

ABN 81 913 830 179 | www.finance.nsw.gov.au

Our reference: BN-04832-2022

Ms Michelle Baxter Chief Executive Officer Safe Work Australia By email:

Dear Michelle

## Consultation Regulation Impact Statement: *Managing the risks of respirable crystalline silica at work*

I am writing to provide some regulator-level comments from SafeWork NSW on Safe Work Australia's Consultation Regulation Impact Statement (CRIS) *Managing the risks of respirable crystalline silica at work*. I understand that the comments may be published on the Safe Work Australia website.

# Overview of SafeWork NSW activities to address the risks of respirable crystalline silica under the existing regulatory framework

SafeWork NSW monitors and enforces compliance with the general protections in the *Work Health* and Safety Act 2011 (**WHS Act**) and the *Work Health and Safety Regulation 2017* (**WHS Regulation);** specific protections for certain dusts, including silica; and Workplace Exposure Standards for hazardous chemicals.

SafeWork NSW has put in place long-term, evidence-based strategies which set the direction for its educational, compliance and enforcement activities in relation to dust hazards. The 2017-2022 Hazardous Chemicals and Materials Exposures Baseline and Reduction Strategy (Hazardous Chemicals Strategy) aims to identify and reduce the level and impact of workplace exposures to hazardous chemicals. The Hazardous Chemicals Strategy has four key components - awareness, interactions, research, and legislation - and identifies silica as a priority chemical for action in these areas.

An independent mid-point review of the Hazardous Chemicals Strategy found that 90 per cent of workers had noticed at least one change in their management's safety approach following inspector visits to their workplace. Additionally, three in four reported that new safety equipment or tools had been purchased.

The Hazardous Chemicals Strategy is supported by the *NSW Dust Strategy* (**Dust Strategy**) which aims to prevent occupational diseases by providing workers and businesses with a co-ordinated approach for the safe handling of materials that generate hazardous dust including asbestos, silica and wood. Under the Dust Strategy, businesses and workers are supported to work safely in accordance with best practice principles and the controls relevant to different dust types. The Strategy provides a coordinated approach for SafeWork NSW and industry to:

- respond to current and emerging dust-related harms by following three key principles that apply to all dust;
- prevent dust exposure through compliance, regulation, awareness and education; and

• educate workers about dust exposure with consistent communication of best-practice safety controls for different dust types and work activities.

SafeWork NSW continues to take action in accordance with these strategies to engage with businesses and workers to provide education and guidance on how to manage the risks of working with silica, to undertake strong compliance action where necessary, and to closely monitor the prevalence of silicosis in NSW. SafeWork's other silica-focused activities under these strategies include world-leading research on new technologies, and working with other Australian jurisdictions to develop a nationally co-ordinated and collaborative approach to preventing silica-related disease.

### Proposal to clarify existing laws

SafeWork NSW notes that this proposal is intended to consolidate requirements for high risk silica work which already exist under general obligations in WHS laws in a single part of the model Regulation. NSW has already clarified the effect of some existing laws by introducing a specific ban on the dry cutting of manufactured stone to the WHS Regulation (clause 1840). This includes specific details in the legislation on how to safely cut manufactured stone with reference to relevant Australian Standards, supported by appropriate penalties.

The proposal could assist in providing clarity to persons conducting a business or undertaking (**PCBUs**) and workers. However SafeWork NSW notes that in relation to engineered stone, clarity on WHS obligations in high risk silica work is already provided by the model Code of Practice, *Managing the risks of respirable crystalline silica from engineered stone in the workplace*. The Code could be expanded to cover other high risk silica work. Codes of Practice use straightforward language to articulate WHS obligations. Many stakeholders are unlikely to read the legislation itself and an educational approach to clarifying WHS obligations could be more beneficial.

#### National licensing framework for engineered stone

A licensing scheme is proposed for PCBUs undertaking engineered stone processes, defined as "a process involving engineered stone at a workplace that generates crystalline silica dust, including cutting, grinding or abrasive polishing of engineered stone". A limitation of this option is that it only addresses manufactured stone and not other silica-containing products.

Many of the duties which are proposed to be introduced via the licensing scheme are already stand-alone requirements, or could be imposed as further stand-alone requirements. The CRIS does not clearly articulate what the benefit of the licensing scheme would be in addition to these potential additional obligations, which could be imposed outside the licensing scheme. A benefit could be control of the supply chain, so that if businesses are not licensed, they are not provided with manufactured stone. However, regulators are already able to identify manufactured stone workplaces by issuing notices to the importers of manufactured stone. This enables targeted compliance activity using existing powers.

The licensing scheme itself – as distinct from imposing other new obligations – may not justify the financial and resource burden of establishing and maintaining a licensing scheme on regulators and PCBUs, which is potentially significant as outlined in the CRIS. The CRIS does not clearly set out how the 'national' licensing framework would function when responsibility for WHS is shared by different jurisdictional regulators. Significant work may be required to integrate with existing jurisdictional systems, and the CRIS may therefore underestimate the costs to Government of establishing the scheme.

Without a licensing scheme in place, SafeWork NSW maintain a list of manufacturing stone factories in NSW. Inspectors have completed 966 visits to all known manufactured stone sites in

NSW (255 sites total) over 2 rounds of compliance verification visits since 2018 (up to 31 March 2022). SafeWork will continue to monitor industry compliance with a program of annual visits (expected to be around 30 each year). Every Request for Service (complaint) relating to silica receives an Inspector response (visit) and each silicosis notification is reviewed for consideration to pursue to full investigation and where appropriate, prosecution.

#### Health monitoring

SafeWork NSW notes the proposal to amend the model WHS laws to introduce a requirement for PCBUs to provide all results of health monitoring to the WHS regulator within 30 days of receiving a report. This would be in addition to existing health monitoring requirements in clauses 368 to 378 of the WHS Regulation. At present in NSW PCBUs are required to notify only adverse health monitoring reports. It is understood that this proposal could be implemented as part of a licensing system or as stand-alone option applying to all high-risk silica work.

This proposal would provide regulators with evidence that a PCBU has provided health monitoring to their workers. It would allow the regulator to undertake targeted compliance for businesses that are not meeting their health monitoring obligations. There may, however, be privacy concerns about WHS regulators having access to and storing the health information of workers. This is particularly the case for workers who do not have an occupational disease.

SafeWork NSW inspectors currently enforce health monitoring requirements using their existing powers under the WHS legislation. As at 31 December 2021, inspectors have issued over 178 improvement notices to require businesses to have their workers screened.

Some of the issues in the CRIS identified in relation to health monitoring could be addressed without legislative change. For example, clearer guidance as to when there is a 'significant risk to health' would help businesses to understand when and how they should conduct health monitoring.

#### Air monitoring

The proposed introduction of an explicit duty to undertake and report air monitoring to the regulator within 30 days of receiving the report (in addition to existing air monitoring requirements in clauses 49 and 50 of the Regulation) is noted. This measure would have the benefit of providing the regulator with evidence that a PCBU has fulfilled their duty to conduct air monitoring and would allow the regulator to undertake compliance activities targeted at businesses who are not undertaking air monitoring.

However, consideration needs to be given to whether processing of all reports – including reports that do not show an exceedance of a workplace exposure standard – is a productive use of regulatory resources. Regulators are able under existing laws to issue notices requiring businesses to conduct air monitoring where appropriate.

Through the Centre for WHS, SafeWork NSW has invested in technology to make air monitoring technology more affordable and effective. The Centre for WHS partnered with Trolex Sensors to develop the world's first real-time respirable crystalline silica detector, the Air XS. Businesses based in NSW are eligible for a \$1000 rebate when they purchase the device.

#### Engineered stone control plan

The CRIS proposes requiring businesses working with engineered stone to prepare and implement an engineered stone control plan, either as part of a licensing framework or as a stand-alone requirement. The Code of Practice *Managing the risks of respirable crystalline silica from engineered stone in the workplace* already covers the preparation of a silica dust control plan as a measure to help a PCBU identify all potential tasks that may result in exposure, or possible exposure, to silica dust.

In implementing this proposal consideration would need to be given to the culturally and linguistically diverse nature of the engineered stone industry. Information about the plan and the template would need to be translated into multiple languages to assist PCBUs to implement a plan.

#### Silica risk control plan

The CRIS also proposes introducing a requirement for businesses to prepare a silica risk control plan for all high risk silica work, noting that a safe work method statement (SWMS) would suffice for high risk silica work that is also high risk construction work. This could be of benefit in manufacturing and other sectors outside construction, such as foundries and brick work. Consideration would need to be given to the regulatory burden that this would impose on these businesses. Again, consideration could be given to expanding the model Code of Practice to include requirements for silica-containing products other than manufactured stone, and this proposal could form part of the model Code.

#### **Other matters**

Consideration could also be given to other measures not covered in the CRIS, such as mandating a unit of training on silica safety for workers in silica-exposed industries. This has the potential to be very effective in raising awareness of silica as a workplace hazard and in providing workers with the knowledge to work safely and to recognise unsafe workplace practices. Consideration would also need to be given to the costs of this measure for workers and businesses, as many PCBUs in the engineered stone industry are small businesses.

Yours sincerely



Natasha Mann Deputy Secretary – Better Regulation Division

Head of Safework NSW; NSW Fair Trading Commissioner

14/08/22