

16 September 2022

Megan Downie  
Director  
Occupational Diseases and Hygiene Policy  
Safe Work Australia  
GPO Box 641  
CANBERRA ACT 2600  
email: [occhygiene@swa.gov.au](mailto:occhygiene@swa.gov.au)

Dear Ms Downie

**RESPONSE TO THE CONSULTATION REGULATION IMPACT STATEMENT (CRIS) - MANAGING THE RISKS OF RESPIRABLE CRYSTALLINE SILICA AT WORK**

In 2019, the Commonwealth Government established the National Dust Disease Taskforce to develop a national approach for the prevention, early identification, control and management of occupational dust diseases in Australia.

Safe Work Australia is now seeking feedback on certain regulatory and non-regulatory options that have been developed to reduce workplace exposures to RCS and the number of cases of silicosis and silica related diseases.

We welcome the opportunity to work collaboratively with you and Safe Work Australia in relation to the provision of further information that will assist in this submission and consultation phase.

If you require any additional information or clarification regarding material contained in this submission, please do not hesitate in contacting me on [REDACTED]

Yours sincerely,

Sincerely,

[REDACTED]

Michael Draper  
Head of Environment, Health & Safety - Asia Pacific

## **RESPONSE TO THE CONSULTATION REGULATION IMPACT STATEMENT - MANAGING THE RISKS OF RESPIRABLE CRYSTALLINE SILICA AT WORK**

### [Introduction](#)

James Hardie Industries is the world's #1 producer and marketer of high-performance fibre cement products. James Hardie's products are used extensively across Australia and we empower homeowners and building professionals alike to achieve their dream home with premium quality solutions that enable endless possibilities for design and aesthetics, while also delivering trusted protection and long-lasting beauty.

Fibre cement, like many building materials, contains crystalline silica which can be released as respirable crystalline silica (RCS) when cut or abraded using high speed power tools. With a company culture built on a foundation of "Zero Harm", helping the users of our products understand how to do so safely, including by minimizing the risk of exposure to unsafe levels of respirable crystalline silica, is important to us.

We confirm that James Hardie fully supports appropriate steps to minimize the risk of exposure to harmful levels of respirable crystalline silica (RCS) in the workplace. For many years, James Hardie has published best practice guidance on how to minimize the creation of and exposure to RCS when using its products and we continue to review and refine this best practice material to reflect improvements in tooling options and understanding on the best ways to minimize risk.

As well as publishing and promoting best practice information through our own channels, we have worked with external bodies and our customers to help educate and inform users of our products on the risks of working with products containing crystalline silica and on best practices to minimize the risk of harmful exposures. We remain fully committed to this and look forward to continuing to work with all stakeholders to do so.

Consistent with our approach to safety, we welcome the opportunity to provide feedback on the regulatory and non-regulatory options set out in the Consultation Regulation Impact Statement (CRIS) aimed at reducing workplace exposures. We have had the benefit of being able to review the submissions in response to the CRIS provided by the Housing Industry Association (HIA) and the Australian Industry Group (Ai Group). We wish to confirm our support for those submissions in general and highlight below some of the points they have made, as well as providing additional comments for your consideration.

### [Response to consultation questions posed by Safe Work Australia](#)

The following section addresses the consultation questions prepared by Safe Work Australia to seek stakeholder feedback on non-regulatory and regulatory options for managing the risks of RCS at work.

#### **2.1 Do you agree with the identified problem? Has the entirety of the problem been identified? Please provide evidence to support your position.**

We note and support Ai Group's comments on the problem statement.

#### **2.2 Do you have further information, analysis or data that will help measure the impact of the problem identified?**

In assessing the potential health risks of exposure to RCS, we highlight the work contained in a submission made to the National Dust Disease Taskforce in 2020 by Dr. Jonathan Borak from Yale University<sup>1</sup>, which notes that there is no evidence that links silicosis or other RCS related diseases to low or ambient levels of RCS exposure.

Dr Borak's paper includes the following statement:

*I am not aware of studies that have associated such ambient exposure levels to silicosis or other silica-related disease. Such information is critical for understanding both the risks (if any) of silica exposure to the general population, and the needs and justification for setting ever lower bounds on occupational [emphasis added] exposure limits.*

The lack of data and information linking silicosis and other dust related diseases to RCS exposures below the current WES reinforces that as a policy, education, compliance and enforcement requiring that PCBU's do not exceed the current WES should remain the proper focus for regulating PCBU's who cannot practicably eliminate RCS exposure from the workplace.

### **3.1 Do you agree with the case for government intervention? Please provide evidence to support your position.**

We support the position that governments have a significant role to play in ensuring that the regulatory framework appropriately addresses particular safety issues and concerns. However, we consider that government intervention, both at the Commonwealth and State level, needs to be appropriate, proportionate and balanced.

We appreciate that striking an appropriate balance is a major challenge for policymakers. We suggest that policymakers should consider adopting a whole-of-government approach to ensure that all government agencies work together in a coordinated manner, thereby reducing and mitigating any unintended consequences associated with any policy or regulatory change.

Building on the above, we recognise that there is a need for improved education and awareness amongst industry, business, unions and other stakeholders. As such, there is a significant role for other government departments and agencies to input into this consultation process and allow for a more holistic response. For example, we believe that consultation should be broadened to incorporate the relevant departments for education, industry, and small business in order to bring a wider policy perspective.

These departments are important stakeholders in driving solutions around better education and awareness outcomes amongst targeted groups and organisations that may be impacted by this policy change, as well as ensuring that safety is enhanced through any proposed government intervention.

We also note that the Australian Government has identified inflation and cost of living pressures as a major policy priority of government, with inflation estimated to increase to 7.75 percent. We consider that any policy change must be cognisant of the costs associated with its implementation on the broader Australian economy.

Similarly, addressing housing affordability has also been identified as a priority of the Australian Government. Therefore, any proposal should include appropriate modelling by the Australian Treasury and Department of Finance to understand the real impacts on industry, businesses and most importantly consumers such as first home buyers.

---

<sup>1</sup> Letter to Prof Brendan Murphy Re: National Dust Disease Taskforce Consultation, November 8, 2019 (attached)

Therefore, proposals for enhanced government intervention by Safe Work Australia should adopt a broader whole-of-government policy approach which considers proposals for policy and regulatory change in a wider context. rather than a narrow approach.

### **3.2 Do you agree with the objectives of government intervention? Please provide evidence to support your position.**

As outlined in the CRIS, the primary objective of government intervention is to reduce workplace exposure to RCS and the number of cases of silicosis and silica related diseases, and premature invalidity or death of workers.

We support this objective.

### **4.1 Do these [Regulatory] options address the problem? Please provide evidence to support your position**

We refer to the Assessment of Options 2-5 set out in the HIA submissions. In particular:

- In relation to Option 2:
  - We agree with the HIA that *“the focus should be on continuing to raise awareness and change behaviour... using guidance that is tailored to the specific needs of construction industry sectors such as:*
    - *the current requirements to avoid uncontrolled processing of silica containing materials,*
    - *the best control measures to prevent exposure of workers to RCS,*
    - *the practical equipment and tools available to capture and collect dust and to protect workers, and*
    - *generally assisting business to implement these measures”*
  - In terms of the guidance tailored for specific needs and sectors, we consider it is important to provide guidance on clear and easy-to-understand controls, which if implemented will create a presumption of compliance, ultimately simplifying both compliance and enforcement.
  - Where certain engineering controls and practices have been shown via reputable industry studies to reduce RCS exposure below the WES for a given process, that process should be deemed not to create a significant risk to health and therefore not be subject to additional air monitoring and/or medical monitoring requirements. This policy approach has been used effectively since 2016 in the United States under OSHA Standard for Occupational Exposure to Silica<sup>2</sup>.
  - A consistent approach adopted across all States and Territories is critical to help all stakeholders understand the risks associated with RCS and the appropriate controls to minimise exposure. While consistency is present in relevant legislation and regulations across the States and Territories that have adopted the model laws and regulations, there are variations amongst States regarding enforcement, Codes of Practice, and communication collateral and materials that provide guidance on legislative compliance,

---

<sup>2</sup> See US 29 CFR §1926.1153 (c) (iii) *Specified Control Methods* and §1926.1153 (d) (ii)(2) *Performance Option* <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.1153>.

making it challenging for industry and businesses operating across jurisdictions. Clear, concise and consistent messaging must be provided.

- As well as focusing on the range of duty holders identified by Safe Work Australia, we support the need to target a broader audience and elicit support and cooperation from industry groups, unions, trade schools and all relevant influencers for individuals working in a given industry, as being absolutely required to drive the necessary behavioural and cultural change. This holistic and broader approach requires speaking to and targeting the right audiences using the right tools and right influencers.
- In relation to Option 3:
  - We note HIA's comments set out in section 2.2 of its submissions and, similarly, do not support option 3 as proposed.
  - Like HIA, we also "support clarification of existing requirements with additional guidance material for work involving crystalline silica that could be said to carry significant risk if uncontrolled, such as uncontrolled cutting of dry engineered stone and other materials."
  - We share HIA's concerns with the proposed definition of "High risk crystalline silica work" and believe the proposed definitions need careful reconsideration if it is determined that clarification should be provided via regulation. In particular, we are concerned that the current proposed definition of high-risk crystalline silica work:
    - Unnecessarily broadens the scope of the proposed regulation by referring to risk associated with *silica dust* as opposed to *respirable crystalline silica*, and
    - Is rendered vague by including in the definition work that "poses a health risk from exposure to silica dust" with no further guidance about what posing a "health risk" means

It is important that those required to comply with and to enforce the regulations have clarity and certainty on what compliance requires and the proposed definitions do not provide such clarity or certainty.

- In relation to Option 4, we offer no comments.
- In relation to Option 5a/5b:
  - In light of HIA's comments and concerns about the costs and benefits associated with these options, we support the HIA's view that they "must be rejected given the absence of evidence of the effectiveness of implementing either option, the significant regulatory burden they would impose and their potential barriers for improved compliance outcomes."

#### **4.2 Are there any other non-regulatory or regulatory options you think should be considered to address the problem?**

As outlined previously in this submission, we consider a whole-of-government policy approach needs to be adopted to ensure that there are no unintended consequences associated with the development and implementation of government intervention, including regulatory and non-regulatory approaches.

Therefore, Safe Work Australia, should broaden the scope of this consultation to allow for all relevant departments and agencies at the Commonwealth and State level to have comprehensive input and identify barriers to policy implementation along with policy proposals that will maximise the positive impact of policy changes.

For instance, there is a role for the Department of Education to place on the Education Ministers Council (EDCO) agenda the need to examine safety training undertaken by apprentices. EDCO can examine the role of Registered Training Organisations, amendments and changes to curricula and work to mandate across jurisdiction appropriate training and education activities. This recommendation is made noting the recent departmental changes with the Department of Employment and Workplace Relations (DEWR).

Overall, this whole-of-government approach to policy development and implementation can help drive a more coordinated approach which delivers a simple, easy to understand set of outcomes for industry, business, unions and the broader Australian community.

In terms of the new requirements proposed under option 5a/5b for PCBUs to provide all results of health monitoring and air monitoring to the WHS Regulator within 30 days of receiving reports, while we do not support the mandatory nature of these requirements, we do appreciate the benefits of obtaining data to help better understand levels of exposure occurring across different industries, when performing different tasks in different conditions. We submit that a voluntary registry approach, such as has been implemented in the EU, may be more cost effective and less burdensome on individual PCBU's. For example, the European Network for Silica (NEPSI) is a network of employers and labour groups that has been active since 2006, working with EU governments to provide templates and tools for monitoring RCS exposure, compliance plans, and a forum for disseminating best practices. NEPSI also maintains a registry of workplaces with the potential for silica RCS exposure and participates in the development of EU RCS safety policy. As of 2022, the NEPSI registry includes over 9,000 worksite signatories representing over 380,000 EU workers<sup>3</sup>.

We also consider that the existing requirements in the model WHS Regulations relating to air monitoring need review and clarification. The monitoring protocol needs clarifying to help ensure that test results can be better compared. We consider PCBU's should not be required to undertake ongoing air monitoring if performing a standard task and implementing the standard controls for that task which result in deemed compliance with the WES. The requirement for air monitoring should be limited to forming part of an initial risk assessment for non-standard tasks which enable the identification of appropriate controls which are sufficient in reducing exposure below the WES.

#### **6.1 Is the cost modelling methodology appropriate to estimate the costs to industry and governments (Appendix D)? Please provide evidence to support your position.**

We refer to the Economic Assessment section in the HIA's submissions which sets out a number of concerns relating to the cost analysis conducted. We also note Ai Group's concerns that not all costs may have been incorporated into the modelling.

The modelling contained in the CRIS appears not to have been subjected to cabinet costing processes which we understand would traditionally be required and associated with a legislative and/or regulatory package.

The CRIS does not reference financial or economic estimates made by the Australian Treasury or the Department of Finance. To allow a better understanding of the true costs of any policy change proposed by Safe Work Australia, we would propose that Treasury and Finance, in conjunction with

<sup>3</sup> NEPSI Executive Summary Report 2022, available at [https://nepesi.eu/sites/nepesi.eu/files/content/document/file/NEPSI\\_Executive\\_Summary\\_Report\\_2022.pdf](https://nepesi.eu/sites/nepesi.eu/files/content/document/file/NEPSI_Executive_Summary_Report_2022.pdf)

relevant departments and government agencies, develop a comprehensive economic and financial impact statement released to stakeholders prior to the consideration of any policy options that may be pursued by government.

We believe such a transparent approach by government would encourage broader awareness of the issue and encourage broader engagement across the community.

**6.2 Are the estimates of the number of businesses covered by each of the regulatory and non-regulatory options accurate? Please provide evidence to support your position.**

We refer to HIA's and Ai Group's submissions on this issue which cast doubt on the accuracy of the number of businesses covered.

**6.3 Are there other factors that should be considered in the assessment of the effectiveness of each option (Section 6.5)? Please provide evidence to support your position**

For community to improve its health, individuals may have to change a number of key aspects of their physical, social, and organisational environments. These changes are likely to be driven by a number of different measures, including but not limited to, instituting new programs, policies, and practices; changing aspects of the physical or organisational infrastructure; and changing community attitudes and beliefs.

Therefore, education, communication and awareness are perhaps the most important elements in driving effective change.

The CRIS notes that [emphasis added]:

*Awareness campaigns and behaviour change initiatives would not present an additional cost to industry as the cost of development and distribution would be borne by government<sup>4</sup>.*

We disagree. The participation of PCBU organizations, industry and labour groups are absolutely necessary for the effective and proper rollout of an awareness campaign. However, the industry costs associated with developing and executing comprehensive education-based activities, communication and outreach are significant and have not been accounted for in the CRIS. For instance, all state and territory jurisdictions have acknowledged that there is a shortage of teachers and active recruitment, and retention policies are now required to address both the immediate and longer term needs of the Australian education system.

If a comprehensive education and training initiative were to be implemented as part of an improved community awareness and outreach initiative, it may require additional resources to allow the effective roll out of such an activity. Therefore, resource availability must be taken into consideration as a major factor in the assessment of each option.

Further, there needs to be a greater understanding of the platforms and fora that would allow for effective education and outreach in the near and longer term. A deeper analysis is required prior to the implementation of any initiative.

It should also be noted that geography needs to be considered as part of any government intervention in this public policy space. For example, rural and regional communities have limited access to health promotion and disease prevention initiatives and experience higher rates of mortality and disability than urban communities. These barriers provide context for the needs of rural communities and an understanding of the strategies that will be most effective in boosting education, communication and awareness. For instance, venues and settings such as Men Shed's in rural and regional communities use materials where exposure could result in negative health and wellbeing impact. These facilities and organisations which have not been identified during this CRIS consultation need to be considered as part of any communication and education awareness campaigns and activities.

---

<sup>4</sup> See CRIS Section 6.2.4.1 Costs to industry



**6.4 Are the cost and other estimates (including worker wage assumptions) listed in Appendix D accurate and appropriate? If not, please provide additional data to support a more accurate estimate of costs.**

There has been a short time frame placed upon organisations wishing to participate in this consultation. This narrow timeframe has limited the opportunity to provide detailed data for consideration, including the financial, economic and commercial costs associated with the implementation of increased government intervention and regulation.

However, we note that the modelling contained in this CRIS appears not to have been subjected to cabinet costing processes which would be traditionally be required and associated with a legislative and /or regulatory package.

The CRIS does not reference financial or economic estimates made by the Australian Treasury or the Department of Finance. To allow a better understanding of the true costs of any policy change proposed by Safe Work Australia, we propose that Treasury and Finance in conjunction with relevant departments and government agencies, develop a comprehensive economic and financial impact statement released to stakeholders prior to the consideration of any policy options that may be pursued by government.

**6.5 Do you have further information regarding the costs to the public health system for silicosis and silica related diseases?**

We do not have access to this type of information.

Further to the response contained in 6.4 and elsewhere in this submission, we support a whole-of-government policy approach towards the consideration of the CRIS. We support the development of a comprehensive economic and financial impact statement released to stakeholders prior to the consideration of any policy options that may be pursued by government.

This comprehensive statement should also incorporate extensive and comprehensive modelling by government departments and agencies on any projected real costs on the public and private health systems. In addition, the approach should be broadened to incorporate other key agencies such as the Department of Social Security and the National Disability Insurance Agency (NDIA). Other departments and agencies may need to be consulted and allowed to contribute to the process, including the Department of Defence and the Department of Veterans' Affairs.

**7.1 Which option or combination of the options presented is most likely to address the identified problem? Please provide evidence to support your position**

We support the adoption of a hybrid, or a combination of Option1, Option 2 and, if necessary, a modified version of Option 3.

We do not believe that the cost/benefit of the proposals under Options 5a/5b have been addressed appropriately and therefore do not support them as written.

**7.2 Are there any significant barriers to implementation of the options presented? What are those barriers? Is there a cost associated with them? How could they be overcome?**

In this submission, we have highlighted the importance of ongoing education and awareness across industry, business and the broader Australian community in promoting workplace safety.

It is important that there are ongoing, engaging education and awareness initiatives that actively engage industry, business and the community. Effective change cannot occur without the involved and informed participation of those in the workplace and within the various sectors that would be impacted as a result of regulatory change. It's crucial that those involved understand the reasons for the change and the desired outcomes.

Indeed, education campaigns need to go beyond the PCBU and other duty holders: they must reach into the households of all those that work and operate in sectors that maybe exposed to silica. A shared understanding needs to be built and encouraged. For example, if workers are not provided with the appropriate training, tools or PPE, they need to call it out. They need to feel confident and supported when they speak up, knowing that action will be taken.





We have also highlighted the importance of a consistent approach on compliance and enforcement across all States and Territories. Without a consistent approach, confusion will continue regarding the nature of the problem and how to effectively control the risk, ultimately resulting in a significant barrier to the changes in culture and approach that are necessary.

To eliminate barriers to change, continuous communication must take place at all levels, and it must ensure that leaders in industry and the community are champions for change. To further increase success in driving cultural change, it is important that government and industry work collaboratively to monitor and evaluate progress and assess the policy pain points and refine the strategy as necessary.