

31st August 2022

Attention to

Director, Occupational Diseases and Hygiene Policy
Safe Work Australia
occhygiene@swa.gov.au



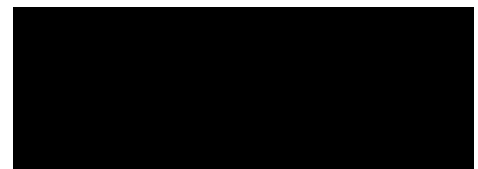
To whom it may concern,

I work for Think Brick Australia (TBA), the Concrete Masonry Association Australia (CMAA), and the Australian Roof Tile Association (ARTA). We represent the clay brick, concrete masonry and roof tile manufacturers of Australia. I am writing to you in response to the Consultation Regulation Impact Statement (CRIS) released by Safe Work Australia (SWA) in June 2022.

TBA, CMAA and ARTA acknowledge the increasing incidence of health associated issues concerning exposure to silica dust. As a result, we support SWA in taking positive steps to protect the health and wellbeing of workers in high-risk environments. As evidence to this, we have supported and communicated the recent action to prohibit the uncontrolled dry cutting of engineered stone and the current national consultation RIS exploring an extension to all silica containing materials.

We recognise and appreciate SWA's strategy of utilising industry feedback to determine the eventual outcome of this proposal. In reviewing the CRIS, TBA and its member associations believe that Option 1 can potentially provide a sufficient base upon which future regulatory decisions may be enacted. We understand that SWA has included Option 1 as a baseline option to demonstrate the incremental impact of regulatory/non-regulatory changes over and above the baseline costs. However, the fact that it imposes no additional costs to industry or the government signifies that SWA should still consider this alternative as a possibility. This is especially the case as the base scenario also includes measures that have yet to be fully implemented. As such, this option has the potential to successfully clarify the existing duties under the model WHS laws, improving compliance and minimising RCS exposure risks.

The efficacy of any regulation parallels the ability of duty holders to understand its underlying requirements and avenues of compliance. The initial steps of any industry-wide initiative should comprise of the education of all relevant stakeholders to ensure the policy produces its desired result. Option 2 readily achieves this by implementing national awareness and



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behaviour change initiatives which will significantly improve compliance with the model WHS laws. As stated within the CRIS, the 'Clean Air. Clean Lungs' national education and awareness campaign was previously successful in increasing audience awareness concerning occupational lung diseases. Correspondingly, SWA should focus on educating PCBU's to ensure a thorough understanding of RCS, stimulating self-mobilisation and action.

It is imperative for SWA to attempt to elucidate the requirements of the model WHS laws to ensure that the risks associated with RCS can be effectively managed by relevant duty holders. At present, preliminary consultations carried out by SWA has indicated a severe lack of awareness concerning the risks associated with RCS, highlighting ambiguity in the current pathways of WHS conformity. As such, the implementation of Option 2 should be prioritised based on SWA consultations where it was determined that additional national awareness and behaviour change initiatives would improve the overall understanding of and compliance with WHS duties, ultimately reducing RCS exposure. Option 2 will directly address the prevailing complication wherein the requirements of the model WHS laws are difficult to understand for those without regulatory expertise. In doing so, this option would directly address the lack of understanding of silica related risks and clarify current regulatory requirements, consequently improving policy compliance rates.

Recognising the need to increase national awareness, SWA has also proposed Option 3 which specifically strives to clarify the existing requirements within the model WHS laws. In particular, the option aims to consolidate and clarify the regulation covering high-risk silica processes. While this seems promising in facilitating improved awareness of the risks of RCS and its associated controls, there are growing concerns regarding the potential impacts to industry. SWA has evidently stated that this option would present no additional regulatory burden to industry and as such, poses no additional costs of compliance compared with the base case. However, the introduction of the accompanying amended definitions will definitely create a regulatory burden in terms of changed behaviour. The enactment of Option 3 would subsequently require duty holders to produce a Safe Work Method Statement (SWMS) where the work involves high risk construction work. The problem with this obligation is not necessarily the SWMS itself, but the vagueness of when it must be produced. A PCBU will likely be unable to determine on reasonable grounds that the Workplace Expose Standard (WES) has been exceeded, and as such, there will be uncertainty in its situational necessity. This is especially the case for PCBU's conducting work of a minor nature where it becomes unreasonable to impose SWMS requirements. This would greatly hinder the execution of

simple tasks such as minor drilling and bracket installation works, hence creating an inadvertent regulatory burden.

Further to this, as per Option 3, PCBU's must undertake air and health monitoring when working with a high-risk crystalline silica process. Contrary to statements made by SWA, this requirement will definitely place a regulatory burden on the industry. It becomes excessive and unreasonable to expect small scale businesses to pay for regular health monitoring for workers and provide information to a registered medical practitioner. These requirements inflict unanticipated monetary costs which are not properly encapsulated by the estimated Net Present Cost (NPV) of the option. Additionally, the ambiguity surrounding the classification of a high-risk silica process creates uncertainty in the health monitoring requirements. It is recommended that SWA consider improving definition (3) from *Section 4.4* of the CRIS to instead distinctively classify a high-risk silica containing process to ensure that PCBUs understand exactly what it entails. Appropriate control measures should then be determined by the PCBUs, with concessions being made for minor construction works. Regardless, it is recommended that Option 3 be reevaluated based on the fact that any definitional changes will surely present additional regulatory burden.

Many materials used to fabricate products, such as engineered stone benchtops, contain varying levels of crystalline silica. It is important to ensure that any regulation concerning engineered stone are not extended to all silica containing materials. Taking a blanket approach in generating regulations will not accurately represent the differing materials types, each having drastically different silica proportions. This is an extreme over-simplification of the way in which a material's composition correlates to RCS exposure. For example, engineered stone is known to comprise of up to 95% crystalline silica, whereas materials such as concrete and brick contain between 30-40% silica respectively. SWA should acknowledge this difference and differentiate the data collection sources to better represent the potential silica dust exposure based on material type. *Section 2.2.3.1* depicts the CRIS sourcing information from the engineered stone sector to inform their regulatory decisions for other silica containing materials. While this forms a good base for analysing the silica exposure trends, it does not provide a comprehensive assessment of exposures of Australian workers to RCS by individual sectors.

Enacting additional regulations for high-risk crystalline processes in accordance with Options 5a and 5b currently seem excessive and infeasible. Both options would include the additional

regulation of processes involving all materials meeting the definition of a crystalline silica substance. This option is consistent with Option 3, however, it includes additional duties that PCBU's will find difficult to adhere to. For example, in addition to the clarification of the existing requirements in the model WHS Regulations for regular health monitoring (Option 3), under Option 5, PCBU's would be required to provide all results of health monitoring to the WHS regulator within 30 days of receiving reports. This is disproportionate to the actual level of risk and as such becomes infeasible for many duty holders. Additionally, Options 5a and 5b are still quite vague in the sense that they do not offer information regarding minimum control measure requirements. Instead, SWA states that a silica risk control plan is required for high-risk crystalline silica work, with no mention of whether controlled dry cutting processes are affected. It is recommended that SWA provide greater clarity in the requirements of the Options, ensuring that PCBU's attain greater compliance in the long term.

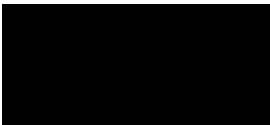
Notably, the Australian Chamber of Commerce and Industry (ACCI) have concluded that the assumptions and methodologies used to estimate the total cost incurred to industry and government as being misleading. For example, the CRIS states that "the base case has been included as a baseline option to demonstrate the incremental impact of regulatory/non-regulatory changes ... there would be no additional costs to industry or government under the base case". This statement forms a false perception of the base case scenario as it includes actions/initiatives that have been agreed by jurisdictions, but which have not yet been implemented such as the dry cutting prohibition. The associated new regulations will induce costs to both industry and government. Furthermore, as per Option 3, the costs of air monitoring can be a barrier for some PCBU's to engage an expert to undertake the air monitoring. At the 2019 NSW Standing Committee on Law and Justice 2019 Review of the Dust Diseases Scheme, SafeWork NSW noted that the majority of the cost comes from hiring an occupational hygienist to undertake the monitoring, estimating that "... regular air monitoring can take some businesses one to two weeks. In terms of the cost, it can be \$10,000 to \$20,000 per experience". As such, the proposed options do not consider these additional monetary costs and hence the current NPV calculations seem to be imprecise.

It is necessary for SWA to facilitate the mitigation of RCS exposure to improve the general health and well being of workers. To effectively achieve this objective, the existing model WHS laws must be clarified to ensure that PCBU's understand its requirements, stimulating greater compliance. In addition to a lack of awareness of the requirements of the model WHS laws, the true financial burden of complying with the current regulations have not been

properly considered. As such, SWA should consider first implementing national awareness and behaviour change initiatives before delving into any other regulatory changes and amendments. Consequently, SWA will be able to address the current inadequate level of compliance and further promote positive action from duty holders.

We appreciate your consideration on this matter.

Kind regards,



Jack Gill

Engineering Team Lead

Think Brick Australia, Concrete Masonry Association of Australia, Australian Roofing Tile Association

