



Submission

Consultation Paper: Prohibition on the use of engineered stone

The Department of Employment and Workplace Relations (the department) welcomes the opportunity to provide a submission to the *Consultation Paper: Prohibition on the use of engineered stone*.

Occupational lung diseases are a national priority condition under the Australian Work Health and Safety Strategy 2023 – 2033. Despite known methods for preventing the disease, and existing requirements for managing risks under Work Health and Safety (WHS) laws, there has been a significant increase in workers diagnosed with silicosis. This presents an urgent case for intervention to ensure workers are not exposed to harmful levels of respirable crystalline silica in their workplace. In particular, the department considers that the significant rates of silicosis in workers in industries associated with engineered stone warrants a strong reform response and focus.

The department has supported Safe Work Australia's implementation of an Occupational Lung Diseases Work Plan established in 2018, which has delivered a range of measures including:

- halving the workplace exposure limit (WEL) for respirable crystalline silica from a time-weighted average (TWA) over 8 hours of 0.1 milligrams per cubic metre (mg/m^3) to 0.05 mg/m^3 , which is now in effect in all jurisdictions. The department will continue to work with SWA Members around measurability of silica dust at lower levels;
- publishing the model Code of Practice: Managing the risks of respirable crystalline silica from engineered stone in the workplace, which has been implemented in the Commonwealth jurisdiction;
- updating national guide on working with silica and silica-containing products; and
- progressing amendments to the model WHS Regulations to clarify the prohibition of uncontrolled dry cutting of engineered stone.

On 28 February 2023, WHS Ministers affirmed their shared commitment to preventing worker exposure to respirable crystalline silica and endorsed a coordinated national approach to address this issue. Ministers agreed to a range of reforms as a priority, based on recommendations from Safe Work Australia:

- Delivery of national awareness and behaviour change initiatives, in partnership with employers and unions.

- Stronger regulation of high-risk crystalline silica processes for all materials (including engineered stone) across all industries. This includes additional training requirements; reporting workplace exposure standard exceedances to the relevant regulator; and scoping model Codes of Practice for at-risk industries.
- Further analysis and consultation on a prohibition of the use of engineered stone under the model WHS laws, including consideration of silica content levels and other risk factors and including consideration of a national licensing system for products that are not subject to a ban or legacy products.

WHS Ministers noted that the Commonwealth is exploring a ban on the importation of engineered stone and its effects - this work is being led by the department and is underway.

Agreement from WHS Ministers to these key regulatory and non-regulatory reforms from Safe Work Australia's *Decision Regulatory Impact Statement: Managing the Risks of Respirable Crystalline Silica in the workplace* (Decision RIS),¹ is a critical step in supporting a coordinated national approach across government to better protect workers and their families from the harms of silicosis and other occupational respiratory diseases.

Risk profile in the Commonwealth jurisdiction

The department is responsible for the Commonwealth *Work Health and Safety Act 2011* (WHS Act). The WHS Act applies to the Commonwealth, public authorities and non-Commonwealth licensees. Comcare is the Commonwealth work health and safety (WHS) regulator. The Commonwealth WHS jurisdiction does not include any known duty holders that fabricate, install or process engineered stone. The Commonwealth also does not have any known duty holders within its jurisdiction that manufacture, supply or import engineered stone.

The department will continue to work with Safe Work Australia, across jurisdictions and stakeholders to better protect workers from hazardous exposure to respirable crystalline silica and improve the quality of life of those already impacted and their families.

Prohibition on the use of engineered stone

The department supports strong action to protect workers from the health risks associated with working with engineered stone and will be informed by the additional research and analysis being undertaken by Safe Work Australia.

Upstream duties and import prohibition

Respirable crystalline silica is generally generated during fabrication and installation processes. While the risk from respirable crystalline silica is more limited during other processes in the supply chain, the department supports consideration of what obligations importers, suppliers and manufacturers should have in relation to engineered stone under the model WHS laws, and whether specific prohibitions for these duty holders are required.

The department notes that Chapter 8 (Asbestos) of the model WHS Regulations provides a useful model for the Agency to consider when considering the scope of a prohibition on engineered stone.

¹ Available at <https://www.safeworkaustralia.gov.au/doc/decision-regulation-impact-statement-managing-risks-respirable-crystalline-silica-work>.

Under this model, a PCBU would be prohibited from carrying out, or directing or allowing a worker to carry out, work involving the processing of engineered stone, including manufacture, manipulation, fabrication, or installation. Processing would include using power tools or other mechanical plant to cut, grind, trim, sand, abrasive polish or drill the engineered stone. As noted by WHS Ministers in February, the department is scoping a prohibition on the importation of engineered stone which may complement any prohibitions on use in work health and safety laws. This work is preliminary in nature and it will be informed by SWA's work and WHS Ministers' consideration of a prohibition on the use of engineered stone.

Request for further evidence

Safe Work Australia's consultation paper highlights that there is limited evidence that 40% crystalline silica content represents the threshold between lower and higher risk of exposure to respirable crystalline silica. The department considers that this is an important area of investigation and supports further analysis in relation to how the risk profile of engineered stone changes based on crystalline silica content.

The analysis in Safe Work Australia's Decision RIS outlined impacts to fabricators and installers in switching to alternative products. The department suggests that Safe Work Australia identify any research on alternative substitutable products available or in development as part of its economic impact analysis.

Conclusion

There is urgent need to take action to ensure workers across all industries are not exposed to harmful levels of respirable crystalline silica. We support a co-ordinated national approach to preventing further cases of silica-related diseases amongst Australian workers and in particular, cases of silicosis. The department will continue to promote and facilitate swift joint action to eliminate silicosis in the workplace and assist those already impacted to lead better lives. The department is happy to discuss its submission in further detail.