SUBMISSION

Consultation Regulation Impact Statement:

Managing the risks of respirable crystalline silica at work

Instructions

To complete this online submission:

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- Use the saved version to enter your responses under each question below. These questions are from the Consultation Regulation Impact Statement on managing the risks of respirable crystalline silica at work.
- Once you have completed your submission, save it and upload it using the upload your submission link on the Engage submission form.

Submissions will be accepted until **11.59 pm on 15 August 2022.**

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1. Name or organisation

Master Builders Australia ('Master Builders')

2. Email used to log into Engage

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Questionnaire

(Consultation RIS questions)

Statement of the problem (Chapter 2)

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 rightly identifies that further work needs to be undertaken to address rates of silicosis amongst engineered stone and stonemasonry workers. This would also reflect the findings of The National Dust Disease Taskforce ('NDDT').

The CRIS paper, however, makes a broad leap in assuming that the problem identified is as acute in ***all*** sectors of the building and construction industry.

In the absence of any contemporary research that identifies actual exposure levels in a wide range of construction occupations, Master Builders does not support the proposition that workers in a ***broad*** range of industries are at high risk of developing silicosis and silica related diseases.

In its submission to the NDDT, Master Builders supported the implementation of measures that curb the incidence of accelerated silicosis in Australia, however, identified that there are distinct differences in exposure risks between those working in the engineered stone sector as opposed to general construction.

The most current public silica exposure data, being the Australian Work Exposures Study,[1] was limited in scope and based on sampling that dates back to 2012. A number of organisations

[1] *The Australian Work Exposures Study: Prevalence of Occupational Exposure to Respirable Crystalline Silica - 2016*

such as the Lung Foundation have also observed that a complete, up-to-date understanding the types of industries exposing workers to harmful levels of silica dust is significantly lacking.

Master Builders has long advocated for governments to provide funding for industry to undertake exposure level monitoring of workers involved in on-site construction in order to establish accurate risk matrices. This would assist in the development of targeted regulatory settings to tackle Respirable Crystalline Silica ('RCS') hazards where they are at their highest.

Despite our repeated calls in recent years for governments to prioritise industry-wide testing of on-site construction workers, no such research has been undertaken to date. This leaves a significant deficit in the availability of contemporary data available on actual RCS exposure levels and, therefore, in the assumptions made throughout the CRIS more broadly with respect to occupations other than stonemasons and engineered stone workers.

This gap in comprehensive exposure data is concerning given that the Options proposed in the CRIS would have far reaching implications across the sector.

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

Following on from our response to the previous question, and due to the lack of contemporary data available, Australian WHS Regulators have had to rely largely on overseas research when developing guidance materials on how to manage silica-related hazards.

For example, in partnership with industry stakeholders including MBA ACT, Worksafe ACT recently published a comprehensive guidance note on managing silica dust on construction sites.[2] The materials were developed with reference to research from the US[3] and UK and included a risk matrix for certain tasks and trades to provide pin-point guidance on recognised control measures.

We would reiterate this demonstrates the need for governments, in partnership with industry, to undertake a comprehensive study of RCS exposure levels and recognised control methods across general construction in Australia. Master Builders' members would be willing and able to participate in any such study.

Why is Government action needed? (Chapter 3)

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

Master Builders agrees with the proposition that silica-related diseases are preventable and therefore must be addressed in those industries where there is a high-risk of accelerated silicosis and other occupational lung diseases.

[2] *Worksafe ACT - Managing Silica Dust at Construction Sites*
[3] *See for example United States Department of Labor - Occupational Safety and Health Administration - Resources for the Construction Industry*

The CRIS, however, fails to identify any evidence that would necessitate the broader sweeping regulatory reform proposed, which would have a significant impact on hundreds of thousands construction businesses both large and small, without potentially delivering any tangible improvements to safety.

Further, this section asserts that a range of current initiatives designed to prevent silica-related diseases are unlikely to result in the level of prevention necessary. We would strongly contest this claim. There have been a number of projects, either in development or recently completed, designed to tackle the risks associated with RCS. These include a significant number of comprehensive guidance materials and Codes of Practice, including those published on SWA's website such as:

SWA PUBLICATIONS

- Managing the risks of respirable crystalline silica from engineered stone in the workplace - Model CoP
- Guide to Working with silica and silica containing products

GUIDANCE FROM WORK HEALTH SAFETY QUEENSLAND

- Construction dust: respirable crystalline silica
- Silica – Identifying and managing crystalline silica dust exposure
- Silica – Technical guide to managing exposure in the workplace
- Silica and the lung
- Immediate action required to prevent exposure to silica for engineered stone benchtop workers
- Respirable crystalline silica in the stone benchtop industry
- Silica exposure health risk for engineered stone benchtop workers
- Protecting workers from exposure to respirable crystalline silica
- Managing respirable crystalline silica dust exposure in the stone benchtop industry Code of Practice 2019

We also note that Queensland is also in the final stages of drafting a Code of Practice for managing RCS hazards in general on-site construction.

GUIDANCE FROM SAFEWORK NSW

- Crystalline silica – technical fact sheet

GUIDANCE FROM WORKSAFE VICTORIA

- Stonemasons: Preventing crystalline silica exposure
- Preventing exposure to crystalline silica dust
- Managing exposure to crystalline silica: Engineered stone compliance code

GUIDANCE FROM QUEENSLAND DEPARTMENT OF NATURAL RESOURCES, MINES AND ENERGY

- Guideline for management of respirable crystalline silica in Queensland mineral mines and quarries

GUIDANCE FROM WESTERN AUSTRALIAN DEPARTMENT OF MINES, INDUSTRY, REGULATION AND SAFETY

- Stone benchtop fabrication and installation - Checklist

A number of these documents have only recently been published and therefore it is premature to assert that they are unlikely to result in the level of prevention that is needed.

OTHER SIGNIFICANT PROJECTS

There are also a number of initiatives on foot arising from recommendations made in the NDDT's Final Report,[4] including development of a:

- *National Silicosis Strategy and National Action Plan*
    - Master Builders sits on the Reference Group for both projects, with them likely to reach their conclusion in the latter part of 2022; and the

- *Occupational Disease Monitoring and Evaluation Framework*
    - A stocktake of monitoring and reporting activities is currently being undertaken in order to understand the impact of initiatives related to silicosis, prevention, management and support.
    - The project will be key in identifying what prevention methods at the State/Territory/Commonwealth level are having a significant impact on the prevention of silica-related diseases.

This work is key in that it will provide a comprehensive overview of prevention initiatives. Any findings arising from the project should be considered prior to the enactment of any regulatory changes with respect to the management of the hazards associated with RCS.

EVIDENCE URGENTLY REQUIRED PRIOR TO FURTHER GOVERNMENT ACTION

Before deviating from the current regulatory framework, it has been identified that governments should first establish:

- An understanding of the differences in regulatory compliance activities across the jurisdictions;
- What is the most effective control measures when processing silica containing materials (e.g. on-tool dust extraction, water suppression, ventilation, RPE);
- The impact of the concentration of exposure versus intensity, e.g. the effect of ambient exposure, impact of exposure during longer shifts, and of specific tasks;
- What are the actual levels of silica in the various silica-containing materials identified within the CRIS;
- Verification of the Workplace Exposure Standard for RCS of less than 0.05mg/m3, and its evidence-based impact on workers' risk exposure; and

[4] *National Dust Disease Taskforce Final Report to Minister for Health and Aged Care - June 2021*

- Any additional strategies for improving dust control measures with a few to maintaining safe work practices.

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

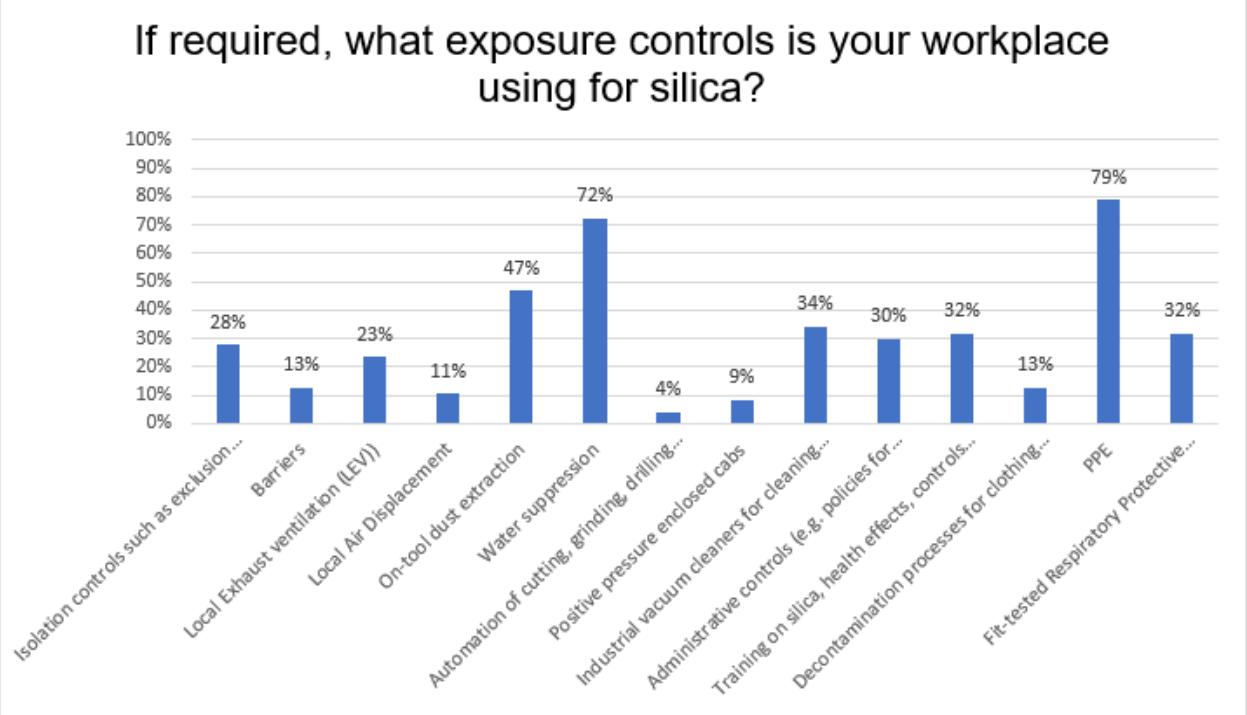
Master Builders supports the Government's primary objective, which is to reduce the incidence of workplace exposure to RCS and the number of cases of silicosis and silica-related diseases.

We acknowledge the need for businesses to continue to implement higher order controls for those working with materials with high proportions of RCS (i.e. engineered stone workers and stone masons). The CRIS, however, fails to:

- Draw an evidentiary link between higher risk work and the diverse range of occupations and tasks within the broader building and construction sector; and
- Recognise the established control framework businesses already have in place to manage RCS across a range of impacted industries.

A survey conducted by the Australian Chamber of Commerce and Industry ('ACCI') in August this year found that there was the level of understanding of the risks associated amongst businesses in the building and construction industry was very high.

The survey of 86 businesses highlighted that a wide range of controls were currently being utilised (often in combination) to manage silica risks. These included water suppression, on-tool dust extraction, as well as the implementation of silica control management plans/policies and training. These results are summarised in the following table:



As a point of clarification, Master Builders **would not support regulatory options that mandate the use of water suppression** as the *primary* control method for managing RCS, as for example currently proposed for the broader construction industry in the ACT.[5]

It was noted amongst respondents to the survey that water suppression would be impracticable or create additional hazards including, but not limited to, circumstances when:

- There are electrical hazards already present in the area of work;
- The introduction of water would impact groundwork and the safe operation of plant;
- Working in and around established buildings or undertaking heritage remediation work;
- Making small cuts using a grinder which would create additional hazards if water is introduced;
- The use of water would have an environmental impact by creating significant amounts of run-off, mould or is not sustainable in times of drought.

In terms of the broader key survey findings:

- The greatest number of respondents (i.e. those affected by the foreshadowed changes) were micro businesses.
- Virtually all respondents were aware of the impact silica can have on your health.
- The majority of businesses who took part were confident in their ability to identify silica containing materials which could be deemed to be high risk.
- Guidance on the risks of working with silica-containing materials was obtained from a variety of Commonwealth, State/Territory sources, with the majority aware of the existing SWA documentation.
- The most commonly used silica containing materials cited were bricks, blocks, pavers, cement products, concrete fibre cement, mortar and render.
- The implementation of leading control mechanisms are the most effective way to prevent silica-related diseases and should remain the focus when managing the hazards associated with RCS.
- There have been significant developments in technologies around dust suppression/extraction, ventilation which have been embraced widely across the sector.
- Amongst those required to undertake air monitoring on site, accessibility and cost of engaging an occupational hygienist was a significant inhibitor.
- The cost of undertaking air monitoring ranges between $4000 - $15,000 (with an average of 60 – 80 samples) per site.

What policy options are being considered? (Chapter 4)

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

Master Builders has had the opportunity to review the submissions of ACCI and supports those submissions in response to the options proposed in the CRIS, as well as with respect to the associated cost and impact analyses.

[5] *Work Health and Safety Amendment Regulation 2022 (No 1)*

In summary our response to the Options proposed within the CRIS can be summarised as follows:

Option 1: Base Case (ref. paragraph 2.2 of ACCI submission)

Master Builders does not support Option 1 as the 'base case'.

We propose that Option 1 should be split into Option 1a and 1 b whereby option 1a articulates the true base case of only existing duties and fully implemented activities and option 1b covers those regulatory changes or activities that have been agreed but not yet implemented.

1A = Existing regulatory requirements and initiatives under model WHS legislation.

1B = Regulatory changes and initiatives that are underway but not yet implemented fully e.g., implementation by jurisdictions of the model engineered stone code, amendments to the model regulations prohibiting the uncontrolled processing of engineered stone and implementation of the model silica containing materials guide by jurisdictions.

Option 2: National awareness and behaviour change initiatives to minimise the risks of RCS exposure (ref. paragraph 2.3 ACCI submission)

Master Builders supports Option 2.

National awareness and behavior change initiatives targeted to workers, PCBUs and other duty holders in the construction, manufacturing, demolition tunnelling, quarrying, and mining industries.

Option 3: Clarifying the existing requirements of the model WHS laws for high-risk silica processes (ref. paragraph 2.4 ACCI submission)

Master Builders does not support Option 3 as proposed.

Option 3 would incur additional industry costs and these must be calculated in an updated cost benefit analysis.

We propose an alternative Option 3 that would meet the intent of only clarifying existing obligations and, in the event that a new definition for high-risk silica work is supported by the majority of stakeholders we provide alternative drafting**.**

Option 4: Implementation of a national licensing framework for PCBUs working with engineered stone (ref. paragraph 2.6 ACCI submission)

Master Builders does not support Option 4.

We do not believe that the benefits would be achieved as described nor that they would outweigh the significant costs, practical barriers and regulatory burden this option as drafted would have on industry**.**

Option 5a and 5b (ref. paragraph 2.5 ACCI submission)

Master Builders does not support Option 5a or 5b.

The focus should be on the adoption of known controls by the industry, rather than documentation of control statements. The development of targeted guidance material that outlines the known risk controls for specific types of work involving crystalline silica is recommended.

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

We refer to the section in response to question 3.1 above with respect to evidence urgently required prior to further government action and Section 3 of ACCI submission.

What is the likely impact of each option? (Chapter 6)

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

Refer to Section 4 of ACCI 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.

Refer to Section 4 of ACCI submission.

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.

Refer to Section 4 of ACCI submission.

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.

Refer to Section 4 of ACCI submission.

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

No. It has been identified that more comprehensive research on the incidence and prevalence of lung disease related to silica exposure and level of impairment is necessary.

Discussion of options (Chapter 7)

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

Refer to Section 2 of ACCI submission

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

Refer to Section 2 of ACCI submission.

Other comment

Do you have anything further you would like to add as part of this process?

The CRIS in many respects fails to recognise the existing guidance, policies, procedures and controls already in place across the industry with respect to managing the risks associated with working with RCS.

Notwithstanding, Master Builders supports a coordinated approach to the elimination of new cases of silicosis and significant reduction in the incidence of occupational respiratory diseases in Australia.

The steady diversion, however, away from the model WHS framework by the States/Territories is increasingly leading to confusion, complexity and compromising safety outcomes.

Prior to any further reform, there needs to be a greater commitment by WHS Regulators across the country to taking a consistent approach to education and enforcement under the existing WHS framework so that businesses can clearly understand their obligations and most appropriately mitigate against silica-related risks.

Any measures arising from the CRIS process should be focused squarely on leading indicators with an emphasis on preventative actions and controls that are practicable to implement, rather than enhanced regulatory regimes that do not appropriately address the risks associated with RCS.

We reiterate that SWA's focus should be on identifying which occupations are at highest risk, understanding what the best practice controls are and how to communicate/educate the industry about how to control those risks. Master Builders would welcome the opportunity to assist SWA in this regard.

Further, the Silica Awareness Training National Unit of Competency which was developed by the Construction Industry Reference Committee, and disappointingly not endorsed by the Skills Ministers, should be reconsidered as a matter of urgency.

Governments should resist the desire to address safety issues in the absence of proper evidence, research and industry consultation. This ever-increasing practice is ultimately leading to impracticalities in implementation (e.g. mandating regulatory controls that increase hazards and/or are out of touch with contemporary work practices), creating confusion across the industry and ultimately leading to poorer safety outcomes.