Australian Industry Group

Consultation Regulation Impact Statement

Managing the risks of respirable crystalline silica at work

Submission to
Safe Work Australia

AUGUST 2022

CONSULTATION REGULATION IMPACT STATEMENT

MANAGING THE RISK OF RESPIRABLE CRYSTALLINE SILICA AT WORK

SUBMISSION TO SAFE WORK AUSTRALIA

INTRODUCTION

The Australian Industry Group (Ai Group) is a peak industry association and has been acting for business for more than 140 years. Along with our affiliates, we represent the interests of businesses employing more than one million staff. Our longstanding involvement with diverse industry sectors including manufacturing, construction, transport, labour hire, mining services, defence, airlines and ICT means we are genuinely representative of Australian industry.

Our vision is for ***thriving industry and a prosperous community.***

We have ongoing contact and engagement with employers across Australia on the broad range of issues related to the operation of their businesses, informing them of regulatory changes, discussing proposed regulatory change, discussing industry experiences and practices and providing advice, consulting and training services.

Ai Group is a member of Safe Work Australia and its sub-group Strategic Issues Group – Work Health and Safety (SIG-WHS), which had oversight of the development of the Model Work Health and Safety (WHS) Laws. We are also actively involved in consultative forums with state and territory regulators in relation to the application of health and safety and workers' compensation legislation.

Our membership is diverse, operating across a broad spectrum of industries. We have a significant number of large organisations within our membership. However, around three quarters of our members employ fewer than 50 employees and half employ fewer than 20 employees.

ADDRESSING THE RISKS OF CRYSTALLINE SILICA

Ai Group recognises the serious nature of the risks associated with excessive exposure to respirable crystalline silica (RCS). We welcome the opportunity to respond to this Consultation Regulation Impact Statement (CRIS) which is considering a range of options to minimise the risks associated with work with silica containing products that have the potential to create RCS.

We note the objective of government intervention in section 3.2 (page 27);

> *The primary objective of government intervention is to reduce the workplace exposure to RCS and the number of cases of silicosis and silica related diseases, and premature invalidity or death of workers.*

It is important that the option(s) adopted have a real positive impact on the management of RCS. At the same time, consideration needs to be given to any unintended consequences, including any potential impact on the management of other risks; this potential is highlighted in our submission in relation to specific elements of the options presented.

In responding to the CRIS we have given consideration to the various options in the context of their ability to contribute to the reduction of risks associated with RCS. Where we have identified flaws with options, it is predominantly because we do not believe that they will increase the health and safety of people working with RCS.

As a Member of Safe Work Australia we look forward to the next steps of this process as we consider the public comment provided and participate in formalising the final options for consideration by WHS Ministers.

We acknowledge that much work has occurred around Australia to address the recent increase in the diagnosis of accelerated silicosis related to work with engineered stone. There has been significant compliance work focused on key processes associated with cutting of engineered stone, with jurisdictions taking a range of different approaches including enforcement activity and the development and implementation of regulations and Codes of Practice.

Work has also been undertaken in some jurisdictions to address a broader range of silica processes.

THE CONSULTATION REGULATION IMPACT STATEMENT - GENERAL

Part of a Broader National Response

In June 2021 the National Dust Disease Task Force delivered their Final Report. Subsequently, in March 2022, the Commonwealth Department of Health delivered the All of Governments' Response to the Final Report. This CRIS addresses Recommendation 1(c) of the Final Report.

Many other recommendations are being advanced by the Commonwealth, State and Territory governments, including the development of a National Silicosis Prevention Plan with an accompanying National Action Plan.

Purpose and Scope

Section 1.6 of the CRIS identified that "the quarrying and mining industries in New South Wales, Queensland, Tasmania and Western Australia are not regulated under the model WHS laws and are also out of scope". Ai Group is concerned that the potential impact on these industries has not been considered. Western Australia has adopted a set of regulations for mining that closely mirror the Model WHS laws; it is therefore likely that they would include any new regulatory responses to silica in those laws. Whilst the other jurisdictions have regulations for mining and quarrying that do not follow the model laws, it is also possible that they will choose to adopt the same regulations for high risk silica work as the jurisdictions that do regulate their mining and quarrying activities under the model WHS regulations.

There should be some consideration in the Decision RIS about the possible financial impacts for quarrying and mining industries in these jurisdictions, unless there is specific advice from the jurisdictions that they would not adopt the proposed approaches.

Reporting of air monitoring and health monitoring results

We have made specific comment about these proposals within the body of our submission. However, we also have an overarching concern about these issues being considered in isolation from the separate piece of work being undertaken by Safe Work Australia in relation to incident notification.

Further we note that the problem identified on page 39 is that information gaps exist because of "the lack of a national requirement to report exposure above the WES threshold". Requiring the reporting of all air monitoring results will not assist this outcome.

Editorial feedback for clarity

The Problem Statement as currently written includes quotes from the Final Report of the Taskforce. Some words have been excluded from the quotation which means that it does not flow logically, as highlighted below, with proposed additional words underlined. We make comment on the substance of the problem statement later in our submission.

> *"… Taskforce noted that silicosis is "entirely preventable", the re-emergence has largely been driven by the increase in the use of engineered stone.*

On page 18 there is reference to the outcomes of recent health screening programs of 4,743 workers. The data is provided in more detail in Table 7. In the information on page 18 there is no reference to the fact that this screening related only to stonemasons and engineered stone workers. This should be highlighted, with an introductory statement in the subsequent paragraph that similar screening has not been undertaken in other industries.

OPTIONS CONSIDERED IN THE CONSULTATION RIS

Option 1 – Base Case

The base case is outlined commencing on page 28 of the CRIS as including all the work that has been undertaken to increase awareness, and undertake compliance and enforcement activities, over recent years. It also describes measures that have not been fully implemented, including adoption of the Model WHS Code of Practice: Managing the risks of respirable silica from engineered stone in the workplace and the adoption of amendments to the Model WHS laws that will prohibit the uncontrolled processing of engineered stone.

In the discussion of options (p.53), it is stated that the base case "is unlikely to be successful", whilst acknowledging that "there has been insufficient time to evaluate the effectiveness of recent initiatives included in this option". Those statements appear on their face to be inconsistent.

Ai Group agrees with the conclusion that the effectiveness of the base case has not been assessed.

However, we do acknowledge that the high profile work to date has predominantly focused on engineered stone and may not have had the same level of impact on work involving other silica containing products, although awareness of silica as a broader risk is likely to have been increased.

Option 2 – National awareness and behaviour change initiatives to minimise the risks of RCS exposure

Option 2 is described (pp.29-30) as involving targeted communications focussed on key industries: construction, manufacturing, quarrying, demolition and mining, utilising behavioural economics approaches.

This option emphasises a behaviour change component which would go beyond raising awareness to "take a behavioural economics approach to improving the compliance practice of duty holders".

This option could use the recently revised Safe Work Australia guidance material that was published in February 2022 – Working with silica and silica containing products which provides clear guidance on the requirements of the regulations. Supplementing this with industry and task specific guidance about reasonably practicable control measures would help to increase understanding and adoption of control measures.

It is Ai Group's view that this approach could also address concerns raised in 5.2.3.2 that "communication of regulations is often delivered through an unsuitable and inconvenient medium for workers (such as regulator websites) and does not address the needs of workers. There is a lack of plain English explanations and appropriate resources for culturally and linguistically diverse workers." Ai Group is of the view that these are also important considerations for PCBUs who have often started their working life in a similar position to the people who work for their business.

Ai Group supports this work being undertaken as a standalone option, or in conjunction with any other options that are adopted. Consideration needs to be given to how this work would interact with other initiatives that are underway in response to the Task Force Final Report. Further, Safe Work Australia initiatives should be directed at workers and the PCBUs, as they have a direct influence on the PCBUs adoption of control measures and worker compliance with those measures.

There may also be value in broadening the message to encompass others that may influence PCBUs and workers, such as the community and family members.

Costs

On page 53 of the CRIS it is estimated that the cost of this option would be $6.08m over 10 years. Table 21 indicates that all of the costs of this initiative would be borne by government, indicating that the initiative will be limited to activities which involve PCBUs, workers and others being influenced via activities that do not require them to be actively engaged in the messaging during work hours, e.g. media campaigns accessed during leisure hours.

It is not clear to us how this would achieve the behaviour change proposed by this work.

Option 3 – Clarifying the existing requirements of the model WHS laws for high risk silica processes

This option (described from page 30) proposes a new set of regulations which repeats obligations from other parts of the regulations in a context that is relevant specifically to a new terminology of "high risk silica work".

It is argued in the CRIS that this creates "no additional regulatory burden beyond the current requirements of the model WHS laws". However, Ai Group is concerned that there may be unintended consequences of the introduction of specific definitions for crystalline silica substance, crystalline silica process and high risk crystalline silica process.

We note that the proposed definition of a high risk crystalline silica process is when "it is reasonably likely that workplace exposure standards will be exceeded". This would mean that an employer would currently need to take action to comply with regulation 49 which establishes a requirement to ensure that a workplace exposure standard is not exceeded.

However, the inclusion of specific definitions for crystalline silica substances and crystalline silica processes will establish that employers need to take steps to demonstrate that any process involving a product which contains over 1% of crystalline silica is not a high risk silica process.

Other than the inclusion of specific definitions, it is not clear how such a regulation would provide any further clarification than what is currently provided in the guidance material referenced in option 2.

Ai Group does not support this option which could have the unintended consequence whilst elevating the focus on silica, of potentially creating an impression that other types of airborne contaminants do not require attention and/or that the similar control measures are not applicable to those products. Given that there are approximately 700 chemicals used in Australia that have workplace exposure standards, a broader focus on education about workplace exposure standards and air monitoring may be relevant.

Increasing the knowledge of PCBUs generally about legislative requirements for air monitoring (regulation 50) and health monitoring (regulations 368 to 378) across a broad range of substances requires a much stronger focus. Rather than repeating the requirements in a silica specific regulation (which does nothing to highlight the general requirements in the regulations and may detract from them), it is arguable that it would be more effective to utilise guidance material, awareness approaches and compliance and enforcement activities to increase the use of these important monitoring tools more broadly.

Option 4 – Implementation of a national licensing framework for PCBUs working with engineered stone.

Option 4 proposes a licensing scheme that is closely aligned to the scheme that was introduced into the Victorian OHS laws during 2021, with an effective compliance date of 14 November 2022.

We note that the CRIS states, on page 54 "the regulatory requirement of Option 4 may offer limited benefits compared with the base case or Option 3", with most requirements already addressed in other ways. On this basis alone, Ai Group would be concerned if the licensing approach was pursued as a viable option.

Ai Group has received mixed feedback in relation to the proposal for a licensing scheme.

Stonemasonry businesses

Some businesses that undertake work with engineered stone are of the view that the recent compliance and enforcement activity within the industry, across all jurisdictions, has focused attention on the required risk controls and that a licensing scheme will increase costs and administrative compliance issues without improving WHS standards in the industry.

There is some concern that smaller businesses will be overwhelmed by the requirement to obtain a licence and may exit the industry due to these administrative requirements, even if they can apply all the required risk controls.

Other businesses support the introduction of a licensing scheme, for reasons similar to those outlined on pages 61 of the Victorian RIS that was undertaken to support that jurisdiction's new silica regulations which were introduced in 2021, accessible here:

> *The licensing scheme is intended to exclude businesses not complying with health and safety requirements from the market … departures of non-compliant existing businesses from the industry or deterrence of rogue businesses from entering the industry will be beneficial for the community. The permissions framework will also help facilitate a more even and level playing field.*

Risk assessments

The issue of risk assessment is not specifically addressed in option 4. However, within the description of an engineered stone control plan (page 32) there is a dot point that includes a reference to a risk assessment

- *states the hazards and risks associated with that work (i.e. includes a risk assessment)*

It should be noted that a specific requirement for a risk assessment is not included in the Victorian regulations and should not be a feature of any licensing option adopted in the model WHS laws.

With the work already agreed to prohibit uncontrolled dry cutting, and the additional controls included in this proposal, the control measures are clearly specified for work with engineered stone. A risk assessment will do little more than create an additional administrative burden, when the control plan can just specify the controls in the simplest possible way to aid compliance.

Reporting all air monitoring and health monitoring results

This proposal includes requirements for engineered stone licensees to provide the results of all air monitoring and health monitoring to the regulator within 30 days of receiving reports.

This requirement is in excess of the requirements in both the lead regulations and the asbestos regulations which require the regulator to be notified if certain adverse health outcomes are reported and, in the case of class A asbestos removal if the respirable asbestos fibre level is above 0.02 fibres/ml.

It is Ai Group's view that this broad notification requirement cannot be justified when compared to other specific regulatory requirements for lead and asbestos.

Cost estimates

Ai Group is concerned that the costs, and related administrative demands, of the licensing scheme have been underestimated.

The methodology for determining the costs for businesses is outlined in Table 29 of the CRIS, based on an hourly rate of $46.24.

The CRIS estimates that it would involve 18.75 hours to prepare the application and a further 2 hours for 2 people each year to participate in audits.

The cost estimates to develop an engineered stone control plan assumes that each business will only require one plan and that it can be completed within 2 hours. Two hours per year has been allocated to preparing each of the health monitoring and air monitoring reports, for all of the 1,000 businesses undertaking engineered stone work, which does not seem to take into account the varying size of such businesses.

These cost estimates seem to assume that there are "additional" people available to undertake these tasks with the necessary literacy and administrative skills to do so in an efficient manner.

In reality, for small businesses in particular, this work will most likely fall to the business owner whose skills are of a practical technical nature and whose time would otherwise be spent "on the tools". Alternatively, the PCBU will hire an external consultant to undertake this work for them.

Any costs associated with a licensing system must recognise the opportunity cost associated with business owners undertaking these administrative requirements, rather than providing a product/service to the customer, and also the costs associated with hiring external providers.

Recognition of interstate licences and a central register

It is important, to both licence holders and the suppliers of engineered stone, that there is mutual recognition of licensees. If there is to be a requirement for notification of air monitoring and health monitoring results it will also be important that this is required to be provided to only one regulator. An employer who is located in a border town and regularly undertaking work across borders, must not be required to provide reports to multiple regulators.

Suppliers of engineered stone

In January 2020 Ai Group responded to an invitation to comment from the ACCC (Australian Competition and Consumer Commission) in relation to an application by the Australian Engineered Stone Advisory Group (AESAG) related to the introduction of *Industry Accreditation Standards for Engineered Stone Fabricators.* The intention of AESAG was to introduce a voluntary scheme where the suppliers of engineered stone agreed to only provide their product to businesses that have been independently certified by a third party as meeting a series of OHS requirements. It is our understanding that the application was subsequently withdrawn, due to feedback from interested parties.

Based on that application, it is Ai Group's expectation that the suppliers of engineered stone would be generally supportive of a licensing scheme. We have received some feedback to this effect during the process of considering this CRIS.

However, the manner in which it is implemented may require further discussion. We expect that the suppliers will be making submissions and encourage Safe Work Australia to carefully consider any unintended consequences of the licensing system that are raised by these businesses.

During the Victorian consultation process we raised concerns about Victoria unilaterally proceeding with a licensing scheme as it would create significant issues for suppliers of engineered stone across Australia, stating that "A licensing system should only be pursued if agreement can be reached with other jurisdictions for a nationally consistent system".

We continue to hold this view and, if a licensing scheme is an outcome of this national consultation process, it should be closely aligned to the scheme that has been adopted in Victoria and be adopted consistently across the country.

A centralised database of licensees would be a major benefit to all parties.

Implementing a licensing system

In relation to a licensing system there are two key duty holders identified: the business that undertakes work with engineered stone; and the business that supplies the engineered stone.

Ai Group can envisage some compliance issues for the suppliers of engineered stone in relation to maintaining current information about license holders. A centralised national register would assist in this, but suppliers may find themselves inadvertently in breach of the requirements if they are not aware that a license has been suspended or revoked. It would not be feasible for a supplier to be required to check the licence status of a customer every time they processed an order. For example, a customer may have a valid license at the time of placing their order but may have had it suspended or revoked prior to delivery.

It is unclear how the supplier obligations would apply in situations where the initial Australian supplier uses intermediaries to supply the product to the end users. This should be addressed in the Decision RIS and through detail in the regulations or clear guidance material.

Another area of ambiguity relates to the provision of engineered stone to retail customers that are not businesses. It is not clear from the CRIS whether this would be permitted. In line with section 23, 24 and 25 of the Model WHS Act (duties of manufacturers, importers and suppliers) it would most likely be out of scope to restrict access to customers that were not intending to use the product in a workplace. To ensure clarity, this issue should be expressly addressed in the final Decision RIS and any subsequent regulations.

Options 5a and 5b – Additional regulation of high risk crystalline silica processes

Although these options are presented separately in the CRIS, they are effectively proposing the same thing, implemented differently depending on whether a licensing scheme for engineered stone is adopted or not. Hence, our response to this section of the CRIS is related to Option 5a.

We note that the CRIS states that Option 5a "includes additional duties that are based on the amendments to the Victorian Occupational Health and Safety (Crystalline Silica) Regulations". However, we have identified some variations.

Risk assessments.

It is important to note that the Victorian regulations do not specifically require a risk assessment to be undertaken. The Victorian RIS did include reference to a new risk assessment requirement (page 30), stating:

> *Introducing a requirement for employers to undertake a risk assessment where prescribed silica processes are to be undertaken to determine if it is high risk, and for those deemed high risk, to prepare a silica hazard control statement.*

Ai Group, and others, raised concerns that the requirement to undertake a formalised risk assessment process would create an additional administrative burden without necessarily improving controls.

Following public comment, and subsequent stakeholder consultation, it was agreed that the risk assessment was intended to determine whether a process involving silica was a high risk silica process. An alternative was to assume that the process was high risk and implement the relevant controls.

As outlined in the response to the Victorian public comment (p.9), accessible here.

> *This [proposed] regulation creates the obligation to undertake a risk assessment and a hazard control statement in every instance that high risk crystalline silica processes are being performed. The intent of a risk assessment was primarily to allow a duty holder to specifically assess in a prescribed way, crystalline silica processes that would otherwise be deemed high risk crystalline silica work under the definition in 319C.* ***If a duty holder applied the definition of 319C and determines the crystalline silica process meets it, then they can move straight to a hazard control statement rather than completing a risk assessment.***
>
> *The proposed Regulations have been amended at 319J Identification of high risk silica work to clarify the intent outlined in the comment above. In particular,* ***319J(1) now makes it clear that a duty holder can identify a crystalline silica process or combination of crystalline silica processes as high risk crystalline silica work without the risk assessment process****.*

Accordingly, the finalised Victorian regulations state:

> ***319J Identification of high risk crystalline silica work***
>
> *(1) Before an employer or a self-employed person undertakes a crystalline silica process or combination of crystalline silica processes, the employer or self-employed person must—*
>
> *(a) conduct a risk assessment in accordance with this regulation to identify whether the crystalline silica process or combination of crystalline silica processes is high risk crystalline silica work;* ***or***
>
> *(b) identify the crystalline silica process or combination of crystalline silica processes as high risk crystalline silica work.*

It is Ai Group's view that, if Model WHS regulations are to include new duties for high risk silica work, then the approach to risk assessments implemented by Victoria should be adopted. This position is supported by the observation on page 24 of the CRIS that "there are gaps in PCBU's capabilities to undertake risk assessments in some industries".

We are also of the view that the development of accepted, practical control measures, for standard tasks could allow for a presumption of the work being below the exposure standard. This could enable a PCBU to presume the work was not high risk silica work without the need to do air monitoring.

The combination of removing risk assessments and providing information about standard control measures could enable businesses to focus on implementing effective risk control measures at a lower overall cost.

Providing results of health monitoring and air monitoring to the regulator

This requirement is included in the Victorian regulations for engineered stone license holders. There is no requirement in the Victorian regulations to report all results related to all high risk silica work.

The concerns highlighted earlier this submission, in relation to requiring more reporting for silica than for lead and asbestos as part of the licensing process, are of even more relevance in relation to the broader range of silica product.

The estimated administrative burden of providing this information is not high for individual PCBUs. However, the time involved by PCBUs will depend on the mode of reporting. If a PCBU is able to forward the reports as provided to them or information directly from their internal tracking/recording systems, the administrative time involved would be quite low. However, if they are required to enter results into a regulator's database or otherwise reformat the data, the time involved could be more significant. This would particularly be the case for multi-jurisdictional PCBUs, if each regulator implements different systems of recording.

Further the CRIS identifies in table 26 that 22,239 businesses would be covered by option 5; that is a lot of air and health monitoring reports for regulators to receive, analyse and determine an appropriate response.

In relation to health monitoring, we have utilised an indicative number of employees for each employer size to estimate the total number of individual monitoring reports that the regulator may receive for each reporting period;

Small business – 21,848 x 5 = 109,240
Medium business – 359 x 50 = 17,950
Large business – 31 x 300 = 9,300

This provides a conservative assessment of 136,490 individual health monitoring results, spread across multiple jurisdictions. We note also that in Table 5 of the CRIS, and the preceding paragraph, it is "estimated that up to 1.45 million workers are employed in industries where there may be exposure to RCS in the workplace" Hence the number of individual health monitoring reports may be much higher than our conservative estimate.

The RIS does not appear to fully cost the provision of multiple systems for receiving reports and the time required to analyse results and establishment appropriate response mechanisms.

Summary

Ai Group is not convinced that the RIS has made out a case for the specific regulation of silica work that is not associated with engineered stone, through either option 3 or option 5.

It is Ai Group's view that the proposed approach in option 5 to increase the legislative requirements related to crystalline silica processes (excluding engineered stone) will not contribute to an increased state of knowledge, nor assist businesses to better understand how to control the risks.

We are disappointed that the RIS did not consider the potential for specific guidance material outlining possible controls for specific tasks, to provide a more effective solution for work with crystalline silica, which does not involve engineered stone.

Government intervention to address the risks of silica (whether through regulation, code of practice or guidance material) should be designed to achieve the maximum benefit.

It is Ai Group's view that this is not achieved with the proposed amendments to regulations.

Much of the work likely to be captured by the definition of high risk silica work relates to construction. This is an industry which relies on very competitive project pricing and quoting. The adoption of known controls by the industry within SWMS (safe work method statements), rather than documentation of risk assessments, would result in a more consistent approach to risk controls, and their pricing. This would lead to a greater understanding, acceptance and implementation of the control measures.

Despite the very specific requirements in the proposal outlined in the CRIS none of them consider providing any more information about how to control the risks than currently exists. The CRIS notes that there is a wide range of materials that contain crystalline silica and includes examples of related activities on page 18. It would not be possible to address the many possible solutions by including them in a regulation.

It is Ai Group's view that a better approach would be the development of guidance material that outlines the known risk controls for specific types of work involving crystalline silica. It is our understanding that this is the approach being pursued in Queensland where it is intended that their Code of Practice will include information for each equipment/task that covers: engineering and work practice control methods; respiratory protective equipment; health monitoring; and air monitoring.

Such an approach would allow for a broad range of tasks to be addressed, with the ability to easily update information on risk controls as better solutions were identified. It would also reduce the need for atmospheric monitoring as businesses could be confident that the implementation of the controls, under specified circumstances, would result in the quantity of airborne contaminant being below the exposure standard. This would mean that the application of regulation 50(1)(a) would remove the necessity for atmospheric monitoring in most circumstances, thus enabling the limited measurement and analysis resources to be utilised for the times when control measures are less obvious.

CONSULTATION QUESTIONS

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

The problem statement

It is Ai Group's view that the problem statement contained in the grey box on page 17 of the CRIS is not consistent with the proposed options.

The first sentence states "Workplace exposures to RCS have led to a substantial increase in the number of cases of silicosis in Australian workers". However, the rest of the problem statement focuses on engineered stone.

If the options related to other silica related work are adopted, the problem statement should be modified to include information about the identified risks and outcomes associated with those products.

The problem definition should be amended to encompass the statements included in table 3, such as "workers in a broad range of industries are at risk…, with the addition of the words "when exposed to elevated levels of RCS"" and include supporting data.

We also note our earlier comments about words currently missing from the quotation from the Task Force Final Report.

Data supporting the problem statement

Table 3 has three main areas of focus in the problem definition:

- Workers in a broad range of industries are at risk of silicosis and silica related diseases
- Worker exposure to RCS is due to lack of understanding of the risks and the current regulatory requirements to ensure the health and safety of those working with silica-containing materials.
- There are inadequate levels of compliance and enforcement with the current model WHS laws.

As highlighted above, workers are at risk when exposed to an elevated level of RCS.

The evidence provided to support the last dot point includes "current regulations are insufficient to ensure workers are not exposed to RCS". It is Ai Group's view that this is not a subset of inadequate levels of compliance and enforcement with the current laws. In fact, it could be argued that the focus should be on increasing compliance and enforcement with the current laws, rather than increasing legislative requirements.

An amended problem statement

We propose that it be amended so that it recognises

- Not every exposure to RCS creates an unacceptable risk to health.
- Workplace exposure to RCS has a long history in Australia and around the world and in many instances cannot be practicably eliminated.
- Exposure to RCS also occurs outside the workplace at an environmental level. Taking into account the breadth of this exposure, the fact that silicosis is not more common is supportive of the presumption that not every exposure represents a risk to health and safety.

An alternative problem statement could be:

> In the past few years, there has been a substantial increase in the number of cases of silicosis in Australian workers, most likely as a result of increased levels of workplace exposures to RCS, particularly in the stone bench top industry.
>
> Silicosis is an irreversible and debilitating disease, largely caused by workplace exposure to elevated levels of RCS. The National Dust Disease Taskforce noted that silicosis is "entirely preventable". They also noted that "… every case of silicosis affecting a stone benchtop worker is evidence that businesses, industry and governments need to do more to recognise and control the risks of working with engineered stone".
>
> Silicosis, and other silica related diseases, can be prevented by implementing effective controls to eliminate or minimise the generation of and exposure to RCS at the workplace to keep it below the workplace exposure standard.

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

Ai Group does not completely understand this question. We have interpreted it to mean whether we have information, analysis or data that will help measure the impact of proposed options on the problem identified.

We do not have any hard data. However, our anecdotal feedback from employers generally is that many smaller employers do not have a good understanding of the detail related to some of their WHS obligations. This is particularly the case in relation to workplace exposure standards, where increased awareness is required.

Further, in relation to everyday tasks they are seeking clear guidance on the controls that can be implemented to allow them with certainty that they are complying with the law and protecting themselves and their workers from exposure to unacceptable risks.

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

It is clear that there has been a case for government intervention in relation to the health impacts of RCS when working with engineered stone. Although we are not convinced that a licensing scheme is required to further this work.

In relation to other industries that work with silica containing products, the focus should be on identifying appropriate control measures that can be implemented safely by industry, that will ensure that exposure to RCS remains below the workplace exposure standard.

Government intervention should be appropriate, proportionate and balanced and focus on the industries and activities where elevated levels of RCS may be generated.

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

The objective of government intervention is outlined in section 3.2 (page 27);

> *The primary objective of government intervention is to reduce the workplace exposure to RCS and the number of cases of silicosis and silica related diseases, and premature invalidity or death of workers.*

Ai Group supports this objective.

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

We have provided our response to this in the body of our submission.

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

As outlined in the body of our submission, it is Ai Group's view that targeted guidance material for individual tasks that may general excessive levels of RCS would provide a more streamlined approach to the adoption of risk controls. Employers could choose to adopt these controls, as an alternative to individual workplaces seeking out their own solutions.

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

As indicated earlier in our submission we are not convinced that all the costs have been incorporated into the modelling. We provide our feedback on that issue within the submission.

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.

Table 25 identifies the percentage of certain industries that would be covered by the options. It is not clear how the estimates of 10% and 37% were arrived at. Further clarification should be included in the Decision RIS, as these numbers are being questioned by industry. We note that ACCI has done some detailed work on this that should be considered.

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.

We note that it is stated on page 52 that "it is difficult to forecast the effectiveness of each option". Ai Group agrees with this conclusion.

The CRIS also does not seem to address the "evidence" presented in Table 3 as part of the problem definition that "WHS regulators may be unable to adequately ensure compliance with the model WHS laws".

If regulatory options are adopted, they must be accompanied by the implementation of Option 2 which focuses on national awareness and behaviour change initiatives.

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.

Ai Group has made some comments on cost issues in the body of the submission. In relation to relation to wage assumptions, we have received feedback from employers that there has been significant cost escalations over the last two years, particularly in construction over the last 2 years. Some of these will be directly related to wage increases, whilst other factors may also be influencing.

We continue to seek further information on cost data and will provide this to the Agency if it becomes available.

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

Ai Group does not have access to this sort of data.

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

It is Ai Group's view that Option 2, supported by targeted industry and task specific guidance on specific controls will provide the best outcome for workers and PCBUs.

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

In relation to the awareness and behaviour change initiatives the biggest barrier will be identifying appropriate modes of communication which focus on how to control the risks associated with elevated levels of RCS whilst not creating a level of panic which leads to the audience turning away from the messaging. It is also unclear how the behavioural economics approaches will be rolled out and how they can be correctly targeted.

The most significant barrier to implementation of the regulatory options is making them practical and easy to adopt in industries and markets which have been impacted by staff shortages, significant supply chain disruption and financial pressures such as increasing interest rates and other business costs. This is one of the reasons that we do not support the introduction of risk assessments which will introduce a level of complexity which may lead to important controls not being implemented.

Finally, implementation of any of the options will only be successful if there is consistent compliance and enforcement across all jurisdictions, supported by a collaborative approach between regulators and industry. Industry can be a major source of compliance information, but this is very difficult to achieve if there are different approaches across jurisdictions. This has been highlighted recently with the release of new Model WHS Regulations and a Code of Practice for psychological risks. We know that some states have already adopted different approaches; some have indicated that they expect to adopt the SWA materials but can't say this publicly as yet; others have indicated they will take a different approach. As a national body we are trying to articulate this to members who are finding it difficult to comprehend the need for variation when all but one jurisdiction has adopted "harmonised" laws.