HOUSING INDUSTRY ASSOCIATION

Submission to
Safe Work Australia

Consultation Regulation Impact Statement
Managing the risks of Respirable Crystalline Silica at Work

31 August 2022

HOUSING INDUSTRY ASSOCIATION

contents

ABOUT THE HOUSING INDUSTRY ASSOCIATION

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry, including new home builders, renovators, trade contractors, land developers, related building professionals, and suppliers and manufacturers of building products.

As the voice of the industry, HIA represents some 60,000 member businesses throughout Australia. The residential building industry includes land development, detached home construction, home renovations, low/medium-density housing, high-rise apartment buildings and building product manufacturing.

HIA members comprise a diversity of residential builders, including the Housing 100 volume builders, small to medium builders and renovators, residential developers, trade contractors, major building product manufacturers and suppliers and consultants to the industry. HIA members construct over 85 per cent of the nation's new building stock.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building development industry. HIA's mission is to:

> *"promote policies and provide services which enhance our members' business practices, products and profitability, consistent with the highest standards of professional and commercial conduct."*

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into manufacturing, supply, and retail sectors.

The aggregate residential industry contribution to the Australian economy is over $150 billion per annum, with over one million employees in building and construction, tens of thousands of small businesses, and over 200,000 sub-contractors reliant on the industry for their livelihood.

HIA develops and advocates policy on behalf of members to further advance new home building and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. New policy is generated through a grassroots process that starts with local and regional committees before progressing to the National Policy Congress by which time it has passed through almost 1,000 sets of hands.

Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis.

The association operates offices in 23 centres around the nation providing a wide range of advocacy, business support including services and products to members This includes technical and compliance advice, training services and a range of other services.

1. INTRODUCTION

1.1 OVERVIEW

The Housing Industry Association (HIA) takes this opportunity to make a submission to Safe Work Australia in response to the Consultation Regulation Impact Statement *Managing the risks of respirable crystalline silica at work* (CRIS).

HIA is supportive of the need to minimise the potential exposure of workers to harmful levels of respirable crystalline silica (RCS), particularly when working with engineered stone.

HIA is fully committed to working with governments to improve industry understanding on the risks of working with products from which RCS can be generated, on minimising and safeguarding workers exposure and on meaningful and practical reforms to improve compliance and work practices.

However, HIA has concerns with the CRIS and the options presented in it.

The CRIS is not based on cost benefit analysis, as recommended by the Office of Best Practice Regulation (OBPR) and expected for national standard setting bodies under the relevant Council of Australia Government arrangements. Significantly, the CRIS does not adequately specify the baseline, against which the policy options are compared.

HIA is concerned that the CRIS provides no direct evidence that supports the creation of benefits by the proposed policy options and fails to analyse policy options that create net benefits if the options restrict competition, as required by OBPR guidelines for RIS analysis

Options 3 and 4 do not include the full detail of regulatory changes that will be applied. This makes it unclear exactly how the proposed regulatory changes will be implemented and their scope of coverage.

Given this, it makes it very challenging to adequately assess the suitability of the proposals and the impacts they would have on industry. Equally challenging are a number of deficiencies in the qualitative costings used in the CRIS.

The CRIS also appears to miss many significant costs.

Notably, Options 2 and 3 fail to outline the actual regulatory impost. The assumptions in the CRIS imply that Options 2 and 3 impose net costs on the Australian community.

While HIA support, in principle, providing industry with greater clarity and supporting mechanisms on existing requirements for working with RCS, the CRIS indicates that Option 3 would have no additional regulatory burden for industry., HIA disagrees. HIA foresee that this option would, in fact, extend and create regulatory obligations and compliance requirements on PCBUs which are inappropriate.

Option 4 proposes the introduction of a licencing scheme for PCBUs carrying out an engineered stone process. While the commentary on this option includes indicative information on the proposed scheme, the actual regulatory details are not included, for example, critical to such a scheme is how it would be implemented by states and territories, which is not discussed in the CRIS.

Key elements of the proposed licensing scheme also remain unclear, for example, how often air monitoring would be required to be carried out, the process and matters to be satisfied before a licence is granted, criteria for cancelling licences, fees and penalties applicable and other relevant matters.

If Option 4 is to be progressed a thorough analysis of the proposed licensing scheme and its application is essential in conjunction with consideration of an appropriate industry transition period that is commensurate with its scope of coverage to construction industry professionals. Additionally, we have highlighted in this submission a number of items that require further consideration should this this option be implemented. For example the CRIS does not appear to allow for any behavioural change created by the policy options – this means it misses a significant portion of the costs and the benefits.

HIA does not support Options 5A or 5B, both options propose the introduction of further regulatory requirements in an area that is already heavily regulated. Of note are the range of regulatory changes and initiatives that have been undertaken in the last 3 years and other work a number of states and territories are progressing concurrently. Adopting these options could create further confusion for industry.

Options 5A and 5B underestimate the number of businesses that will be impacted by the proposed regulations. HIA has identified at least a further 131,000 businesses which could be impacted to some extent.

Reflecting on all of the options outlined in the CRIS, it is considered that the most suitable approach would be a combination of options which may be more realistically achievable and appropriate. It is considered that a variant of Option 3, in conjunction with Options 1 and 2, as detailed in this submission, may be the most appropriate and cost-effective course of action.

1.2 ASSESSMENT OF THE BASE CASE

Option 1 is presented in the CRIS as “the base case” or status quo.

HIA is concerned that the analysis of this option does not provide a true assessment of the base case. As noted in the economic assessment below, the CRIS does not adequately specify the problem or baseline. Additionally, the CRIS assessment does not consider the extensive range of activities, including regulatory controls, that have occurred over the past 3 years focused on minimising worker exposure and raising awareness of RCS.

Further, the analysis of Option 1 indicates that it is a non-regulatory option yet captures regulatory reforms that have yet to be fully implemented, both of which are problematic.

Of note the analysis of Option 1 not only considers the existing duties under the model WHS Act, model WHS Regulations and relevant model Codes of Practice but it also includes the implementation of the model Code of Practice: *Managing the risks of respirable crystalline silica from engineered stone in the workplace*, and amendments to the model WHS Regulations prohibiting uncontrolled processing of engineered stone.

It is recognised that the additional measures may lead to improved safety outcomes in relation to managing work involving engineered stone.

However, it is not true to say that this option is non-regulatory and it is premature to undertake an assessment of the 'base case' with the inclusion of these reforms, as their effectiveness on improved safety outcomes can only be assessed once they are implemented and fully adopted.

As such the final CRIS needs to recognise this and take this into account as part of a broader analysis of the current state of the problem to which further regulatory interventions would be seeking to address.

Statement of the problem

The CRIS states that Option 1 on its own is unlikely to be successful in addressing workplace exposure to RCS and reducing the incidence of silicosis and other silica related diseases. The CRIS also states that workers are continuing to be exposed to hazardous levels of RCS in the workplace.

There is no clear evidence presented to support these generalizations and as noted in the section above it is considered that a more thorough assessment of the base case with consideration of the extensive reforms and initiatives undertaken over the past 3 years, as well as other reforms notified but yet to be implemented, needs to be undertaken to verify the extent of the problem that remains to be addressed.

In the statement of the problem, the CRIS presents information about the conditions that have led to workers being exposed to hazardous levels of RCS in the past. We note that this has been mostly in the engineered stone industry.

However, there is no valid scientific evidence presented to support the assertion that workers are continuing to be exposed to hazardous levels of RCS given the controls now in effect across Australia. Some of the 'evidence' presented in the CRIS to support this is not valid and relates more to a qualitative assessment. One study quoted in the CRIS as a "comprehensive assessment of exposures of Australian workers to RCS" claimed that workers were "heavily exposed to RCS". However, this was based on interviews with workers and not on personal air monitoring to measure whether the WES was exceeded[1]. In the absence of such measurement, the study cannot be said to be a 'comprehensive assessment', let alone one that would support the claim that workers were "heavily exposed to RCS" where controls are now in place.

Other studies quoted only confirm what is already understood - that workers can be exposed to excessive levels of RCS if effective control measures are not in place. This should not be taken as evidence that workers are continuing to be exposed to hazardous levels of RCS or that anytime someone is working with a product containing RCS they are exposed to hazardous levels of RCS. Nor should this be used as the basis to support a valid definition of the problem and the case for further regulatory intervention.

[1] Safe Work Australia June 2022, *Consultation Regulation Impact Statement – Managing the risks of Respirable Crystalline Silica at Work,* section 2.2.2, pg. 20

The assessment of the base case for the final RIS also needs to acknowledge the fact that the model WHS Act, model WHS Regulations, and the model Codes of Practice already provide extensive provisions for managing risks to health and safety arising from exposure to RCS and that actions have been taken by states and territories to progress the adoption of these laws and the new lower Workplace Exposure Standard (WES).

The model WHS laws framework imposes general duties on employers and others to manage risks to health and safety and to provide safe workplaces. Part 7.1 of the Model WHS Regulations applies to the generation of hazardous substances at a workplace.

This part requires PCBUs to manage, in accordance with Part 3.1, risks to health and safety associated with using, handling, generating or storing a hazardous chemical at a workplace. Part 3.1 provides for the elimination of risks to health and safety. If elimination is not reasonably practicable, it provides that risks must be reduced so far as is reasonably practicable.

Duties and obligations in workplace health and safety legislation include:

- Obtaining information about hazardous substances and chemicals.
- Eliminating or reducing risks to health and safety arising from exposure to hazardous substances such as crystalline silica by implementing controls in accordance with a hierarchy of control.
- Ensuring the workplace exposure standard (WES) for RCS is not exceeded.
- Providing appropriate information, instruction, training and supervision of workers.
- Undertaking atmospheric monitoring to determine if there is a risk to health.
- Undertaking health monitoring of workers if they carry out ongoing work generating RCS, or there is a significant risk to the worker's health because of exposure to RCS.

While the requirements of this framework for managing risks arising from exposure to RCS are acknowledged in the CRIS, the fact that they are extensive and that they already provide useful support to reduce the risk to workers needs to be acknowledged as supportive on the base case and the statement of the problem in the CRIS.

The WHS laws are being enforced

Australian work health and safety regulators have made crystalline silica a strategic priority in their operations and have implemented strategies, interventions and support measures, particularly in relation to engineered stone to ensure that engineered stone workplaces provide adequate protection for workers.

Such strategies include further compliance and enforcement action, as well as education and awareness raising about preventing and responding to silica exposure.

Most jurisdictions have conducted, and continue to conduct, several hundred workplace visits and assessments over the past few years and taken effective enforcement steps to prevent exposure to crystalline silica.

It is considered that through these activities industry compliance and understanding of the need to minimise exposure and implement the adequate and proper controls has improved significantly.

It has been consistently demonstrated that there is no need for additional WHS regulations to compel duty-holders to comply with their general health and safety duties for which regulatory duties and guidance exists.

Further to this, it is considered that further regulation regarding working with RCS is unlikely to result in better safety outcomes on site. Rather more targeted practical information and guidelines tailored to task specific or sector specific information would be a far more effective next step.

Guidelines raising awareness and supporting compliance

The CRIS acknowledges at section 1.4, a range of additional policy measures have been implemented by Safe Work Australia and the states and territories to address the risks of exposure to RCS in the workplace.

As part of these measures, a range of guidance and codes of practice have been made available to assist PCBUs to support a systemic approach to managing risks of exposure to RCS and to meet their health and safety obligations.

These resources are useful and have been implemented by a wide range of workplaces, providing much clarity for duty-holders about what is needed for managing RCS hazards and risks.

The resources have also been applied by workplace health and safety regulators when needed to compel PCBUs to implement appropriate management practices. These matters also need to be acknowledged as supportive of the base case.

It is considered that these resources should be supplemented with additional targeted guidance and education campaigns. Such campaigns should focus on practical information tailored to task specific or sector specific activities with a particular focus on clarifying the suitable control measures that need to be applied to prevent exposure of workers to RCS and reinforcing that uncontrolled dry processing of silica containing materials must not be carried out. This is within the sphere of activity of Option 2.

Industry has taken action to raise awareness

Industry bodies such as HIA have undertaken a broad range of activities over the past 3 years to inform industry about the risks of crystalline silica and the suitable control measures that need to be applied to prevent exposure of workers to RCS. For example, HIA has published a number of articles in HIA's national and state magazines, made online industry information sheets freely available and provided regular email information to our members.

In 2019 HIA carried out an extensive nation-wide silica awareness campaign consisting of silica awareness seminars that were attended in person by over 1,000 practitioners. The seminar was also recorded as a webinar for ongoing access by practitioners. HIA also developed a range of information resources for members on how to prevent exposure of workers to crystalline silica and to raise greater awareness of the potential for exposure.

All the resources from HIA's silica awareness campaign are available in HIA's website (www.hia.com.au).

HIA continues to run dedicated silica awareness training sessions throughout the country and has developed other online training resources.

We have also actively participated in the development of the national recognised silica awareness training package and we are delivering silica training through our Certificate IV and HIA apprentices training.

Other industry groups also ran seminars and developed resource material on the safe use of materials that contain crystalline silica.

These activities have raised substantial awareness about the risks of exposure to crystalline silica in the construction industry over the last 3 years and must be recognised in establishing the baseline for the CRIS.

Reforms need further time to mature before more regulations added

The extensive information campaigns, increased levels of enforcement carried out, together with existing WHS laws, codes of practice and/or guidance available, has resulted in a range of effective dust control measures being implemented by businesses that undertake work with RCS.

It is considered that the range of reforms already implemented over the past few years, together with the enhanced measures already implemented by industry and work health and safety regulators, have created significant awareness and an appropriate level of control in minimising the risks of exposure to RCS.

These reforms should be given further time to mature prior to introduction of more onerous measures, such as are proposed under Options 3, 4 and 5, that may provide limited or no additional safety benefits.

Other enhancements to improve compliance and awareness and minimise exposure could include other types of intervention, such as further practical guidance to assist businesses, inspections, enforcement and using enforceable undertakings when non compliances are detected.

While it may be too soon to ascertain the full impact of these measures and initiatives, HIA is of the view that in light of these steps the exposure of workers to hazardous levels of RCS in all workplaces where silica-containing materials are handled is being addressed and responded to.

As such, HIA does not agree that a case for further government intervention for some of the options proposed in the CRIS has been substantially established and rather a combination of Options 1, 2 and 3 should be considered that would be equally, if not more, effective.

2. ASSESMENT OF OPTIONS 2-5

The CRIS presents four options that contrast to the base case (Option 1) with Option 5 including two sub-options. Options 3-5 involve introducing new or additional WHS regulations.

Below is an assessment of HIA's position on each of those options.

2.1 OPTION 2

Option 2 involves raising national awareness and behaviour change initiatives to minimise the risks of RCS exposure. These initiatives are to be focussed on duty holders in the construction, manufacturing, tunnelling, quarrying, demolition and mining industries, to improve compliance with the model WHS laws.

As discussed above, a range of reforms and initiatives have been undertaken over the past few years by governments and industry that support this outcome.

Although there is a need to assess the impact current actions have had on reducing exposures to RCS, undoubtedly the construction industry is now much more aware of the health hazards posed by exposure to RCS and the measures that can be used to minimise exposure as a result of these reforms and initiatives.

A recent survey carried out by the Australian Chamber of Commerce and Industry found that at least 90 per cent of industry respondents were aware of the hazards posed by RCS if not effectively controlled, and 72 per cent were using water suppression to control the risks of exposure to RCS.

This is consistent with some of the data presented in the CRIS that demonstrates that stonemasons are now much more aware of the risks and how RCS exposures can be avoided[2], and that state and territory regulators have observed a general improvement in compliance in the engineered stone sector[3].

The range of national reforms and initiatives carried out to date have almost certainly raised awareness and had an impact on reducing exposure to RCS in the sector where most of the cases of silicosis have occurred. This should be supplemented by further awareness, education, and behavioural change initiatives.

While HIA agrees with the statement in the CRIS that implementation of national awareness and behaviour change initiatives without clarification of the model WHS Regulations is unlikely to effectively reduce RCS exposure, it is not agreed that clarification of the model WHS Regulations should equate to modifying or adding more regulations, as proposed under some options.

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[2] Safe Work Australia June 2022, *Consultation Regulation Impact Statement – Managing the risks of Respirable Crystalline Silica at Work*, section 2.3.1, pg. 23.
[3] Safe Work Australia June 2022, *Consultation Regulation Impact Statement – Managing the risks of Respirable Crystalline Silica at Work*, section 2.4.1, pg. 24.

Clarification of existing requirements is more appropriately achieved using guidance material that can be adapted to the needs of specific industry sectors. Clarification using more prescriptive and 'one size fits all' regulations, as proposed under options 3, 5A and 5B. is not warranted and will be counterproductive.

The focus should be on continuing to raise awareness and change behaviour, in conjunction with clarifying the current requirements of the WHS laws, using guidance that is tailored to the specific needs of construction industry sectors such as:

- the current requirements to avoid uncontrolled processing of silica containing materials,
- the best control measures to prevent exposure of workers to RCS,
- the practical equipment and tools available to capture and collect dust and to protect workers, and
- generally assisting business to implement these measures.

This will improve the safe management of tasks involving products capable of generating RCS.

HIA notes and agrees with the statement at page 7 of the CRIS that Option 2 would be relatively low cost ($6.08 million over 10 years). While the CRIS further states that Option 2, if undertaken in conjunction with one of the regulatory options, would be expected to further reduce workplace RCS exposures, HIA considers that this would be an appropriate option to implement as an adjunct to Option 1 and potentially with a modified form of Option 3 as suggested in this submission.

2.2 OPTION 3

According to the CRIS, Option 3 is a non-regulatory option that involves clarifying the existing requirements of the model WHS laws that apply to defined 'high risk silica processes'.

HIA notes that this option will involve amendments to the model WHS Regulations to include a number of new definitions and to prescribe the processes to which current regulatory requirements for air monitoring, health monitoring and SWMS will apply.

The intention of this option is to introduce three new definitions – 'crystalline silica substance', 'crystalline silica process' and 'high risk crystalline silica process'.

Under this option a 'crystalline silica process' would be defined as:

- use of power tools and machinery that generates crystalline silica dust
- use of roadheaders involving material that is a crystalline silica substance
- quarrying involving material that is a crystalline silica substance
- mechanical screening involving material that is a crystalline silica substance
- tunnelling involving material that is a crystalline silica substance, or
- a process that exposes or is reasonably likely to expose a person to crystalline silica dust during manufacture or handling of a crystalline silica substance.

The term ‘high risk crystalline silica processes’ would be defined as crystalline silica processes where:

- it is reasonably likely that workplace exposure standards will be exceeded, or
- the PCBU is not certain on reasonable grounds that workplace exposure standards will be exceeded, or
- there is a health risk from exposure to silica dust.

HIA does not support adding the proposed new definitions on the basis that the proposed definitions:

- Will make the WHS regulations unnecessarily complex and prescriptive.
- Create significant regulatory burden for many tasks undertaken in construction.
- Are a convoluted and unnecessary means of defining the types of work and the provisions from the existing regulations that will apply.
- Create a blanket, or one size fits all, provision that will deem processes to be ‘high risk’, regardless of actual risk and regardless of whether or not the workplace exposure standard is unlikely to be exceeded.

Option 3 will introduce regulatory changes and burdens

The requirement for a SWMS to be produced when undertaking construction work that falls under the proposed definition of a high risk crystalline silica process is not a current requirement of the WHS laws.

The current criteria for a SWMS is that the construction work is carried out in an area that may have a contaminated or flammable atmosphere. However, under Option 3 even if the process is controlled to not release any dust, it may meet one of the three proposed criteria of a high risk crystalline silica process. This will create a regulatory requirement that does not currently exist.

Similarly, the requirement to undertake health monitoring of workers, which currently applies if a worker is carrying out ongoing work with crystalline silica and there is a significant risk to the worker's health, will instead be subject to the different criteria of the proposed definition of ‘high risk crystalline silica process’.

If the work isn’t ‘ongoing’ health monitoring is not currently required. If the process is adequately controlled it could not be said that the process is likely to be a ‘significant risk’ to the workers health so that health monitoring is required.

The current requirement to undertake air monitoring is also subject to different criteria under the model WHS Regulations. Air monitoring is required if there is uncertainty on reasonable grounds whether or not the workplace exposure standard is being exceeded or if air monitoring is necessary to determine whether there is a risk to health.

Once again, it will instead be subject to the different criteria under the proposed definition of ‘high risk crystalline silica process’ by adding the additional element: *it is reasonably likely that the workplace exposure standards will be exceeded.*

The changes proposed under this option will essentially remove what existing WHS legislation rightfully allows PCBUs to do, i.e., to make their own assessment of the risks based on actual work conditions, circumstances and control measures applied in their workplace. Therefore it is clear that this option will fundamentally change how risks are determined and create costs that must be considered in the CRIS.

The proposed definitions under Option 3, if adopted, will also introduce significant regulatory burden by capturing many minor or infrequent tasks or processes that would not pose a high risk of exposure including:

- occasionally using a power tool to drill a hole in a concrete or brick wall,
- cutting bricks,
- cutting roof tiles,
- cutting ceramic wall, floor and decorative tiles,
- cutting autoclaved aerated concrete panels and
- cutting fibro cement.

Such processes may be unlikely to generate RCS levels in excess of the WES, but if a PCBU is not certain of it, the process will be deemed to be a 'high risk crystalline silica process' to which the above obligations apply.

Option 3 is proposed in order to clarify existing regulatory requirements. However, this appears to ignore a problem identified in the CRIS that the financial costs of complying with the current regulations, specifically for health monitoring and air monitoring, "may be driving the low levels of compliance seen amongst PCBUs, particularly for small and micro businesses" and quotes evidence that the cost of air monitoring, being as high as $10,000 to $20,000 can be a significant barrier[4].

If compliance with these requirements is such a high barrier for small and micro businesses, it provides further evidence that imposing a one size fits all solution of the highest order proposed by Option 3 is highly questionable.

Imposing the requirements of this option on such a wide a wide range of silica processes would be such a significant financial burden for small and micro businesses that it would be counterproductive and could well lead to more adverse exposures.

What these businesses need is not more regulatory controls but practical information on how to minimise exposures to RCS without necessarily having to undertake expensive air monitoring and health monitoring.

HIA is not opposed in principle to the option of clarifying existing requirements. However, we are concerned that the option as presented goes beyond that. It will introduce new regulatory requirements that will capture many tasks and processes that can be practically managed onsite and therefore will create an additional regulatory burden.

[4] Safe Work Australia June 2022, *Consultation Regulation Impact Statement – Managing the risks of Respirable Crystalline Silica at Work*, section 2.4.1, pg. 24.

As such, HIA does not support Option 3 as proposed. We would support clarification of existing requirements with additional guidance material for work involving crystalline silica that could be said to carry significant risk if uncontrolled, such as uncontrolled dry cutting of engineered stone and other materials.

This is the most appropriate means of clarifying the requirements of legislation – not by introducing additional regulatory complexity and burden that in fact requires new and additional education and training to changes recently made and that industry is committed to understanding and adopting.

If it is agreed that clarification should be via regulation, HIA considers that imposing a 'high risk' label on crystalline silica work should only be done by a simpler definition that includes additional reference to uncontrolled processes.

This could be achieved by defining the alternative term 'crystalline silica risk work' instead of 'high risk crystalline silica process' to clarify existing requirements. HIA would prefer the following simpler definition:

> ***Crystalline silica risk work*** *means work involving a crystalline silica process where the workplace exposure standard is likely to be exceeded if the work is uncontrolled.*

If the agreed definition is to include the term 'high risk', an alternative suitable definition could be

> ***High risk crystalline silica work*** *means work involving a crystalline silica process where the workplace exposure standard is likely to be exceeded for respirable crystalline silica, and there is a significant risk to health from exposure if the work is uncontrolled.*

Any new regulation should be backed up by industry-specific material that is designed to guide PCBUs on how to determine these matters without introducing any additional regulatory provisions.

This will clarify that PCBUs undertaking 'crystalline silica risk work' must undertake air monitoring and provide and pay for health monitoring for workers, as per model WHS Regulations r50 and 368-378, and that for construction work a SWMS must be prepared in accordance with WHS Regulations 299-303.

2.3 OPTION 4

Option 4 proposes to introduce a national licensing framework for PCBUs working with engineered stone. Option 4 also includes a prohibition on suppliers of engineered stone to supply to a person that requires but does not hold an engineered stone licence, and to keep records of the supply of engineered stone.

This proposal appears to be similar to the licencing scheme that is to commence in Victoria in November this year. However, it is worth noting that, apart from the Victorian scheme, such a scheme does not appear to have been introduced in any other jurisdiction either in Australia or internationally. Therefore its effectiveness is currently unknown.

Given the background to the health effects that have surfaced from exposure to RCS as a result of work with engineered stone there may be some merit in introducing further safeguards in relation to the people involved in the fabrication and installation of engineered stone. However, it is questionable whether the proposed licencing scheme is a proportionate and practical response and whether it will improve safety beyond the improvements already made.

One significant disadvantage, identified in the CRIS, is that this option would place a greater financial burden on small to medium size businesses which form a large portion of the engineered stone industry, and that this may have some negative effects.[5]

If this option is introduced, it is imperative that the definition of engineered stone clearly excludes the products listed as a footnote in the definition of engineered stone in the model code of practice. These are: concrete, concrete products, cement products, fibre cement, bricks, blocks, pavers, autoclaved aerated concrete, roof tiles, wall and floor tiles that are ceramic or porcelain, grout, mortar, render and plasterboard.

A definition that does not recognise these materials as excluded, will capture a broad range other building products that are neither true 'engineered stone' nor have raised the level of concern that engineered stone has in generating RCS. This would have a range of unintended consequences and impacts that HIA believes would far outweigh the benefits.

This will have implications not only on the scope and application of the proposed licencing scheme and who it will apply to, but also for suppliers of engineered stone and who they can and can't sell products to.

Notwithstanding this, HIA considers that additional regulatory changes as set out in Option 4 are not necessary. There are already adequate regulatory health and safety duties and obligations on PCBUs to eliminate or minimise harm from exposure to RCS in workplaces that work with engineered stone and these obligations are being enforced. Any perceived gaps could be filled through the code of practice and non-statutory guidance.

HIA considers that a licencing scheme is unlikely to add more safety or achieve a higher level of compliance at times other than during the process of application and evaluation.

A high level of regulatory control and compliance may be more appropriately achieved through other types of intervention, including assisting businesses further, providing guidance, inspections, enforcement, and using enforceable undertakings when non compliances are detected.

The additional measures noted as still to be implemented under Option 1, namely the model code of practice and prohibition on uncontrolled processing of engineered stone, if effectively enforced, along with the additional awareness and behaviour change measures suggested under Option 2, would supplement the compliance and enforcement framework and lead to more effective prevention of harm from exposure to RCS in HIA's view.

[5] Safe Work Australia June 2022, *Consultation Regulation Impact Statement – Managing the risks of Respirable Crystalline Silica at Work*, section 6.5.4, pg. 49.

2.4 OPTIONS 5A AND 5B

Options 5A and 5B include additional requirements combined with the requirements of Option 3. The additional requirements will be to report all results of air monitoring and health monitoring to the regulator within 30 days of a report being received. In addition, PCBUs will be required to undertake a risk assessment and to develop and implement a silica risk control plan.

Option 5B is equivalent to Option 5A but it would exclude engineered stone.

The CRIS identifies that these options are expected to incur large costs due to additional administration costs for industry and government. In fact, of all the options, options 5A and 5B would result in the largest burdens by far. Option 5B, which is marginally less costly than 5A, is 28 times the cost of Option 2, 1,752 times the cost of Option 3 and 8 times the cost of Option 4.

The benefits of Options 5A and 5B are rather dubious. The CRIS acknowledges that it is not possible to assess effectiveness of each option in monetary terms.

The CRIS presents no evidence to suggest that these additional requirements will improve safety outcomes. The CRIS assumes that the changes will raise awareness and impose greater accountability on PCBUs and that the additional requirements would lead to increased compliance and reduced instances of silicosis. This is guesswork and ignores the possibility that the added obligations may well have the opposite effect by discouraging compliance, as noted in the CRIS, for the air monitoring and health monitoring requirements.

Given that, as identified in the CRIS, the financial costs of complying with the current regulations, for health monitoring and air monitoring are a significant barrier for compliance by PCBUs, particularly for small and micro businesses, it would make no sense to introduce further barriers via additional regulatory burden that will make the situation worse.

HIA considers that Options 5A and 5B are untenable and must be rejected given the absence of evidence of the effectiveness of implementing either option, the significant regulatory burden they would impose and their potential barriers for improved compliance outcomes.

3. ECONOMIC ASSESSMENT

3.1 SUMMARY

HIA has reviewed the Consultation Regulation Impact Statement (CRIS) on Managing the Risks of Respirable Crystalline Silica at Work with respect to the economic assessment undertaken. The CRIS presents 6 options for dealing with Respirable Crystalline Silica (RCS).

As noted above, HIA is not opposed in principle to some of the options put forward in the CRIS, but far more information is required to be more certain of their impacts on industry practice, improved health and safety outcomes and the economy. Some of the options may impose significant net costs on Australia. The CRIS does not present enough information to reach a conclusion.

The discussion above notes the technical information and details that would be required to be more certain. The discussion below notes the information and analysis that would be required to be more certain from an economic perspective.

HIA argues the CRIS does not provide an adequate basis for policy makers to decide which option is the preferred option. HIA's key concerns include:

- The CRIS is not based on cost benefit analysis, as recommended by the Office of Best Practice Regulation (OBPR).
- The CRIS does not specify the baseline, against which the policy options are compared.
- The CRIS appears to miss many significant costs.
- The CRIS does not appear to allow for any behavioural change created by the policy options – this means it misses a significant portion of the costs, and the benefits.
- The CRIS appears to assume the industry already complies with some of the policy options – this should be reflected in the costs and the benefits.
- OBPR guidelines for RIS analysis require that where policy options reduce competition, these policy options must be shown to create net benefits – the CRIS does not do this.

The OBPR is responsible for ensuring that new regulations and policies are subject to high quality analysis. Based on noted guidelines from OBPR, HIA argues the CRIS is lacking information in the following areas.

3.2 THE CRIS IS NOT BASED ON COST BENEFIT ANALYSIS, AS RECOMMENDED BY OBPR

OBPR notes the Australian government is committed to using cost-benefit analysis in RIS analysis.[6]

The key advantages of cost benefit analysis include: (1) it systematically compares the incremental costs and benefits created by policies, based on evidence, and (2) it is transparent, because the analyst is required to document assumptions used.[7] The goal of cost benefit analysis is to lay out all information on estimated net benefits, evidence and assumptions about the policy options, in a way that allows relevant policy makers to reach a conclusion about the preferred option.

[6] OBPR, see: https://obpr.pmc.gov.au/sites/default/files/2021-09/user-guide.pdf, pg. 19
[7] OBPR, see: https://obpr.pmc.gov.au/sites/default/files/2021-09/cost-benefit-analysis.pdf

In contrast, the CRIS for RCS uses "multi-criteria analysis" and "breakeven analysis". The CRIS notes "multi-criteria analysis is used to estimate the additional costs of each option" while the breakeven analysis "assesses the number of silicosis cases that would need to be avoided under each option for the benefits to outweigh the additional costs." [8]

"Multi-criteria analysis" and "break-even analysis" do not add up to cost benefit analysis. The CRIS does not provide a systematic comparison of incremental costs and benefits attributable to the policy options considered. For example, the CRIS notes Option 3 is a "relatively cost-effective measure".[9] It is not clear how the analyst has reached this conclusion. It appears this is an implicit judgement, rather than a derivation from costs and benefits.

3.3 THE CRIS DOES NOT ADEQUATELY SPECIFY THE PROBLEM OR BASELINE.

Cost benefit analysis requires the analyst to compare outcomes if policies are implemented against "the baseline" where policies are not implemented. The correct specification of the problem and the baseline are crucial.

In the context of RCS, the relevant problem for the CRIS is a forecast for the number of future RCS cases that could plausibly be avoided with changes to policy (and not other factors). The CRIS does not provide this.

The baseline for the CRIS is a forecast for the number of future RCS cases, which could be avoided with changes to policy, after the effect of existing policies has been included. The CRIS notes the base case includes policy measures that have yet to be fully implemented.[10] This is a significant concern. If the baseline does not fully include outcomes that are attributable to existing polices, the CRIS is unlikely to accurately measure the benefits and costs that are attributable to the policy options considered.

3.4 THE CRIS APPEARS TO UNDERESTIMATE COSTS

The costs in the CRIS appear to be almost exclusively administrative costs for included businesses and governments. For example, costs include the labour to: "prepare licence applications," "retain records," "develop control plans," "participate in audits," "submit reports," "undertake risk assessments," "plan and design behaviour change initiatives," "roll out awareness/behaviour changes initiatives," etc.

The exception appears to be Option 4, which includes some additional costs to government for monitoring and compliance costs. These costs are not included for Option 5.

HIA argues the options are likely to impose significantly higher costs than what is included. There are four sources of these additional costs:

1. Administrative costs imposed on businesses included in the CRIS are likely to be higher, given the dynamic nature of the industry.

[8] Safe Work Australia June 2022, *Consultation Regulation Impact Statement – Managing the risks of Respirable Crystalline Silica at Work*, pg. 7
[9] Safe Work Australia June 2022, *Consultation Regulation Impact Statement – Managing the risks of Respirable Crystalline Silica at Work*, pg. 7
[10] Safe Work Australia June 2022, *Consultation Regulation Impact Statement – Managing the risks of Respirable Crystalline Silica at Work*, pg. 29

2. The proposed policies will likely impose significant administrative costs on businesses not included in the CRIS.
3. The proposed policies will likely impose more compliance and enforcement costs on government than what is included in the CRIS
4. Significant costs appear to be assumed away
5. The CRIS does not include costs associated with changes in behaviour and practice by industry, which is what creates benefits. These costs tend to be the largest component of costs.

Administrative costs for included businesses are likely to be higher than what is in the CRIS

The assumptions noted in Appendix D of the CRIS imply the costs are based on a static industry, with many costs appearing to be "once-off". In fact, residential construction is dynamic. Administrative costs change as the industry changes.

Business entry and recruitment

The simplest source of dynamism in the industry is new business creation and business exits each year. In 2020/21, new business entries into the construction industry were equivalent to 17.1 per cent of businesses that existed at the start of the year, and business exits were equivalent to 12.8 per cent of businesses that existed at the start of the year.[11]

This means that each year new businesses will enter the industry and will likely incur costs under the regulation, including: "licence application," "licence fee (ongoing)", "engineered stone suppliers – retention of records," "engineered stone control plan," "health monitoring – provision of report to regulators," "compliance and monitoring enforcement," "risk assessment: quarrying, mining, tunnelling, demolition," "risk assessment: construction, manufacturing," "silica risk control plan," "health monitoring report to regulators," etc.

HIA interprets the assumptions noted in Appendix D of the CRIS to imply that some or all these costs are "once-off" costs, applied only to businesses that exist when the new regulations come into effect. HIA argues that it is likely that these costs will continue to be incurred, over multiple years, as new businesses enter the industry.

Even existing businesses will incur new costs as new employees are recruited, as new training will likely be required. This cost should also be included.

The industry evolves, and administration costs will likely be ongoing

The residential building industry is never at stand still, with opportunities, products, costs and consumer preferences continuously evolving. This means business practices and plans must constantly evolve too.

[11] ABS Cat 8165.0 *Counts of Australian Businesses,* Table 1, see: https://www.abs.gov.au/statistics/economy/business-indicators/counts-australian-businesses-including-entries-and-exits/latest-release#data-download

This means that businesses are likely to incur administrative costs on an ongoing basis, with respect to regulation. Even if a business implements a plan to comply this year, it cannot assume that it will continue to comply next year when a new product, material or opportunity emerges.

For example, the stated formulas for certain costs in Appendix D imply these costs are once off. In fact, it is likely these costs will be at least partially re-incurred on an on-going basis, as plans and processes are monitored and updated, in the context of a changing industry. These costs are: "engineered stone suppliers – retention of records," "engineered stone control plan," "health monitoring – provision of report to regulators," "air monitoring – provision of report to regulators," "compliance and monitoring enforcement" [it is not clear if this is annual cost or not because there is no frequency], "risk assessment: quarrying, mining, tunnelling, demolition (year 1 only)" [this cost will likely be incurred with each new opportunity], "risk assessment: construction manufacturing (year 1 only)" [this cost will likely be incurred with each new opportunity], "silica risk control plan," "health monitoring – provision of report to regulators," and "air monitoring - provision of report to regulators", etc.

Businesses not included in the RIS will likely incur significant administrative costs

HIA understands that Option 4 requires suppliers, including wholesalers, retailers, etc., to monitor whether PCBUs have the correct licence. This means these suppliers will likely incur administrative costs under this option. These businesses are not included in the relevant tables in Appendix D. Costs to these businesses should be included in the CRIS.

Option 5A and Option 5B broaden the definition of the processes and materials that are regulated, such that businesses which are not included in the CRIS will likely be impacted.

HIA argues that some percentage of up to a further 130,000 businesses will likely be impacted by these regulations, as set out in the following table. Costs to these businesses should be added to the CRIS.

Number of businesses (excluding Victoria), at June 2021

ANZSIC sub-industry	Size of business				Total
	No employees (e.g. sole trader)	1-19 employees	20-199 employees	200 employees or over	
House construction	19773	17194	329	2	37313
Other residential construction	12602	4898	101	8	17600
Electrical services	14027	18899	554	13	33502
Air conditioning and heating services	2110	3285	150	2	5553
Fire and alarm installation services	1157	1629	94	5	2890
Other building installation services	1945	2202	92	5	4245
Painting and decorating services	9303	5902	81	0	15296
Glazing services	1207	1427	48	0	2677
Landscape construction services	6246	5513	174	3	11943
Total	**68370**	**60949**	**1623**	**38**	**131019**

Source: ABS Cat 8165.0

When the CRIS settles on the sub-industries that include impacted businesses, it will be necessary to estimate the percentage of businesses in these industries that incur costs under the regulation. These percentages should include:

- Businesses that must comply with the new policies.
- Businesses that may not have to comply, but which must monitor the new policy and their own activities to judge whether or not they must comply.

Costs to both types of businesses should be included. Given the broad definition of "high risk silica activities," it is quite plausible that a significant number of businesses will incur costs monitoring the regulation and their own activities, even if they are not forced to incur administrative and compliance costs.

The government will likely incur more compliance and enforcement costs than what is included

For the policies to be successful, positive and active monitoring, compliance and enforcement will be required from government.

Appendix D in the CRIS implies that compliance costs for government have only been included for Option 4. This option includes the cost: "labour to participate in additional scheduled and unscheduled audits."

It is very likely that monitoring and enforcement will extend beyond merely participating in more audits. Enforcement officers will have to evaluate the data they gather from audits. Where problems exist, these officers will have to communicate this to relevant businesses, and presumably undertake further checks to ensure that businesses satisfactorily adjust their processes.

Further, it is likely that all policy options will require some compliance and enforcement activities from government to some extent. Compliance and enforcement are required for the policy options to be successful.

These additional costs to government should be added to the CRIS.

Significant costs are assumed away

The CRIS notes that Options 2 and 3 do not impose costs on industry, while many costs are excluded from Option 4.[12] This assumption requires significant clarification. This clarification may occur if the analyst adopts cost benefit analysis, which would impose a clearer conceptual framework on the CRIS. It seems implausible that a new policy would impose zero cost on industry. The implication of this assumption is discussed further below.

Costs to do not include behaviour change, which is what drives benefits

While reasonable administrative costs are a necessary part of any new policy or regulation, they do not create benefits (in-and-of-themselves). Rather, it is the resulting behavioural change by industry that creates benefits. This behavioural change also creates costs.

[12] Safe Work Australia June 2022, *Consultation Regulation Impact Statement – Managing the risks of Respirable Crystalline Silica at Work*, pg. 42

For a policy maker to understand the net benefits created by a new policy, it is necessary to understand the behavioural change that will result from the policy, and the benefits and costs of this change.

In the context of RCS, a simple example of behavioural change is a business who does not comply, changing its operations to match businesses who do comply. HIA interprets Appendix D and other relevant discussion to imply the CRIS does not include behavioural change by industry, or costs associated with this behavioural change. This is a significant limitation. In the ABCB's Decision RIS on accessible housing, administration and compliance costs were less than 5 per cent of total costs for Option 1 (which was eventually adopted at the Building Ministers Forum).[13] The other costs were the cost of the behavioural change of the industry. This means the CRIS on RCS is likely missing a substantial portion of the costs that the policy options would create.

Put another way: (1) the costs included in the CRIS are likely to be only a small fraction of the costs created, and (2) it is likely that any benefits created by the policies are not attributable to the costs that are included.

3.5 THE CRIS ASSUMES COMPLIANCE – THIS SHOULD BE REFLECTED IN COSTS AND BENEFITS

It appears that one reason why costs are assumed away, and why behavioural change is not included in the CRIS is because the CRIS assumes that businesses already comply with the policies. The CRIS notes that options 2 and 3 impose 'no additional cost to industry' and notes various measures under option 4 create no cost because they are already required.[14]

If businesses already comply with the policy options, this means the policy options do not require any behavioural change. In turn, this means the policy options do not impose any additional costs on businesses, nor do they create any benefits.

The assumptions in the CRIS imply that Options 2 and 3 impose net costs on the Australian community. The assumption that Options 2 and 3 do not require any behavioural change implies the only impact of Options 2 and 3 is to create new administrative costs. This implies these options impose net costs on the community.

To be clear: it is not argued that Options 2 and 3 do not create benefits. Rather, it is argued that the CRIS does not allow the reader to understand what these benefits are, because the benefits are assumed away.

3.5 THE CRIS DOES NOT PROVIDE EVIDENCE THAT SUPPORTS THE CREATION OF BENEFITS

OBPR notes assessment of costs and benefits should 'based on evidence, with data sources and assumptions clearly identified.'[15]

[13] ABCB Decision RIS, see: https://ncc.abcb.gov.au/sites/default/files/resources/2022/Final-decision-RIS-accessible-housing.pdf, pg. [26/398]
[14] Safe Work Australia June 2022, *Consultation Regulation Impact Statement – Managing the risks of Respirable Crystalline Silica at Work*, pg 42
[1515] OBPR *Australian Government Guide to Regulatory Impact Analysis,* see: https://obpr.pmc.gov.au/sites/default/files/2021-06/australian-government-guide-to-regulatory-impact-analysis.pdf, pg. 34

HIA is concerned the CRIS for RCS provides very little direct evidence that supports the proposed policies. The CRIS notes: 'it was not feasible to quantify the benefits of the effectiveness of each of the proposed options to reduce exposures to RCS and reduce silicosis and silica related diseases, in monetary terms. This is because there is insufficient data to estimate the benefits of a reduction in workplace exposure in RCS and a reduction in silicosis and silica related disease for each of the regulatory and non-regulatory options.'[16]

3.6 NEGATIVE COMPETITION IMPACTS REQUIRE MORE TREATMENT

HIA understands a goal of these policies is to impose significant changes on businesses who do not comply with regulation. These changes include the potential cessation of trade and/or significant increases in costs and/or other changes in operations.

Clearly, there is a significant risk that such changes would reduce competition.

OBPR notes: 'if your proposal [a new policy or regulation] is likely to restrict competition, your RIS must demonstrate benefits that outweigh the costs and that no alternative means of achieving the same objective is available. This is required to meet the Commonwealth's commitments under the intergovernmental Competition Principles Agreement, designed to promote competition and established by COAG in 1995.'[17]

While the CRIS acknowledges the risk of reduced competition, HIA is concerned its treatment of this risk is not commensurate with OBPR requirements. In particular, the CRIS does not demonstrate benefits that outweigh the costs of the policies.

[16] Safe Work Australia June 2022, *Consultation Regulation Impact Statement – Managing the risks of Respirable Crystalline Silica at Work*, pg. 41
[17] OBPR *Australian Government Guide to Regulatory Impact Analysis,* see: https://obpr.pmc.gov.au/sites/default/files/2021-06/australian-government-guide-to-regulatory-impact-analysis.pdf, pg. 39