

**GOVERNMENT RESPONSE**  
to  
**REPORT OF THE LEGISLATIVE COUNCIL STANDING COMMITTEE ON  
LAW AND JUSTICE**

***2021 REVIEW OF THE DUST DISEASES SCHEME***

Recommendation	NSW Government Response
<p><b><u>Recommendation 1:</u></b></p> <p>That the NSW Government actively work toward a health-based workplace exposure standard for respirable crystalline silica of 0.02mg/m<sup>3</sup>, including by advocating for this change at a national level and supporting research that would enable this standard to be effectively measured.</p>	<p><b>Supported in principle.</b></p> <p>In October 2019, the majority of WHS Ministers (including NSW), agreed to reduce the workplace exposure standard (<b>WES</b>) for respirable crystalline silica (<b>RCS</b>) to 0.05mg/m<sup>3</sup>. The revised WES commenced in NSW on 1 July 2020.</p> <p>There remain concerns about the technical capability to measure at 0.02 mg/m<sup>3</sup> and industry's capacity to comply. The ability to measure accurately is important for compliance purposes. SafeWork NSW is part of ongoing national discussions on whether a further reduction in the WES is possible. Researchers at the NSW Government's TestSafe lab have expressed confidence that further research and the growing availability of new sampling and analysis technologies offer a potential pathway for increased sensitivity and a potential further lowering of the exposure standard. The NSW Government is supporting research in this area, including published research by TestSafe and the development by the Centre for WHS of the Air XS real-time RCS detector.</p> <p>SafeWork NSW has also purchased high flow pumps to conduct exposure monitoring, which will contribute to the research for measuring exposure to the lower WES.</p>

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<p><b>Recommendation 2:</b></p> <p>That the NSW Government, in consultation with key stakeholders, implement measures to enhance air quality monitoring and reporting in relation to respirable crystalline silica, to ensure that:</p> <ul style="list-style-type: none"> <li>· there are clear and appropriate standards in place for air monitoring</li> <li>· air monitoring is carried out regularly in workplaces according to relevant standards</li> <li>· the results of air monitoring are recorded appropriately</li> <li>· the results of air monitoring are reported to SafeWork NSW when the workplace exposure standard is exceeded and immediate regulatory action is taken in response.</li> </ul>	<p><b>Supported in principle.</b></p> <p>The <i>Work Health and Safe Regulation 2017</i> requires a person conducting a business or undertaking (PCBU) to ensure that air monitoring is carried out if the person is not certain on reasonable grounds, whether or not the airborne concentration of the substance or mixture at the workplace exceeds the relevant exposure standard, or if monitoring is necessary to determine whether there is a risk to health.</p> <p>The results of air monitoring must be recorded, made readily accessible to persons at the workplace who may be exposed to the airborne substance, and the records kept for thirty years (clause 50).</p> <p>National guidance issued by Safe Work Australia recommends that workplaces that work with silica-containing products carry out air monitoring at least once a year, or if:</p> <ul style="list-style-type: none"> <li>• a worker becomes unwell or if a health monitoring report recommends a review of control measures</li> <li>• if work practices or the types of tools used change</li> <li>• if new control measures are implemented or you change your control measures, e.g. the establishment of designated work areas for tasks that generate dust, the installation of localised engineering controls such as exhaust ventilation or water suppressors and new administrative controls, such as shift rotations and modifying cutting sequences.</li> </ul> <p>The Australian Standard, <i>AS 2985-2009 Workplace Atmospheres: Method for Sampling and Gravimetric Determination of Respirable Dust</i> provides detailed guidance on how exposure</p>

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	<p>monitoring is to be undertaken. This is supported by further technical guidance and training provided by the Australian Institute of Occupational Hygienists, who provide professional certification to members undertaking exposure monitoring.</p> <p>Where appropriate, SafeWork NSW has issued notices to require businesses to conduct air monitoring.</p> <p>The regulation impact assessment process currently being conducted by Safe Work Australia is also considering amendments in relation to air monitoring. The NSW Government will consider those measures further at the conclusion of the process.</p>
<p><b><u>Recommendation 3:</u></b></p> <p>That the Minister for Small Business and Fair Trading advocate at the national level for a mandated, consistent format for product labels and safety data sheets for manufactured stone products.</p>	<p><b>Supported in principle.</b></p> <p>Manufactured stone products do not fall within the definition of a chemical, and therefore businesses are not required to produce a safety data sheet (SDS) or label (as outlined in the <i>NSW Code of Practice: Preparation of safety data sheets for hazardous chemicals</i>). However, manufactured stone suppliers have opted to provide SDS and labels based on their general duty of care under section 19 of the <i>Work Health and Safety Act 2011</i>.</p> <p>SafeWork NSW work proactively with suppliers of manufactured stone when they come across non-compliant labels/SDS. To date all issues have been resolved without the need for compliance action.</p>
<p><b><u>Recommendation 4:</u></b></p>	<p><b>Supported in principle.</b></p>

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<p>That SafeWork NSW, across all industries where licensing requirements for silica exposure operate, consult with relevant unions and professional bodies to develop a package of new measures to increase levels of awareness, training and compliance with work, health and safety requirements.</p>	<p>SafeWork NSW has undertaken significant awareness campaigns on the hazards of respirable crystalline silica since 2018, targeting construction and engineered stone businesses. In 2021, NSW delivered a local version of the national <i>Clean Air. Clear Lungs</i> campaign, created in response to a National Dust Disease Taskforce recommendation for a nationally coordinated awareness and education strategy.</p> <p>A range of task-focused silica safety videos, fact sheets, easy-to-follow visual checklists and other guidance materials have been developed and promoted to businesses, translated into key languages including Mandarin and Arabic. and promoted via community groups and industry associations.</p> <p>SafeWork NSW has contributed to the drafting of four Units of Competency (<b>UoC</b>) for working with materials and products containing silica, coordinated by Artibus Innovation. The units were submitted to the Construction, Plumbing and Services Industry Reference Committee in August 2021. Three of the four Units of Competency have been endorsed by Australian Skills Ministers.</p> <p>In addition to the awareness campaigns undertaken, SafeWork NSW has conducted an extensive program of site visits. As part of the round one visits, SafeWork NSW visited 246</p>

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	<p>manufactured stone (fabrication) sites as at 30 June 2019. A total of 699 notices were issued. This included 656 improvement notices and 43 prohibition notices issued.</p> <p>A second round of visits is currently underway. As at 31 March 2022, 327 visits to manufactured stone (fabrication) sites have been completed. A further 1,116 visits have been conducted in other industries that have high exposure to silica, including tunnelling, domestic and civil construction and foundry work. A total of 413 notices were issued, which include 336 improvement and 77 prohibition notices. Of these, 78 improvement notices and 18 prohibition notices were silica-related.</p> <p>Intensive visits in the construction sector took place from January to March 2022, with 294 site visits during January and February and a further 586 interactions with sub-contractors while on site, to provide silica awareness and education. The visits are supported by a new guidance checklist, poster and promotion via media, advertising and industry stakeholders.</p> <p>Several initiatives are being progressed in parallel at the national level, as part of the implementation of the National Dust Disease Taskforce recommendations. This includes the development of a nationally recognised silica training package.</p>
<p><b><u>Recommendation 5:</u></b> That SafeWork NSW develop and implement a compliance strategy directed toward the elimination of dry cutting in the</p>	<p><b>Supported in principle.</b> The NSW Government introduced a ban on dry cutting of manufactured stone in July 2020.</p>

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<p>manufactured stone industry, incorporating a more rigorous regime of random on-site inspections at sites where manufactured stone is being installed.</p>	<p>Inspectors can issue on the spot fines to businesses for dry-cutting engineered stone products. The dry cutting of silica containing material was already a prohibited practice under the general health and safety duties. This means that inspectors are also able to issue prohibition notices.</p> <p>In accordance with the <i>SafeWork NSW's Hazardous Chemicals Strategy (2017-2022)</i> and the <i>NSW Dust Strategy (2020-2022)</i>, SafeWork NSW visited all identifiable manufactured stone (fabrication) sites in NSW by 30 June 2019, as part of round one visits.</p> <p>The second round of visits is currently underway. As at 31 March 2022, 327 visits had been completed. Only two on-the-spot fines have been issued for uncontrolled dry cutting since introduction on 1 July 2020. SafeWork NSW considers that this reflects improvements in industry safety standards.</p> <p>SafeWork NSW is currently undertaking exposure monitoring at manufactured stone workplaces, where further information may be obtained by inspectors to assist with visiting these sites to review work practices.</p>
<p><b>Recommendation 6:</b> That SafeWork NSW investigate the feasibility of implementing an organisational goal of increasing the number of Health and Safety Representatives elected in the manufactured stone industry.</p>	<p><b>Not supported.</b> The <i>Work Health and Safety Act (WHS Act)</i> places obligations on duty holders in relation to consultation, cooperation and coordination on work health and safety matters (Part 5 of the <i>WHS Act</i>). Consultation is an essential part of managing WHS risks. The <i>WHS Act</i> gives businesses and workers flexibility to determine which methods of consultation are most effective in their workplace.</p>

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	<p>Early consultation and identification of risks can allow for more options to eliminate or minimise risks and reduce associated costs. Consultation with workers can be done in various ways. It does not need to be a formal process and can be as simple as talking to them regularly and considering their views when making health and safety decisions. One of the ways consultations can be undertaken is through health and safety representations (HSRs). However, the WHS Act does not require this consultation mechanism unless requested to by a worker (section 50 of the WHS Act).</p> <p>SafeWork NSW is not in a position to enforce the election of HSRs. Many workplaces within this industry are small businesses with between one and five workers, where direct consultation with the small number of workers may be more efficient than consultation via a representative.</p>
<p><b><u>Recommendation 7:</u></b></p> <p>That the NSW Government, as a matter of urgency, take necessary steps to establish a licensing scheme for businesses working with manufactured stone in New South Wales that:</p> <ul style="list-style-type: none"> <li>· includes a publicly available database of licence holders</li> <li>· takes into consideration the feasibility of including provisions for silica control plans that require registration with the regulator of</li> </ul>	<p><b>Noted.</b></p> <p>A regulation impact assessment of a variety of regulatory and non-regulatory options, including a licensing scheme for working with manufactured stone is currently being conducted by Safe Work Australia. A Consultation Regulation Impact Statement (CRIS) was released on 30 June 2022 with a call for public comment. This nation-wide assessment will enable a rigorous analysis of the costs and benefits of implementing a licensing scheme. NSW awaits the outcome of this process and notes that other regulatory and non-regulatory options to address the hazards of respirable crystalline silica are also under assessment.</p>

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all workers operating within the scope of the control plan including any subcontractors.	
<p><b><u>Recommendation 8:</u></b></p> <p>That the Minister for Small Business and Fair Trading indicate the NSW Government's support for a ban on manufactured stone should the industry not demonstrate sufficient improvement by July 2024, in accordance with the National Dust Disease Taskforce's recommendation.</p>	<p><b>Noted.</b></p> <p>The All of Governments' response to the Final Report of the National Dust Disease Taskforce noted the recommendation relating to a ban (recommendation 1d).</p> <p>The response noted that substantial work has been undertaken by Commonwealth and state and territory governments and Safe Work Australia to address the increase in silicosis cases amongst engineered stone workers. It stated that a ban will only be considered if there are no measurable improvements in compliance and/or preventative measures prove to be ineffective. Consideration of a ban will require cooperation by of State, Territory and Commonwealth Governments.</p> <p>The All of Governments' response also stated that any decision to ban engineered stone products will be dependent on an objective assessment of the requirements established under the framework, noting that more time than that proposed by the Taskforce may be required to make this assessment.</p>
<p><b><u>Recommendation 9:</u></b></p> <p>That the NSW Government review the approach taken to the medical screening and assessment of workers who are</p>	<p><b>Supported in part.</b></p> <p>icare is committed to exploring ways to increase the accessibility of screening services for workers exposed to dust in the workplace. Working with all stakeholders, the aim is to provide both the screening services and the encouragement to use them.</p>



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<p>exposed to respirable crystalline silica, to ensure that:</p> <ul style="list-style-type: none"> <li>· all workers, former, current and future, exposed to respirable crystalline silica in the manufactured stone industry have been screened using high resolution CT scanning sensitive enough to detect silicosis</li> <li>· screening services are supportive, accessible and free to workers, and offer a streamlined pathway to treatment and compensation where this is applicable</li> <li>· there are processes in place to identify and reach all workers exposed to respirable crystalline silica and to follow up on screening or treatment drop-out</li> <li>· data is collected and reported publicly on the number of individual workers screened, the types of scans performed, and location of silica-related cases.</li> </ul>	
<p><b><u>Recommendation 10:</u></b> That the NSW Government review and improve health monitoring requirements for</p>	<p><b>Supported in part.</b> <b>Development of national guidance</b></p>

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<p>workers exposed to respirable crystalline silica, by:</p> <ul style="list-style-type: none"> <li>· advocating for and supporting the development of national guidance to identify people at risk from respirable crystalline silica exposure and improve the quality, frequency and coverage of health screening assessments for current and former workers, and</li> <li>· amending the Work Health and Safety Regulation 2017 to provide certainty on the requirements, which could include amending Schedule 14 to stipulate that high resolution CT scan is the primary method of screening for workers exposed to respirable crystalline silica.</li> </ul>	<p>Safe Work Australia has developed a published guidance on Health Monitoring for Crystalline Silica, including a guide specifically for registered medical practitioners.</p> <p>In the All of Governments' response to the final report of the National Dust Disease Taskforce, the Commonwealth Government confirmed that funding would be allocated to develop a training package to support radiologists and other health professionals to continue to build their skills and expertise in relation to chest imaging to improve accuracy in diagnosis.</p> <p>The All of Governments' response also noted that a grant of \$1.4 million has been awarded to the Lung Foundation Australia to develop and deliver education and training resources for health professionals to improve diagnosis, management and care of people with lung conditions in Australia. This includes developing a national, evidence-based Lung Health Competency and Education Framework for Primary Health Care Professionals.</p> <p>icare will continue to provide a free screening service to all workers at risk from respirable crystalline silica exposure (manufactured stone). icare is also a member of the National Silicosis Prevention Strategy (NSPS) Reference Group.</p> <p><b>Amendment to WHS Regulation</b></p> <p>The Work Health and Safety Regulation 2017 is based on national model legislation. The regulation impact assessment (RIA) process being led by Safe Work Australia is considering a number of regulatory and non-regulatory options to manage the risks of respirable crystalline</p>

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	<p>silica (RCS) at work. These include changes in relation to health monitoring. The Government will consider the outcomes of that process.</p> <p>The Government notes that replacement of chest X-ray with low dose high resolution computerised tomography (HRCT) in the minimum requirements for health monitoring was considered by Safe Work Australia as part of the RIA. The RIA did not recommend that this option progress, because:</p> <ul style="list-style-type: none"> <li>• the model WHS Regulations already allow for equal or better methods to be used for health monitoring</li> <li>• it would remove the discretion of medical practitioners to determine the most appropriate method for carrying out or supervising health monitoring. Chest X-ray may be preferred where workers have lower levels of exposure to RCS and the risk of radiation exposure outweighs the benefits of HRCT</li> <li>• the risk that the lack of availability of low dose HRCT in rural and regional Australia could delay or decrease health monitoring.</li> </ul> <p>Other options in relation to health monitoring remain under consideration through the RIA process, including the reporting of health monitoring data to regulators.</p>
<p><b><u>Recommendation 11:</u></b> That the NSW Government conduct an independent review into the adequacy of the legal, financial, physical and mental support provided to workers diagnosed with</p>	<p><b>Supported.</b> A review will offer an opportunity to understand and improve the services and supports provided to workers under the Dust Diseases Scheme. An independent review could provide improvements in how icare financially, physically and mentally support this group of workers.</p>

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<p>silicosis, including return to work supports and customer centric case management models, with an intention of expanding the support and care provided to workers.</p>	
<p><b><u>Recommendation 12:</u></b>  That the NSW Government, within this term of Parliament, amend the definition of a 'dust disease' in the <i>Workers Compensation (Dust Diseases) Act 1942</i>, in accordance with the outcomes of the Driscoll review.</p>	<p><b>Supported.</b>  The NSW Government passed the Workers Compensation (Dust Diseases) Amendment (Scheduled Diseases) Regulation 2022 on 10 August 2022. The Regulation expanded the Schedule 1 list of diseases in accordance with recommendations of the Driscoll Review.</p>