CEMENT CONCRETE & AGGREGATES AUSTRALIA

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Ms Michelle Baxter
Chief Executive Officer
Safe Work Australia
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Dear Ms Baxter,

CCAA SUBMISSION: MANAGING THE RISKS OF RESPIRABLE CRYSTALLINE SILICA AT WORK

Thank you for the opportunity to comment upon the Safe Work Australia Consultation Regulation Impact Statement (CRIS) – Managing the Risks of Respirable Crystalline Silica at Work. We are grateful for the two-week extension of time that has been afforded to us to complete our submission and as members of the Australian Chamber of Commerce and Industry (ACCI), we support their submission which challenges the key assumptions and identified costs for industry with the options presented within the CRIS.

Cement Concrete & Aggregates Australia (CCAA) is the peak industry body for cement manufacturers, concrete suppliers and extractive operators throughout Australia. Collectively known as the heavy construction materials industry, CCAA members operate cement manufacturing and distribution facilities, concrete batching plants, hard rock quarries and sand and gravel extraction operations throughout the nation to meet Australia's building and construction needs. These businesses are made up of the majority of material producers and suppliers, and ranges from large global companies to SMEs and family operated businesses.

Heavy construction materials are vital to delivering the infrastructure required to support Australia's built economy which underpins the development of our nation's physical infrastructure, generating approximately $15 Billion in annual revenue and employing 30,000 Australians directly and a further 80,000 indirectly.

CCAA strongly recognises the significant hazard that Respirable Crystalline Silica (RCS) presents for many workers in Australia across a broad range of industries including manufacturing, stonemasonry, construction, tunnelling, demolition, mining and quarrying. Dust containing RCS can arise from a number of processes in the extractive operations of rock such as drilling, blasting, crushing and handling rock and other minerals containing Quartz, although actual extractive processes differ by the type of rock being extracted.

When airborne, ongoing breathing in of RCS for extended periods at concentrations above the WES can cause silicosis, a fibrosis (scarring) of the lung resulting in loss of lung function and lead to a range of respiratory diseases, including silicosis, progressive massive fibrosis, chronic obstructive pulmonary disease and chronic bronchitis.

However, practices adopted across extractive sectors such as ours to limit exposure to airborne contaminants such as wet methods to suppress dusts, local exhaust ventilation, positive pressure cabins and worker segregation from high-risk areas have been in place for many years, are considered effective[1] and are strongly supported by the Australian Institute of Occupational Hygienists (AIOH). These practices have worked to minimise RCS exposure across our sector.

CCAA also acknowledges the significant financial and non-financial costs associated with silicosis and related disease, including physical and emotional harm, reduced ability to work and quality of life as well as the costs incurred upon the public health system such as health screening, diagnosis, treatment, disease management and the workers' compensation system.

As highlighted in the CRIS, we note the primary objective of government intervention is to reduce workplace exposure to RCS and reduce the number of cases of preventable silicosis and silica related diseases, and premature invalidity or death of workers. We understand the need for Government and Regulators seeking to address this matter.

Support for practical and evidence-based regulation and policy

The heavy construction materials sector has a strong track record in protecting its workers from the risks of exposure to RCS and supports practical, evidence-based regulation and policy options which are supported by appropriate education and compliance activities.

Our submission to Safe Work Australia's draft evaluation report for Crystalline Silica (Respirable Dust) in 2019[2] called for this approach and we remain firmly of the belief that had such measures been applied to the engineered stone benchtop industry, incidences of Silicosis could be effectively managed without any further reduction to the present Workplace Exposure Standard.

Following a spike of reported Silicosis incidences which in the main, arose from poor practices and a lack of regulation of the engineered stone benchtop industry, Safe Work Australia embarked on a number of awareness campaigns since 2018 to improve knowledge and understanding of the risks associated with RCS. However, the CRIS states that these campaigns have been sub-optimal, noting that preliminary stakeholder consultation has highlighted a lack of awareness of the risks associated with RCS and a lack of clarity on how to comply with model WHS laws has contributed to silicosis cases and related diseases.

[1] AIOH Position Paper – Respirable Crystalline Silica and Occupational Health Issues 2019
[2] CCAA Submission – Safe Work Australia Workplace Exposure Standards – Crystalline Silica – Draft Evaluation Report

In 2019, Safe Work Australia's draft evaluation report for Crystalline Silica (Respirable Dust) recommended a significant amendment to the RCS workplace exposure standard (WES) which was first introduced in 2005. This proposal sought an 80% reduction to the eight-hour, Time Weighted Average (TWA) from the then figure of 0.1mg/m^3 per cubic meter of air to 0.02mg/m^3. This recommendation was proposed as a blanket/one size fits all approach across all potentially affected sectors, despite clear identification and highlighting of non-compliant practices associated with the engineered stone benchtop industry.

CCAA argued that the proposed response from Safe Work Australia was disproportionate as the bulk of highlighted practices and incidences of Silicosis were almost entirely limited to the engineered stone benchtop sector, on top of the track record of the heavy construction materials sector in monitoring and controlling the risks associated with dust related diseases – particularly since the introduction of the WES in 2005 and the complete inability to adequately measure and interpret health monitoring data at levels below a WES of 0.05 mg/m^3 with real statistical certainty.

Following agreement with State and Territory Health Ministers, a new mandatory WES of 0.05 mg/m^3 was agreed to in March 2020 and subsequently adopted across most Australian jurisdictions by 1 July 2020.[3] Since the introduction of the new WES, our sector has continued to proactively work with state-based regulators such as SafeWork NSW, to monitor dust levels and any exceedances, in addition to supporting education and awareness campaigns with persons conducting to ensure that wet method suppression systems and other methods are in place to minimise dust generation. State and Territory Regulator feedback to CCAA with regards to member company proactivity to ensure compliance with the new WES suggests that that our sector continues to demonstrate a proactive approach to minimising its risk to workers from RCS exposure.

We further note that inspectors across most State and Territory jurisdictions may issue prohibition notices to stop work that generates high levels of silica dust while employers face stiff financial penalties for failing to comply with a prohibition notice. These penalties, in some circumstances of up to $100,000 per notice, are obviously a significant deterrent to conducting unsafe practices and serve as a strong incentive for our sector to maintain compliance with the WES. We note that Table 2 of the CRIS outlines the steps that State and Territory jurisdictions have taken to manage RCS risk.[4]

With this in mind, CCAA believes that more work can be done to change workplace behaviour and improve awareness to reduce exposure to RCS. We further believe that it would be prudent of Safe Work Australia to ensure that regulations related to high-risk silica processes are clarified for PCBU's, workers and any other duty holders. As a national industry body, we believe that we are very well placed to support, assist and to deliver an enhanced industry campaign across the sector in a meaningful and cost-effective manner, alongside or independently of Safe Work Australia.

[3] New silica exposure standards (News) | Comcare

[4] Consultation Regulation Impact Statement - Managing the risks of respirable crystalline silica | Engage SWA

Option 2

CCAA supports the development of national awareness raising campaigns and additional behaviour change initiatives across our sector to further support understanding and compliance with the model WHS laws.

We believe that a campaign consisting of additional awareness initiatives combined with a behavioural economic approach would be more beneficial and cost-effective to implement and deliver than Options 4, 5a and 5b which all seek to impose significant cost and regulatory burdens upon our sector.

In particular, tactical options to change behaviour which are practical and targeted towards specific industry sectors, rather than a one size, fits all, blanket approach to regulation are beneficial. This option could certainly address a lack of understanding of silica related risks while also presenting new opportunities to improve compliance outcomes and control risks without the adoption of significant new and costly regulatory hurdles. Outcomes derived from this approach can also be routinely measured against the data that is presently collected by state and territory jurisdictions and this will prove particularly useful where gaps in the understanding of awareness can be identified.

As a national industry body, CCAA maintains strong relationships and an intimate knowledge of the heavy construction materials sector. We would be willing to work with Safe Work Australia to help ensure that an awareness campaign is targeted to the right workers and businesses, lend support for an overarching national campaign to help drive national awareness and behavioural change or with funding support, drive a broader industry-wide campaign with our CCAA member stakeholders.

Option 3

Option 3 seeks to maintain and clarify the existing requirements of the model WHS laws into specific regulations covering defined high risk silica processes. While members would need to carry out enhanced risk assessments to ensure that they remain compliant with the clarified definitions under the model WHS laws outlined below, this option will at least focus the effort on the areas of highest risk without the more disproportionate and costly proposals outlined in Options 4 and 5a and 5b. Regular risk assessment has been a long-term practice across our sector.

We note that the CRIS points to this option seeking to address present requirements relating to PCBU's working with RCS, including air and health monitoring that's undertaken by our sector. Based upon Victoria's *Occupational Health and Safety Amendment (Crystalline Silica) Regulations 2021*, this option seeks to provide a definition of a crystalline silica substance (a material containing over 1 percent crystalline silica), a crystalline silica process (quarrying involving material that is a crystalline silica substance) and high-risk crystalline silica process (where there is a risk from exposure to silica dust or where the PCBU can not be certain that workplace exposure standards will be exceeded).

While CCAA notes that our sector has had a long history and strong track record of working with regulators to ensure that compliance activities are met, we agree that clarifying these definitions will

assist to improve the understanding of the requirements under the model WHS laws for defined high risk silica processes.

CCAA suggests that minor amendments be made to the three proposed definitions of a crystalline silica substance, process and high-risk processes to ensure greater clarity and alignment with the Model WHS regulations, thus avoiding any confusion or misinterpretation of regulations or guidelines for industry members.

Opposing Additional Regulation for the Extractive Sector

CCAA remains steadfastly opposed to the adoption of additional regulation in the forms proposed within Options 4, 5a and 5b of the CRIS. As stated earlier in our submission, our industry continues to maintain a strong track record in protecting its workers from the risks of exposure to RCS and continues to work closely with State and Territory based regulators to be compliant with the new WES and ensure that the risks for our workforce are minimised.

With regards to Option 4, we don't believe that the adoption of a national licensing framework for PCBU's will do anything to improve health outcomes or minimise the risks from RCS given the controls that are now in place and overseen by State and Territory regulators. A further layer of bureaucratic oversight at the Federal level will not lead to improved health outcomes, as desired by the Federal Government and Safe Work Australia and will only lead to higher costs of compliance.

Options 5a and 5b follow on from the revision of the definitions contained within Option 3 of the CRIS and either support additional regulation of defined, high-risk silica processes – including all materials meeting the definition of a crystalline silica substance or exclude engineered stone to work in conjunction with a national licensing framework for PCBU's as proposed in Option 4.

It is our view that these options are unnecessary and are not cost effective in delivering improved health outcomes as they deliver another layer of bureaucracy and higher compliance costs on top of the actual compliance and enforcement work carried out by State and Territory regulators.

Summary Position

While CCAA understands the wish for the Federal Government and Safe Work Australia to address the very significant risks of airborne RCS dust, we believe that the measures that are now in place to mitigate the risks for the extractive sector workforce are strong and are leading to improved health and compliance outcomes.

The adoption of the new WES, a larger focus on the risks of airborne contaminants and greater compliance by State and Territory Regulators have all contributed to improved outcomes and a reduction in the risks of exposure.

Our sector has maintained a strong track record with its control measures and member companies are aware of the need to upgrade infrastructure and improve processes, following the introduction of the new WES, just a little over two years ago.

Importantly, the feedback that we have received from State and Territory regulators tells us that the efforts of our sector to work to achieve and maintain compliance with the new WES are working. Stiff penalties are in place for any businesses which fail to comply with a prohibition notice and it is clearly in every affected industry's best interests to ensure that the risks of airborne contaminants are minimised.

CCAA supports further development of national awareness raising campaigns and additional behaviour change initiatives across the extractive sector and we are keen to work with the Federal Government and Safe Work Australia to better target and promote these campaigns and initiatives, as outlined in Option 2 of the CRIS.

Our sector agrees that the provision of further clarity around existing requirements of the model WHS laws to define high risk silica processes and the enhancement of risk assessment initiatives is useful, as outlined within Option 3 of the CRIS. This option offers a cost-effective regulatory approach without the imposition of disproportionate outcomes or significant rises to the costs of compliance.

Thank you once again for the opportunity to comment upon the Consultation Regulation Impact Statement for Managing the Risks of Respirable Crystalline Silica at Work. We trust that Safe Work Australia will give serious consideration to the arguments and points made within our submission.

Yours sincerely,

KEN SLATTERY
CHIEF EXECUTIVE OFFICER
CEMENT CONCRETE & AGGREGATES AUSTRALIA