

**Submission
No 13**

INQUIRY INTO 2024 REVIEW OF THE DUST DISEASES SCHEME

Organisation: SafeWork NSW
Date Received: 11 October 2024

The Hon Greg Donnelly MLC
Chair
Standing Committee on Law and Justice
Legislative Council
Parliament of NSW
By email: law@parliament.nsw.gov.au

Re: SafeWork NSW submission to the 2024 Review of the Dust Diseases Scheme

Dear Chair

Thank you for the opportunity to make a submission to the 2024 Review of the Dust Diseases Scheme (the Review).

I acknowledge the two key focus areas of the Review and note that SafeWork NSW's submission will focus on the second focus area of other risk areas for silicosis, including but not limited to tunnelling and quarrying.

NSW has seen a dramatic increase in cases of silicosis since 2017, and SafeWork NSW has been focusing on the dangers posed by respirable crystalline silica since this time. Silica continues to be a high priority for SafeWork NSW and the NSW Government with continued reforms being progressed to protect workers from the deadly exposure to respirable silica dust.

To assist with the Review, I have set out the below information to provide the Committee with an update on SafeWork NSW's activities in relation to silicosis prevention since December 2023. Our earlier work is well documented by the Committee in previous reviews of the Dust Diseases Scheme.

Legislative framework

The NSW *Work Health and Safety Act 2011* (WHS Act) and the NSW *Work Health and Safety Regulation 2017* (WHS Regulation) provide a strong preventative framework for managing the risks to workers' health posed by hazardous dusts. The WHS Act and WHS Regulation are supported by Codes of Practice which provide guidance to businesses and workers in relevant industries on how to comply with their WHS obligations. SafeWork NSW monitors and enforces compliance with the protections in the WHS Act and WHS Regulation, including specific protections for certain dusts, including silica and asbestos, and Workplace Exposure Standards for hazardous chemicals.

The WHS Act and WHS Regulation are based on national model legislation and SafeWork NSW continues to work with interjurisdictional colleagues through Safe Work Australia (SWA) on reforms to enhance the existing legislative framework in relation to dust diseases.

National silica reforms

The increase in cases of silicosis across Australia has, and continues to, require a national coordinated response to ensure consistency across jurisdictions.

Prohibition on the use of engineered stone

Following extensive consultation undertaken by SWA and agreement by WHS Ministers at their 13 December 2023 meeting, a decision to ban engineered stone containing at least 1 per cent silica was announced. The ban applies to the supply, manufacture processing and installation of engineered stone benchtops, panels and slabs.

Following the endorsement by WHS Ministers of the engineered stone ban, SWA amended the model WHS Regulations in April 2024. It is up to jurisdictions to adopt these amendments in their regulations to implement these changes.

NSW has since adopted these model provisions. The ban came into effect in NSW on 1 July 2024, with a transition period for contracts entered on or before 31 December 2023, if the work is completed by 31 December 2024.

Under these new regulations, there are circumstances where work on legacy engineered stone is permitted by persons conducting a business or undertaking (PCBU). This work is permitted when the removal, repairs, minor modification or disposal of engineered stone already in place may be required. PCBUs must notify the regulator of this work, and this notification may be relied upon for up to 12 months.

Stronger regulation of high-risk crystalline silica processes for all material across all industries

SWA undertook extensive consultation with its members, and following endorsement from the WHS Ministers, SWA further amended its model WHS Regulations in May 2024. These amendments give effect to the WHS Ministers decision on 28 February 2023 to implement the recommendation made in *Decision Regulation Impact Statement: Managing the risks of crystalline silica at work*, providing for stronger regulation of the processing of materials containing crystalline silica across all industries, particularly in relation to processing that is assessed as high risk.

NSW has adopted the model provisions which came into effect in NSW on 1 September 2024, which require PCBUs who are undertaking high risk crystalline silica processes to:

- Prepare a silica risk control plan
- Ensure workers are appropriately trained
- Report exceedances of the RCS workplace exposure standard, and
- Provide health monitoring.

National Occupational Respiratory Disease Registry (NORDR)

Following extensive consultation, the *National Occupational Respiratory Registry Act 2023* received Royal Assent on 22 November 2023 and came into effect on 22 May 2024.

The NORDR stores data on occupational respiratory diseases in Australia. It will help to reduce, eliminate and improve our understanding of preventable occupational respiratory diseases. The national registry currently only requires mandatory notifications of diagnosed cases of silicosis. It may also accept voluntary notification of other occupational respiratory diseases with a patient's consent.

NSW worked with the Commonwealth in the development of the NORDR, and now sources silicosis diagnosis real time data from the NORDR for use in the NSW Dust Disease Register, and annual Dust Disease Report. Previously, SafeWork NSW received the information from NSW Health via silicosis notifications from medical practitioners. SafeWork NSW will continue to source asbestosis and mesothelioma data from NSW Health.

NSW amended the WHS Regulation to eliminate duplicate reporting requirements for the Secretary of Health to report silicosis cases and deaths to SafeWork NSW. The NSW Ministry of Health has removed the requirement for NSW medical practitioners to notify silicosis to NSW Health. These cases are now captured through the NORDR.

Silica Worker Register

In October 2023, NSW Parliament passed the *Work Health and Safety Amendment Act 2023* which introduced new sections 273A and 273B of the WHS Act. These new sections of the WHS Act enable SafeWork NSW to establish and keep a silica worker register, in accordance with the regulations. Court imposed penalties are also contained in section 273A of the WHS Act.

Regulations are required for the silica worker register to become operational. A draft *Work Health and Safety Amendment (Silica Worker Register) Regulation 2024* was released for public consultation on 4 October 2024 on the NSW Government Have Your Say platform.

SafeWork NSW will carefully consider and assess all feedback received in response to the consultation. This feedback, along with any other relevant information, will inform the further development of the draft regulations regarding the NSW silica worker register. It is expected that the new regulations will be finalised shortly after the consultation period.

Construction projects, including tunnelling

Crystalline silica is a natural mineral found mostly as quartz in sand and sandstone, which are used in building products. Workers can be exposed to silica when excavating or tunnelling through sandstone. As outlined above, from 1 September 2024 new requirements in relation to the processing of crystalline silica substances commenced. These new requirements apply to construction projects where there is processing of crystalline silica substances.

SafeWork NSW's Construction Inspectors undertake both proactive and reactive compliance activities to support best practice management of silica risks across construction projects, not just in tunnelling projects, but across all major projects as well as roads, schools, and hospital construction projects.

Regular proactive tunnel inspections are undertaken to monitor high risk activities and controls including management of RCS. As required, visits and unannounced inspections can occur in tandem with the Hygiene and Toxicology Inspectors. Air monitoring reports for major infrastructure tunnelling sites are readily available on most sites and displayed on site notice boards and can be requested by the regulator at any time.

The recent Silica Safety in Construction compliance program 2023-24 aimed to reduce workers and others exposure to harmful silica dust in workplaces. Findings of this compliance program are available on the [SafeWork NSW website](#).

SafeWork NSW

The NSW Government committed an additional \$2.5 million in the 2024-25 Budget to SafeWork NSW to enforce compliance with the ban on engineered stone and the stronger regulations for working with silica-containing substances which came into effect on 1 September 2024.

The additional funding has led to the formation of two dedicated SafeWork NSW Silica Teams on a temporary basis for 12 months in the 2024-25 financial year: Silica Compliance Team and the Silica Program Team.

These additional resources are being utilised to communicate changes to affected industries, particularly engineered stone, construction, infrastructure, and manufacturing, as well as to develop tools and resources to assist PCBUs in complying with the reforms. The Silica Compliance Team consists of five Inspectors that are working to enforce compliance with the requirements as well as working with the broader SafeWork NSW inspectorate and providing guidance to PCBUs across the state. SafeWork NSW continues to conduct educational, compliance and enforcement activities to ensure PCBUs are fulfilling their WHS duties in accordance with the new laws.

SafeWork NSW will maintain the current compliance and enforcement approach related to observed instances of immediate and high-consequence harms and will continue to take a zero-tolerance approach to workers' lives being placed at risk. In relation to the new provisions in the Silica Amendment, SafeWork NSW will remain focused on capability building and continuously engage with industry to ensure the effectiveness of its approach and regulatory posture.

An overview of recent silica workplace compliance programs is enclosed for your information. Recent statistics can also be found on the [NSW Government's silica dashboard](#).

SafeWork NSW has a range of educational and awareness initiatives including task focused silica safety videos, fact sheets, easy-to-follow visual checklists and other guidance materials to support PCBUs and workers by providing advice on how to comply with their WHS obligations.

SafeWork NSW continues to work with Safe Work Australia and other Australian jurisdictions on a collaborative approach to the regulation of silica, and the development of guidance and educational materials.

I trust this information assists the Committee in conducting the Review.

Sincerely,

Graeme Head AO
Secretary

Enclosed below:

Recent silica workplace compliance programs

SafeWork NSW - Recent Silica Workplace Compliance Programs

Date	Program	Summary
From 21 Aug 2024	Engineered stone ban and transition compliance	The Silica Compliance Team are undertaking compliance and enforcement activities within the Engineered Stone processing sector providing a visible presence, strong deterrence to unsafe practices, and enforcing the transitional arrangements of the engineered stone ban.
From late 2024	High risk silica industries compliance	Compliance and enforcement will commence within higher silica risk industries such as manufacturing (non-engineered stone), construction, and concrete/aggregate recycling. Compliance focus in these additional areas will increase in 2025.
Oct 2023 – Mar 2024	Silica in Construction	<p>State-wide visits were led by construction team inspectors to reduce exposure to silica dust in construction workplaces raise awareness. During these visits, inspectors provided education and enforced compliance.</p> <p>A social media campaign and interactive webinar also raised awareness on the dangers of exposure to silica and control measures in Construction.</p>
From March 2023	Engineered stone fabrication	A third round of Engineered Stone fabrication visits conducted with inspections focussed on businesses that received repeat notices in previous rounds of compliance visits (since 2018), including escalated compliance actions for any repeated non-compliance.
Ongoing	Silica in tunnelling	Regular proactive tunnel inspections occur to monitor high risk activities and controls including management of Respirable Crystalline Silica. As required, visits and unannounced inspections can occur in tandem with the Infrastructure and Hygiene and Toxicology Inspectors.
2022-2023	Air monitoring in Engineered stone fabrication	An air monitoring (exposure) visit program was conducted in 2022-23. Results found that while there had been improvement in controls by many workplaces, silica exposure exceedances were still found in some workplaces.