidence and prevalence of occupational respiratory diseases in a coordinated and consistent way.
2. WorkSafe WA wishes to ensure greater data access for work health and safety regulators than is available via the Australian Mesothelioma Register (AMR).

States and Territories transferred their highly useful mesothelioma data and resources to the AMR. The AMR provides limited analyses and trends published annually. AMR data is readily accessible to WA Health researchers for hospital and university PhD research purposes and grants for clinical research (follow-up on disease).

However, AMR data is not available to WorkSafe WA and there have been missed opportunities for WHS authorities in terms of analysis aimed at *preventing* occupational lung disease.

WorkSafe WA expects that the NORDR online system should be user-friendly, with full (state specific), live access to useful WHS-related data for the relevant State or Territory WHS authorities, health and workers' compensation authorities. This will enable WHS regulators to proactively identify job tasks, workplaces and worker exposure history where available, better identify where risks may be occurring, to implement appropriate responses and preventative control measures.

3. The Department has concerns about the proposed NORDR legislation. These centre on the power of the Commonwealth Minister to make rules by legislative instrument under sections 12 (Contents of the National Registry), 31 (Fees) and 33 (Rules) of the NORDR Bill 2022 Exposure Draft. These legislative instruments enable the Minister to significantly change the application of the NORDR legislation and this power is only limited by the requirement that the Minister consults with and has "regard to" submissions made by the Commonwealth Chief Medical Officer and each State or Territory Health Minister.
4. Under section 33, the Minister can change the scope of the NORDR by adding further diseases to the list of prescribed occupational respiratory diseases. Part B of the NORDR legislative instrument content document supplied in October 2022 stated that initially the only prescribed respiratory disease will be silicosis, but *"it is anticipated that the types of diseases that will be classed as 'prescribed occupational respiratory diseases' will expand over time"*.

5. A change of scope would add complexity and risk. It may increase costs to medical practitioners who will be required to report an expanded list of prescribed occupational respiratory diseases, and would have implications for the funding and administration of the NORDR. Other unforeseen negative impacts may also arise.

To provide certainty, the occupational respiratory diseases to which the NORDR applies should be set in the Act, accompanied by more robust consultation processes, rather than in subordinate legislation (rules set by the Minister using a legislative instrument).

6. The material provided does not mention which agency is likely to take on the NORDR project, but it could possibly be the Asbestos Safety and Eradication Agency (ASEA). If this occurs, it is possible the scope of NORDR may expand to include asbestos-related diseases and it could impact the current Australian Mesothelioma Registry.
7. Section 16 of the NORDR Bill provides that a medical practitioner may submit information to the NORDR about non-prescribed occupational respiratory diseases, with the individual's consent. WorkSafe WA understands that the policy intent may be to enable earlier identification of emerging issues. However, there are likely to be some limitations –issues tend to emerge a case or so at a time, so there would not be an impetus for each doctor to notify the NORDR, unless they were aware of a cluster.
8. According to the draft legislation, the purpose of the NORDR extends well beyond data collection. Section 13(1)(d) of the NORDR Bill 2022 Exposure Draft provides that one of the purposes of the NORDR is to facilitate:

(d) for the benefit of the nation:

- (i) monitoring, in a coordinated and consistent way, the incidence and prevalence of occupational respiratory diseases in Australia; and*
- (ii) taking preventative action.*

Further, section 13(2)(c) provides that the NORDR will facilitate:

(c) monitoring the quality and effectiveness of policy and regulatory arrangements in relation to occupational respiratory diseases to inform and enhance policy development, programs and decision-making relating to the prevention of occupational respiratory diseases.

These sections would permit the Commonwealth Government to use the data supplied to influence States and Territories into taking action that may not be best practice for each jurisdiction.

9. It is not clear that the workplace where workers with silicosis were exposed to silica must be reported, which could limit opportunities to conduct prevention work. I understand that this may be established through a related instrument.

10. Section 8 defines a ‘relevant State or Territory authority’ as one which has functions in relation to occupational health and safety or health. WorkCover Western Australia and its equivalents in other jurisdictions may have use for the NORDR in relation to workers compensation matters, however workers compensation authorities are currently not considered a ‘relevant state authority’, so would not have access to the NORDR.
11. The definition of a relevant State or Territory in section 8 of the NORDR Bill 2022 and section 13(2)(a)(ii) both contain a reference to “*occupational health and safety*”, whereas the phrase “work health and safety” is more widely used throughout Australia.
12. Notifications (without consent) are mandatory after the NORDR Bill commences, but consent is required if an occupational respiratory disease is diagnosed before the NORDR Bill commencement.

This means existing silicosis cases can be excluded from the National Register.