

# SUBMISSION

## Consultation Regulation Impact Statement:

### Managing the risks of respirable crystalline silica at work

#### Instructions

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- Use the saved version to enter your responses under each question below. These questions are from the [Consultation Regulation Impact Statement on managing the risks of respirable crystalline silica at work](#).
- Once you have completed your submission, save it and upload it using the upload your submission link on the [Engage submission form](#).

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## Questionnaire

*(Consultation RIS questions)*

### Statement of the problem (Chapter 2)

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

As a business in the Housing Industry, we are not in the position to counter the facts provided in the Problem Statement and Consultation Regulation Impact Statement (CRIS). The problem statement provides a broad outline of the situation with a heavy focus on one area of the industry. The initial statement of the problem does make reference to a range of broader based industries where high exposure rates are common, but in the actual problem statement the focus returns to the issues faced when working with engineered stone. This product is highly associated with the residential housing industry. The problem statement does not appropriately break down the issue through the application of the hierarchy of control. It does consider the application of the hierarchy of control in the statement by making comment on the possibility of elimination of engineered stone but the remainder of exposure is through engineering controls and administrative controls, not the elimination through the reduction in the use of the products that have such extremely high volumes of silica. The CRIS provides a range of information that outlines the problems faced in reducing the occurrence of RCS, as seen in Table 6 page 21 of the CRIS, manufacturing which has the highest levels of claims, this area is associated with engineered stone and less noted than the manufacturing of natural stone products.

As noted, we are not in a position to counter the research and evidence but we believe there is not enough focus on a whole of the workforce approach to the CRIS. Section 6.5 looks at the effectiveness of the options presented based on the research presented. As Options 1 - 4 do hold the PCBU to account to undertake risk assessments and develop a plan, despite the CRIS view that current legislation is ineffective, in WHS, the existing requirements for the PCBU identify the hazard/risk, implement control methods, communicate this with workers (key point

not noted in the CRIS) and monitor controls applied, does provide the legislative means for the protections against RCS. We believe the CRIS is too focused on a narrow band towards manufacturing and secondary construction without enough focus on the elimination or substitution of the products used. This would require a consumer demand focus on the demand for products that contain high levels of silica, in particular, engineered stone products.

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

No

### **Why is Government action needed? (Chapter 3)**

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

Yes, we agree that additional government intervention is required, but with a view towards the application of hierarchy of control methodology and combined methodology of Option 1-3. The summary of proposed options focuses on government regulatory efforts through the application of options 4-5b and does make note of option 2 as seen section 6.5.1. Efforts in 2018 were made to provide education and information into effects of RCS in manufacture and working with silica materials, but our view is it lacked a broad industry and community focus. The section 6.5 does indicate the ineffectiveness of the recent awareness campaigns, it makes reference to its cost effectiveness but does not take into account that the educational change is a long term process to see the effects of change. If reference is made to BF Skinner and Operant Conditioning theory, his belief was that the best way to understand behaviour is to look at the causes of an action and its consequences. The CRIS has made reference to, in particular engineered stone manufacturing, that change has not come about due to lack of understanding of regulatory compliance, time pressures and other similar factors. There appears to be in CRIS, a lack of focus on the positive reinforcement to ensure longer term change. This would require greater long term goals for the government based around behavioural based theories and cognitive strategies that are characterised by focusing on the how and what people think, which leads to choices not to apply simple RCS preventative measures in their work practices.

As a PCBU and a Principal Builder, the additional controls from government would tend to be placed on the manufacturing PCBU and will not reach out to the subcontractor base who operate and manage the risks within their own right to install and perform other work activities with high-risk silica products. We also believe that as Regulation 293 defines the principal contractor and further regulations outline the responsibilities for construction activities, noted in Appendix A, and that the rate of RCS is 1:4, as noted in the problem statement, we see there is a lack of the Worker's responsibility applied in the government's options as per the Act and regulations requirements.

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

The objective stated in section 3.0 and particularly the statement in 3.2 is clear.

In looking at the research into changing of mindsets of learners, if we should look at the change needed as a learning process. Dweck, (1999), stated that Students' (learner) academic success is influenced not only by their cognitive abilities and content knowledge, but also by non-cognitive factors, such as their beliefs, attitudes and values, and with a fixed mindset tend to avoid challenges, quit when they encounter challenges and ultimately achieve less academic success. We believe that the regulator's view as expressed in section 3.1.1 is, although supportive of industry involvement, short sighted and requires a stronger emphasis on option 2 or a combined approach with 1-3. If we make a relationship to asbestos as made by the chair of the British All Party Parliamentary Group (APPG) for Respiratory Health, Jim Shannon MP in 2020, then we believe the objective of the government is to apply additional regulatory controls as noted in option 4-5b which will not result in the outcomes required in the subcontractor space.

It can be noted in the APPG report that additional regulatory controls as recommended in the CRIS was not part of their Summary Recommendations. The recommendations do seek to make the controls in line with asbestos regulations. If we follow the regulatory process in the development of asbestos regulations across the states in general, asbestos was found to be raised as harmful by Britain in the late 1890's with regulatory change not implemented until the mid 1960's, with WA recognising concerns in mining by 1945. WA regulatory change did not occur until 1996 with bans not commencing until 1979 and full bans in 2003. Amid these regulatory developments was the continued awareness campaigns by organisations and unions inclusive of the media awareness and filing of legal cases. Other research also demonstrates that the application of many of the regulatory controls for asbestos were not applied or understood within the workplace and the workforce.

As a PCBU and being a Principal Builder, the additional controls from government would tend to be placed on the principal PCBU and will not reach out to the subcontractor base who operate and manage the risks within their own control. In current WHS, regulation 33 – 36 already places the duty on the PCBU to identify and manage risks. If the goal of the CRIS is to add additional regulatory controls on the industry, the question should be raised - will this be as effective if current laws are not understood and applied. This perspective can be supported in the comments provided in Section 5 from stakeholder feedback, particularly addressed in section 5.2.4 and 5.2.4.5.

We also believe the CRIS goals are void of worker responsibility in the process. In section 5 of the CRIS which discusses the involvement of the stakeholders, there is lack of consultation or stated consultation with the workers, and in section 6.5 of Effectiveness, the relationship has not drawn the responsibility of the workers, as they will need to accept and participate in the systematic changes. We believe the goals of government intervention should not be focused on the PCBU that by rights has a high level of control to mitigate the risks but across the board to workers and community. The CRIS does make reference to banning or phasing out the use of engineered stone, as the primary item of concentrated silica, by 2024 but does not present a

goal to an across government approach, ensuring the community understands the risks and seek to change to consumer views on the use of high content silica products. Consumer sentiment and wants drive business.

#### **What policy options are being considered? (Chapter 4)**

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

The question of whether Option 4-5b addresses the problem cannot be determined as the options remain as proposed and not tried and tested. As presented by the CRIS, Option 1 and 2 have been attempted and CRIS make references to the perceived effectiveness in section 6.5 highlighting that awareness and behaviour change initiatives are expected to improve compliance. The continuation of Option 2 should be seen as vital to the reduction of RCS. The use of Option 2 should not be restricted to awareness of RCS but also the application of current regulations as control methods, the application of the principles of regulations 33 – 38 (WHSR) as a means of supporting Option 3. The introduction of Option 4 can be aligned to the Licensing of Asbestos Removalists and Demolition. These licence processes focuses on the application of removal of asbestos above certain quantity level but leaves the issue of exposure to low volumes (under 10 squares) to normal regulatory frameworks within the WHSR to manage the risk associated via the application of regulation 33-38. As can be found in the housing industry, it does nothing for the application for asbestos removal outside of legislative workplaces. It can be seen as regulatory in the residential housing industry that there is still a lack of understanding of the management of asbestos in the workplace by PCBU, workers and the general public unless you have some direct experience or are required to carry out works as a licensed asbestos removalist or conduct demolition where ACM has been identified. If we draw the same correlation that small exposure of asbestos can result in illness then in awareness campaigns, Option 2 needs to be continuous and broad ranging. In section 2.3.1 of the CRIS, the reference made to the campaign period conducted in 2018 and survey results conducted in 2021 possibly demonstrate that the campaign may not have been successful, and not broadly focused enough and sustained.

As a Principal Builder, the introduction of Option 4-5b will have limited effect on the how silica is used after its manufacture. As there is little detail into Option 5b for additional regulations, how RCS is legislatively managed in the onsite use of engineered stone, cutting of bricks, exposure to RCS for electricians and tilers, is not able to be determined. We would be concerned with having additional regulatory burdens that are again most likely not understood by small PCBU (subcontractors) for no net benefit.

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

If we make reference to the James Hardie case with asbestos, the first common law case was filed in 1975 and although it failed, James Hardie continues to make its financial settlements with its former workers, which were for many years resolved outside the public arena of the law courts, keeping the company and the issue out of the public spotlight. In 1991, the issue was then publicly raised by Slater and Gordon in a class action suit. For many years through the 1990's and early 2000's, this remained in the public spotlight until 2007 when the Carr

government lead a settlement process. This process can be used to demonstrate the need to have the issue of RCS remain in the public spotlight to enact real change, as during this time asbestos regulations were in their infancy and even today are not fully understood or complied with. Therefore, we support a continuation of Option 2 utilising broad based awareness campaigns over extended periods of time and ensure that the campaigns not only are targeted at industries and workplaces but within the wider community.

## **What is the likely impact of each option? (Chapter 6)**

### **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.**

If the goal is to reduce RCS incidents, then the application of cost modelling will serve to provide evaluation of the costs to seek reductions. It should deter the application of the strategies but help to serve as a tool to measure effectiveness and gain understanding of the impact business and government expenditure. For industry, this cost will appear to primarily impose on the manufacturing of high content silica and the manufacturing by the engineered stone sector of the industry. This is again highlighted in the CRIS that it is out of the scope to address the other risk areas of silica production and processing that is in mining. As a builder, there will be minimal impact to our cost base as we are the end installers of the high-risk products and end manufacturers of the lower risk products such as cutting of concrete. The controls that can be placed to minimise the risk to RCS are rarely considered in the CRIS or placed at a low level of cents in the dollar. The impact to these changes in cost process will be spread over time, as work practices and culture change in the subcontractor industry can take time. The costs associated with regulatory change that currently does apply through WHRS is associated with a short-term impact in the equipment purchase and training. But, as noted previously, this change will require the subcontractor base to participate in the change and this not only be directed at the larger Principal Builders who will mostly be targeted with the change. As the Principal Builder, our cost base is not truly represented by the Options analysis in section 6.4.2 of the CRIS. The cost to the Principal Builder will come in the increase in numbers of supervisors to enforce regulatory change. This is across a range of changes in WHSR and the cost to provide education and training to the subcontractor workforce.

Section 2.4.1 does provide discussion on the costs to micro business in the area of air monitoring and other administrative controls to meet legislative requirements. The section highlighted costs predicted by the report from NSW Legislative Council Standing Committee which indicated high costs and variable price estimates. Costs and practices do not appear to be considered for works with RCS that are performed within a short period of time, such as a single wall chasing or small job tiling.

In reading the report, the costs associated with the PCBU also appear to associated with the operation of fixed sites to enable the regulatory requirements to be met. Costs associated with working with the subcontractors in the residential building industry in particular, could result in a reduction in production to a Principal Builder to ensure regulatory requirements. As the cost to compliance will be generally be associated to the micro PCBU for equipment and training, the costs to the Principal Builder will be associated with the builder's supervising staff conducting auditing functions, reducing the time to perform product tasks associated with the build.

**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 are not in a position to formally support or contradict the statistical data provided. The only comment we can provide is that if a PCBU is a business entity, then subcontractors who perform works with high-risk RCS may not be captured accurately. The number of workers and a lack of air monitoring was discussed in section 2.2.2 of the CRIS. Within this discussion, the capture of the subcontractor workforce in the construction or manipulation of the high-risk RCS products have been focused on the manufacture of engineered stone, tunnelling and stone mason quarry workers. At table 5 the Division to C Manufacturing and Subdivision 30 Building construction workers employed does constitute the highest numbers of works at risk of RCS but the data does not provide a breakdown of the risk levels of the exposure across the employment number and relative the activities if the subcontractor base. This number does not capture the number of PCBU as to workers and therefore, does not demonstrate the breakdown of PCBU responsibility across the building construction figures.

The study produced by the AIOH provides some clear detail into the exposure rates within the roles working with high risk/high concentrated RCS materials, with additional comments made to exposure of rates for Construction Activities and the ancillary exposure to workers not directly involved in the activity. The concern from our perspective is regulation cannot be applied on the residential building sector with will comply with the acceptable exposure standards. This due to a range of factors including the control over the subcontractor base, the often-short task nature of the works and other factors such as variable work sites and conditions. Our view point is the reduction of exposure in this sector is best managed through the application of engineering controls on the equipment used and the application of Option 2 as broad industry and community focus.

Therefore, we are unable to support whether the number of businesses is covered accurately within this data especially since data has been drawn from research in 2011 and 2016.

**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.**

As outlined in the sections above, we believe that current regulatory requirements are sufficient in relationship to the residential housing industry. We have outlined that if the CRIS report outlines that current regulatory requirements are unlikely then the market will address the issue effectively by addressing the current regulations to ensure they are made clearer, can be applied easily and are educated appropriately, requiring greater consideration in the effectiveness of reducing RCS.

As discussed, it has been the relationship between the Principal Builder and the subcontractors with the need across the building and construction industries, especially in the residential building construction sector, that greater emphasis needs to be placed on, as described in the CRIS, micro business (PCBU) to ensure their responsibilities and compliance in managing RCS for themselves and other stakeholders that may come into contact with their work practices.

Another area noted was the relationship the general public has and the consumer, to understanding the cause and effect of product to workers with known high silica content. This

process is in the application of the hierarchy of control could focus on the lamination/manufacture of such risk products (engineered stone) and the reduction in the use of high-risk silica naturing occurring product such as limestones with products the consumer chooses.

**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.**

Appendix D has provided the figures on worker assumption for the construction industry stating that work roles such as bricklaying, tiling etc have been considered. Within the data of the small business category, a total of 16979 businesses are covered by regulations but we believe the costs are truly reflective of the costs to the small business. As part of section 2.2 and 6.5, the skills and ability of the PCBU to understand and manage the issues with RCS is an issue. Therefore, for a small business to establish processes, purchase additional tools and equipment, apply the additional maintenance costs to the equipment and seek out the professional assistance are not reflected in Appendix D. We can only assume that the Employee wage by industry rates provided by the ABS are reflective of the wage rates and not reflective of subcontractor rates. If the subcontractor, as a PCBU within the small business category, is to absorb a lack of production to implementing regulatory requirements, this has not been reflected. If the given is that a small business PCBU does not have the knowledge and skills to initially manage the regulatory requirements then additional costs for expert advice will be required. Depending on the type of work the small business PCBU undertakes will depend on the regulatory requirements of the additional cost need to be incurred. Such a professional cost to a PCBU can be incurred at the rate of industry standards of \$160 per hour of professional service as noted by CRIS. The costs to seek professional advice has focused on the engineered stone, quarry, mining and tunnelling PCBU at the nominated rate. The costs to manage the regulatory requirements for small PCBU are focussed on the nominal wages rates not on subcontractor rates.

Appendix D does apply what can be seen as reasonable costs to managing the regulatory requirements with a primary focus on engineered stone, quarry, mining and tunnelling PCBU's and the traditional single site of workplace activity.

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

No, we have not been in the position to formally judge the costs.

## **Discussion of options (Chapter 7)**

**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 would support the implementation or continuation of option 1-3 with greater focus on Option 2.



If we look at Option 2 at a cost base of \$6.08 million and requiring a net benefit of 1.49 silicosis events improvement to break even and increase the cost expenditure to the same as Options 4, 5a and 5b then the break-even point is within a range of less than 1% variation. This simple analysis does not cater for the fact to achieve the outcomes in Options 4-5b, the use of Option 2 would need to be considered and added to the cost benefit analysis.

**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?**

As a Principal Builder, we are not involved in Option 4 and without the details to additional regulatory requirements for Option 5a and 5b, it is difficult to determine the additional costs.

As highlighted previously, in the residential building industry, the primary barrier to change in any area of the WHSR or other regulatory requirements is the messaging, mindset change and the training and compliance monitoring of the subcontractors. This is why [REDACTED] supports the continuation of development work with Option 1 and 2, especially Option 2 from government and industry bodies with a strong belief that the message is broader to reach the community as a whole to drive change.

#### **Other comment**

Do you have anything further you would like to add as part of this process?

The need for public comment on this topic can be seen as an important part of any process to reduce the incidents of RCS. With the CRIS document being published in June of this year and having the period of consultation being open for such a short period of time, a conclusion can be drawn that real consultation with the broader community is not a legitimate focus. As a Principal Builder, this CRIS and the consultation period was brought to our attention by a professional position held within the organisation. Informal consultation with subcontractors and other businesses that have exposure to RCS associated with the Group found a lack of knowledge for the CRIS and consultation period. As a large employer in the WA residential building industry and as categorised in the CRIS, we have the professional resources to formulate a response that can provide an informed, knowledgeable and professional understanding of the regulatory requirements. Even with our resources, to provide evidence to support our position still requires formal research and a greater amount of time for the consultation period to be made available. Our response has been provided on the information provided by the CRIS, a review of WHSR requirements, with limited time to conduct formulative research and informal information obtained within the extent of our workforce.