



Construction, Forestry, Maritime, Mining and  
Energy Union – Construction & General  
Division’s Submission to the National Dust  
Disease Taskforce (Phase 2)

November 2020

**CFMEU**

## Introduction

- The National Dust Disease Taskforce (**NDDT**) was established in 2019 in response to a spike in cases of accelerated silicosis, particularly amongst stonemasons involved in the fabrication and installation of engineered stone benchtops.<sup>1</sup>
- Whilst the NDDT was initially established for the purpose of developing a ‘*national approach for the prevention, early identification, control and management of dust diseases*’<sup>2</sup> generally, its terms of reference were later narrowed to focus on accelerated silicosis related to the engineered stone benchtop industry.
- The first phase of consultation occurred between October and November 2019 and the Construction, Forestry, Maritime, Mining and Energy Union – Construction and General Division (**C&G Division**) filed submissions in response to the NDDT’s request for public comment.
- In January 2020, the NDDT released its Interim Advice to the Minister for Health and made the following **five recommendations**:
  - a. Develop and implement a prevention strategy, with an initial targeted education campaign;
    - i. Focus on educating workers and business
    - ii. Developing guidance on best practice dust control measures
  - b. Develop a national approach to understand the extent of dust disease through data collection and sharing;
    - i. Staged development of a National Dust Disease Register
  - c. Conduct research to better understand accelerated silicosis for the purpose of improving prevention and treatment options;
  - d. Develop guidance on an approach to search for people at risk of silica dust exposure at the workplace
  - e. Develop a strategic national approach to improve Australia’s ability to detect and respond to future emerging occupational diseases.<sup>3</sup>
- The C&G Division maintains that these interim recommendations – which are largely focussed on education and research for the purpose of improving clinical responses to silica-related disease - are grossly inadequate and fail to prevent exposure at a worksite level. Whilst education and gaining an advanced clinical understanding of silica-related diseases is vital – this should not supplant the need for urgent and concrete action being taken to prevent exposure in the workplace.
- The disregard by the NDDT for the need for improved work health and safety measures for workers within the engineered stone benchtop was made abundantly clear when it initially failed to invite the C&G Division – the representatives of stonemasons dying as a consequence of exposure to respirable crystalline silica (**RCS**) – to its phase 2 consultation sessions. Further, there was not a single member of the NDDT in attendance at the consultation session that involved the C&G Division and other unions that represent workers who are regularly exposed to RCS. This is despite the NDDT staff

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<sup>1</sup> The Hon Greg Hunt MP & The Hon Karen Andrews MP, *Media Release: \$5 Million for National Dust Diseases Taskforce* <  
<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F6651492%22>>

<sup>2</sup> *Ibid.*

<sup>3</sup> National Dust Disease Taskforce, *Interim Advice to Minister for Health: December 2019* <  
[https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-nat-dust-disease-taskforce.htm/\\$File/nat-dusk-interim-advice-dec2019.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-nat-dust-disease-taskforce.htm/$File/nat-dusk-interim-advice-dec2019.pdf)>

present at the union consultation session acknowledging that at least one NDDT member had attended ten of the twelve consultation sessions.

- As will be apparent in these submissions, the C&G Division remains committed to improving the work health and safety standards for workers that are exposed to RCS to prevent the onset of silica-related disease. However, improved safety standards alone – whether it be through the adoption of nationally Codes of Practice and regulations - will not suffice. Regulators need to ensure that PCBUs are complying with these standards through robust enforcement activity.
- These issues will be discussed in this paper, which will endeavour to complement and, in some instances, refine the positions outlined in the C&G Division’s initial submissions filed in late 2019. This is following recent developments concerning safety standards within the engineered stone industry, such as the development of a Codes of Practice in Queensland<sup>4</sup> and Compliance Code in Victoria.<sup>5</sup>

## Questions

**1. From a regulatory perspective, what should be considered ‘engineered stone’? Please provide the rationale for your recommendation.**

- a. WorkSafe Victoria describes engineered stone as *“reconstituted, artificial and or manufactured stone, and quartz conglomerate, which is made up of composite stone bound together by resins and contains at least 80% crystalline silica”*<sup>6</sup>
- b. While the C&G Division largely supports this definition, it is hesitant to endorse a definition that suggests that engineered stone containing less than 80% crystalline silica is a safe product and therefore, does not require application of strict work health and safety measures. A potential consequence of adopting such a definition is that manufacturers of engineered stone – that are largely based overseas – could foreseeably formulate a product with a marginally lower silica content and in doing so, PCBUs at all stages of the supply chain could avoid having to comply with the health and safety standards that would otherwise apply.
- c. It has been discussed in numerous academic studies that there is no known safe level of crystalline silica exposure and therefore, interference with any material that contains RCS poses a risk to workers.<sup>7</sup> However, natural stone largely contains vastly lower silica concentrations. For instance:
  - i. Granite - 25% to 60%;
  - ii. Slate – 20% to 40%; and
  - iii. Marble – less than 5%<sup>8</sup>

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<sup>4</sup> Work Health and Safety Queensland, *Managing respirable crystalline silica dust exposure in the stone benchtop industry: Code of Practice 2019*

[https://www.worksafe.qld.gov.au/\\_\\_data/assets/pdf\\_file/0013/32413/managing-respirable-crystalline-silica-dust-exposure-in-the-stone-benchtop-industry-code-of-practice-2019.pdf](https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0013/32413/managing-respirable-crystalline-silica-dust-exposure-in-the-stone-benchtop-industry-code-of-practice-2019.pdf)

<sup>5</sup> WorkSafe Victoria, *Compliance Code: Managing exposure to crystalline silica: Engineered Stone: February 2020* < <https://content.api.worksafe.vic.gov.au/sites/default/files/2020-02/ISBN-Compliance-code-managing-exposure-crystalline-silica-engineered-stone-2020-02.pdf>>

<sup>6</sup> WorkSafe Victoria, *Stonemasons: Preventing crystalline silica exposure: Identifying hazards and controlling the risks of exposure to dust containing crystalline silica in the stonemasonry industry* < <https://www.worksafe.vic.gov.au/stonemasons-preventing-crystalline-silica-exposure>>

<sup>7</sup> See International Program on Chemical Safety. Concise International Chemical Assessment Document 24. Crystalline silica, quartz. 2000 where it was stated *“...it cannot be assumed that there is a threshold (i.e., tolerable concentration) at which exposure to silica would not result in silicosis and/or lung cancer.”*

<sup>8</sup> *Ibid*

- d. These natural stone products are a comparatively safer material to use for stone benchtops and given that granite contains a silica content of up to 60%, the C&G Division maintains that engineered stone should be defined as follows:

*“reconstituted, artificial and or manufactured stone, and quartz conglomerate, which is made up of composite stone bound together by resins and contains at least **60%** crystalline silica*

2. ***Various jurisdictions have already banned uncontrolled dry processing of engineered stone. What other practical measures could be introduced to reduce worker exposure to silica dust?***

- a. As noted earlier in these submissions, the C&G Division is concerned that the interim recommendations almost exclusively on education and research into clinical responses to silica-related diseases which – while important – fail to adequately to consider work, health and safety measures to prevent exposure.
- b. The submissions provided by the C&G Division in the first stage of the consultation process were predominantly focussed on practical measures that should be reflected in regulations and a nationally consistent Codes or Practice. ***Notably, not one of these recommendations were reflected in the interim findings of the NDDT.***
- c. In light of recent safety development in the engineered stone space – such as the development of the Queensland Code of Practice and Victoria Compliance Code – the C&G Division has refined its position as to the measures that *must* be adopted to prevent more workers in the engineered stone benchtop industry contracting silica-related disease. These measures are outlined below.

i. ***Immediate lowering of the workplace exposure standard***

1. In 2019, SafeWork Australia (**SWA**) invited submissions on a review of the Workplace Exposure Standard (**WES**) for RCS, which was at the time 0.1mg/m<sup>3</sup> weighted over an 8-hour period.
2. In its submission, the C&G Division endorsed a lowering of the WES to 0.02mg/m<sup>3</sup> over an 8-hour period and in doing so, referred to the comparatively lower RCS WES standards that applied internationally. For instance:
  - a. British Columbia, Canada – 0.025mg/m<sup>3</sup>;
  - b. Mexico – 0.025mg/m<sup>3</sup>;
  - c. United States – 0.05mg/m<sup>3</sup> (with a requirement for health monitoring once a WES of 0.025mg/m<sup>3</sup>) is exceeded.<sup>9</sup>
3. Notwithstanding these lower international standards, SWA announced that the WES in Australia would only be lowered to 0.05mg/m<sup>3</sup> weighted over an 8-hour period. The C&G Division maintains that this is still unacceptably high.

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<sup>9</sup> Occupational Safety and Health Administration, *OSHA Fact Sheet: OSHA’s Respirable Crystalline Silica Standard for Construction* <<https://www.osha.gov/Publications/OSHA3681.pdf>>

4. Whilst it is important to again acknowledge that there is no known safe level of exposure to RCS and that mere compliance with a WES does not, of itself, adequately mitigate health risks to workers – we reiterate the need to lower the WES to 0.02mg/m<sup>3</sup>. In fact, notwithstanding SWA revising the WES to 0.05mg/m<sup>3</sup>, several regulators have departed from the position of SWA and are actively recommending that PCBUs ensure that the WES does not exceed 0.02mg/m<sup>3</sup>.<sup>10</sup>
5. Further, the NSW Legislative Council report on the 2019 Review of the Dust Diseases Scheme<sup>11</sup> accepted submissions by the C&G Division's NSW Branch that the current WES standard is grossly inadequate and made the following recommendation:
 

*'That the Minister for Better Regulation ensure that steps are taken to further reduce the workplace exposure standard to a time-weighted average of 0.02 mg/m<sup>3</sup> for non-mining industries as soon as possible, to ensure workers are protected from the harmful effects of silica dust'*<sup>12</sup>
6. A lowering of the WES – coupled with stronger requirements with regards to air monitoring that are actively enforced by regulators – will reduce the risk of harm to workers.

ii. Air monitoring

1. Regulation 49 of the *Work Health and Safety Regulations 2011 (WHS Regulations)* states that a PCBU must ensure that “no person at the workplace is exposed to a substance or mixture in an airborne concentration that exceeds the exposure standard for the substance or mixture.”
2. Regulation 50 provides that air monitoring must be carried out where the PCBU “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”.
3. This creates a situation where - should the PCBU fail to implement air monitoring - the PCBU remains unaware whether the WES may have been exceeded. In the absence of such data, the PCBU concludes that air monitoring is not required and consequently, there is no need to doubt the adequacy of existing control measures.
4. We support what is stated in the Queensland Code of Practice as to when air monitoring is required to be undertaken, save for the requirement that

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<sup>10</sup> This includes WorkSafe Vic (see WorkSafe Victoria, *Compliance Code: Managing exposure to crystalline silica: Engineered Stone: February 2020*, pg 16).

<sup>11</sup> NSW Legislative Council: Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme: Silicosis in the manufactured stone industry*, Report 73 – March 2020  
<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2538/Report%2073%20%E2%80%93%202019%20Review%20of%20the%20Dust%20Diseases%20Scheme%20%E2%80%93%2024%20March%202020.pdf>

<sup>12</sup> NSW Legislative Council: Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme: Silicosis in the manufactured stone industry*, Report 73 – March 2020, pg ix  
<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2538/Report%2073%20%E2%80%93%202019%20Review%20of%20the%20Dust%20Diseases%20Scheme%20%E2%80%93%2024%20March%202020.pdf>

air monitoring happen annually after the establishment of a baseline.<sup>13</sup> We are of the view that – as per the Victorian Compliance Code – air monitoring should occur at six monthly intervals and this *should not be limited to fabrication sites*.<sup>14</sup> The Queensland Code of Practice states that business should be required to undertake baseline air monitoring:

- a. Within six months of the Code commencing for existing business or within six months of a new fabrication business starting; and
  - b. At six monthly intervals for the first two years
5. In the Queensland Code of Practice, after the baseline is established, air monitoring is required at least every 12 months or in response to any of the following triggers:
- a. Major changes to work practices, processes, control measures etc since the last assessment, which may reasonably be expected to result in new or additional exposures;
  - b. Health monitoring report indicates an adverse result where previous reports for the worker did not reveal any abnormality;
  - c. A Health and Safety Representative (**HSR**) requires a review of control measures and current air monitoring records are not available;
  - d. Results of consultation with workers indicates that air monitoring is required or where there are concerns about a possible breach of the WES and air monitoring records not available; and
  - e. Where there has been changes to the WES and previous air monitoring results indicate that the new WES would be exceeded.<sup>15</sup>
6. We further support the requirement in the Queensland Code of Practice that an air-sampling plan be developed in consultation with workers and their representatives to ensure that air monitoring takes into account matters such as the need to monitor the range of tasks being performed in a particular workplace.<sup>16</sup> For instance, in the context of a fabrication site a sampling plan would ensure that not only the activities of supervisors and labourers (who are generally exposed to lower levels of RCS) are monitored, but also those exposed to higher levels of RCS (such as saw-operators).
7. Based on the foregoing, regulation 50 should be revised and the air monitoring requirements cited above from the Queensland Code of Practice and Victorian Compliance Code should be reflected in nationally consistent Codes of Practice.
8. We note that SWA recently released for comment a draft model Code of Practice for the Engineered Stone Industry and the air monitoring requirements contained therein fell woefully short of what is required in Queensland and Victoria.

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<sup>13</sup> Work Health and Safety Queensland, *Managing respirable crystalline silica dust exposure in the stone benchtop industry: Code of Practice 2019*, pg 17

<sup>14</sup> WorkSafe Victoria, *Compliance Code: Managing exposure to crystalline silica: Engineered Stone: February 2020*, pg 18.

<sup>15</sup> Work Health and Safety Queensland, *Managing respirable crystalline silica dust exposure in the stone benchtop industry: Code of Practice 2019*, pg 17

<sup>16</sup> *Ibid.*

9. Finally we submit – and this will be further discussed in the section of these submissions that consider licensing schemes – a PCBU must be required to provide the results of air monitoring to regulators (regardless of whether or not the WES has been exceeded). This could be one of the conditions for participants in the engineered stone industry (businesses responsible for manufacture, fabrication, modification and installation) to obtain and retain a license to operate.

iii. Development of nationally consistent WHS regulations

1. *Ban on on-site cutting*

- a. In the event that engineered stone is not banned in the foreseeable future, one means of achieving near-elimination of the hazard for installing the product is a ban on on-site cutting.
- b. In 2019, the C&G Division carried a motion that supported an immediate prohibition on all on-site cutting of engineered stone. We submit that this should also be reflected in WHS regulations.
- c. In practice, a ban on-site cutting could be achieved by PCBUs ensuring that the following work practices are adopted:
  - i. Asking builders to provide a template for pre-cutting the silica-containing materials at the fabrication workshop
  - ii. Ensuring that installation measurements are correct – using lasers may assist in taking precise measurements
  - iii. Asking builders to communicate any installations changes before attending a site (eg changes to location or measurements)
  - iv. When modifications are required, taking the slab back to the fabrication site rather than undertaking the process at the installation site.<sup>17</sup>

2. *Ban on dry-cutting*

- a. An additional regulation needs to be introduced in all jurisdictions that bans the practice of dry-cutting of engineered stone, such as that introduced in Victoria.<sup>18</sup>
- b. A comprehensive study into artificial stone associated silicosis revealed a strong positive correlation between the practice of dry-cutting and the development of silicosis.<sup>19</sup> Accordingly, a regulation consistent with regulation 319C in Victoria must be adopted. This regulation states an employer “*must ensure that a power tool is not used for cutting, grinding or abrasive polishing of engineered stone at a workplace level unless the use is controlled*”.

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<sup>17</sup> These measures are recommended by WorkSafe Victoria guidance material. See *Stonemasons: Preventing crystalline silica exposure* < <https://www.worksafe.vic.gov.au/stonemasons-preventing-crystalline-silica-exposure> >

<sup>18</sup> *Occupational Health and Safety Regulations 2017*, regulation 319C

<sup>19</sup> Lesco, V; Fontana, L; Romano, R; Gervetti, Iaviocoli, I, *Artificial Stone Accelerated Silicosis: A Systematic Review*, International Journal of Environmental Research and Public Health 2019, 16, 568, pg 6

- c. Notably, the Queensland Code of Practice also bans dry-cutting and by operation of s.26A of the *Work Health and Safety Act 2011* (QLD), a PCBU must comply with the requirements of a code unless it adopts a practice that is equivalent to, or superior to the code.
  - d. Whilst publications and guidance material produced by regulators in a number of jurisdictions state that the practice of dry cutting should not be relied on at a workplace level,<sup>20</sup> this should be clearly prohibited in regulations.
3. *Adoption of a specific regulation that requires application of the hierarchy of controls for RCS*
- a. Such a regulation must be supported by nationally consistent Codes of Practice that align with the principles of the hierarchy of control. This is required because the C&G Division has observed that once the risk of exposure to airborne contaminants has been identified in a workplace, it is not uncommon for PCBUs to first consider lower-order controls such as respiratory protective equipment (**RPE**) over engineering controls. In instances where engineering controls are utilised, some PCBU's will not consider additional controls such as RPE. This is consistent with audits carried out by regulators in Queensland, New South Wales and South Australia. For instance, a small audit carried out by SafeWork South Australia of engineered stone fabricators and installers revealed that there was reliance on water suppression alone as a control measure and workers were observed working without any RPE.<sup>21</sup>
  - b. Firstly, there needs to be urgent consideration given to banning the import, manufacture and use of engineered stone with a RCS concentration exceeding 60%. As observed a number of times already in these submissions, there is no known safe level or exposure to silica and given that engineered stone benchtops are essentially a fashion item, exposure to RCS from engineered stone is entirely preventable. This can be contrasted with silica dust generated through activities such as tunnelling, which is an unavoidable feature of mining and civil infrastructure works.
  - c. Should it be deemed that a ban is not feasible, the C&G Division recommends observance of the following control measures - a combination of which are required to reduce the risk to a minimum:

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<sup>20</sup> See for instance SafeWork NSW <<https://www.safework.nsw.gov.au/hazards-a-z/hazardous-chemical/priority-chemicals/crystalline-silica>>; SafeWork ACT < <https://www.worksafe.act.gov.au/health-and-safety-portal/safety-topics/dangerous-goods-and-hazardous-substances/silica-dust>>; WorkSafe WA <[https://www.commerce.wa.gov.au/sites/default/files/atoms/files/gn\\_stone\\_product\\_fabrication.pdf](https://www.commerce.wa.gov.au/sites/default/files/atoms/files/gn_stone_product_fabrication.pdf)>

<sup>21</sup> SafeWork SA, *Respirable Crystalline Silica Compliance Program: 2019 Audit Report* < [https://www.safework.sa.gov.au/\\_\\_data/assets/pdf\\_file/0010/187624/rcs\\_compliance\\_audit\\_report\\_2019.pdf](https://www.safework.sa.gov.au/__data/assets/pdf_file/0010/187624/rcs_compliance_audit_report_2019.pdf)>

- d. *Elimination*
  - i. Assuming that the import, manufacture and use of engineered stone is not banned, it is still possible to achieve near-elimination of the hazard at the on-site installation stage if a ban on on-site cutting is introduced.
  - ii. As previously noted, the C&G Division has endorsed a prohibition on on-site cutting, which can be achieved through the measures outlined at paragraph (c)(iii)(1)(c).
- e. *Substitution*
  - i. Substitute engineered stone with lower silica content products such as natural stone, including granite and marble. Further, laminate and wood offer alternatives that contain no silica.
- f. *Isolation:*
  - i. Isolation in the engineered stone context requires PCBUs to designate areas that will be used strictly for the performance of occupational tasks that generate dust containing silica to avoid secondary exposure. This could be by ensuring that such tasks are performed solely in outdoor exclusion zones.
  - ii. Further, fabrication sites should consider the use of automated wet machines to cut, grind or polish engineered stone in dedicated rooms.
- g. *Engineering controls:*
  - i. In addition to a regulation banning dry-cutting, it should also be reiterated in the context of the control measures that all relevant tools that generate dust (such as those for cutting and grinding) have local exhaust ventilation (a H class dust collector or vacuum) fitted or integrated water suppression. Adequate guards need to be in place to manage water spray.
  - ii. Additionally, whole of workplace dust extraction mechanisms should be installed as an additional measure. It should be stressed that whole of workplace dust extraction alone is not sufficient protection for workers performing high dust generating tasks and that on-tool dust suppression and extraction is also required.
- h. *Administrative controls:*
  - i. A number of administrative controls can be implemented by PCBUs in addition to the higher order controls outlined above. These include:
    - 1. A requirement that proper housekeeping be undertaken to ensure that cleaning and maintenance of tools (and personal protective equipment) does not expose workers to RCS;
    - 2. Ensuring that the workplace has a dedicated regular cleaning regime in place, which uses low pressure water, wet wiping or H class vacuums;

3. Controls put in place to manage wet waste, contaminated surfaces and garments;
4. Dry sweeping and use of compressed air should be prohibited;
5. Planning to make minimum number of cuts per job;
6. A roster rotation system should be implemented to ensure that no single worker is exposed to high dust generating tasks for a prolonged period;
7. In the context of fabrication, workshop design and layout to be considered, which may involve isolating automated machines and having slanted floors to drains in order to manage wet waste/run-off;
8. Requiring that workers remove contaminated clothing before leaving work area; and
9. Regular training and refresher training on safe use of tools, risks associated with RCS exposure, inspection and maintenance and use of PPE. Training will be discussed in further detail later in these submissions.

i. *Personal protective equipment (including respiratory protective equipment):*

- i. Personal protective equipment (**PPE**) – including RPE – should be used in addition to higher order controls and not relied on as sole control measures.
- ii. In terms of RPE, workers should be provided with a powered air purifying respirator (**PAPR**) that is fit-tested and comfortable, with consideration given to how facial hair may compromise effectiveness. PCBUs should consider which type of PAPR is appropriate, depending on the type of work being performed and the physical features of the worker (such as a loose-fitting hood, helmet or half face powered air-purifying respirator).

3. ***Relevant to dust-related diseases, what mechanisms exist or could be further developed to ensure effective enforcement of regulations and codes of practice?***

- a. The practical measures outlined in response to question 2 are of limited value if Codes of Practice and regulations are not robustly enforced by regulators. In the context of the engineered stone industry, enforcement proves to be particularly challenging in relation to businesses that install engineered stone benchtops.
- b. Such businesses are generally small operations and are highly mobile, often moving between domestic sites. Workers in these settings are commonly non-unionised and will not have a HSR who can represent their interests and communicate concerns to the union. This means that both the union and regulators face challenges in monitoring and enforcing occupational health and safety standards because they are simply unable to locate these workers.
- c. The difficulty in monitoring the activities on installation businesses is revealed when one considers audits conducted by regulators in Queensland, New South Wales & South Australia – all of which focussed on fabrication sites to the exclusion on companies at the installation

stage. Fabrication sites are comparatively easy to monitor as they are at fixed locations and not moving from site to site.

- d. The challenges in monitoring the practices of installers was discussed in the NSW Legislative Council's 2019 Review of the Dust Diseases Scheme, an extract of which is below:

*Similarly, the CFMMEU suggested that SafeWork NSW's summary of inspector notices issued during the operation of the Manufactured Stone Industry Taskforce show 'an extremely high level of non-compliance across manufactured stone fabricators'. In its final report on the work of the Taskforce, the CFMMEU explained its concerns regarding compliance rates:*

*The picture emerging from the SafeWork data is of a manufactured stone industry exhibiting a high level of non-compliance. This is of serious concern given that fabrication sites subject to the existing initiative are based in fixed locations and at least in that respect are relatively easy to locate and deal with.*

*Expanding on this, the CFMMEU noted that the next phase of compliance activities will involve attempts to locate and inspect joinery and installation businesses. The CFMMEU stated that inspectors have said that this 'presents real practical difficulties as more often than not inspectors arrive onsite to find the installers have moved on.'<sup>22</sup>*

- e. Notwithstanding the fact that the SafeWork NSW's audit focussed exclusively on fabrication sites, a startling level of non-compliance was revealed - with 746 notices being issued across some 246 fabrication sites.<sup>23</sup> However, this would be the tip of the iceberg in circumstances where installers are subject to little to no regulatory oversight.
- f. To be able to effectively enforce WHS standards in all parts of the engineered stone industry in Australia (fabrication to installation), the C&G Division recommends the following:
- i. Increased resourcing of regulators and a focus on compliance activity such as what was undertaken (and is continuing to occur) in Queensland. This should not be limited to fabrication sites.<sup>24</sup>
  - ii. To assist with regulatory oversight of all business responsible for the fabrication and installation of engineered stone, licensing schemes should be introduced at a state level (such as that currently being considered in Victoria). Such licensing schemes *must* be overseen and administered by regulators and not outsourced to industry (as was proposed in early 2020 by the Australian Engineered Stone Advisory Group in its application to the Australia Consumer and Competition Agency).<sup>25</sup>

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<sup>22</sup> NSW Legislative Council: Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme: Silicosis in the manufactured stone industry*, Report 73 – March 2020, pg 86  
<<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2538/Report%2073%20%E2%80%93%202019%20Review%20of%20the%20Dust%20Diseases%20Scheme%20%E2%80%93%2024%20March%202020.pdf>>

<sup>23</sup> NSW Legislative Council: Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme: Silicosis in the manufactured stone industry*, Report 73 – March 2020, pg 81  
<<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2538/Report%2073%20%E2%80%93%202019%20Review%20of%20the%20Dust%20Diseases%20Scheme%20%E2%80%93%2024%20March%202020.pdf>>

<sup>25</sup> The C&G Division's submission opposing the proposed industry licensing scheme can be found here  
<<https://www.accc.gov.au/system/files/public-registers/documents/AA1000461%20->

- iii. The establishment of a National Dust Disease register to assist in identifying non-compliant workplaces and responding with enforcement activity. Relevant to this is a requirement for mandatory reporting for PCBU's when workers are diagnosed with a disease arising from workplace exposure to RCS. Further, an introduction of a requirement that medical professionals notify WHS regulators of adverse health reports linked to occupational RCS exposure, which will again assist in identifying problematic workplaces.
  
- 4. ***Do you consider a ban (either total or partial) of high silica content engineered stone material, a proportionate and practical response to the emergence of silicosis in the engineered stone benchtop industry in Australia?***
  - a. Again, there is no known safe exposure level to silica to avoid silicosis and other silica-related diseases. Whilst silica is naturally occurring in materials such as sandstone (which is frequently encountered whilst performing critical infrastructure works) the reality is that engineered stone is a fashion item and could be substituted with products such as granite, stone and marble.
  - b. Assuming that there comes a time when engineered stone is banned, we will not see a peak in cases of silicosis until approximately 3 to 5 years after that time.<sup>26</sup>
  - c. Accordingly, urgent consideration must be given to the feasibility of banning the import, manufacture and use of engineered stone (with a silica content exceeding 60%) and substituting it with the products containing lower concentrations of silica referred to above.
  
- 5. ***The Taskforce is aware some jurisdictions are considering a licensing scheme for engineered stone. Do you consider this a proportionate and practical response in relation to the following:***
  - a. ***Restricted (under license) or otherwise prohibited manufacture in Australia?***
  - b. ***Restricted (under license) or otherwise prohibited importation and distribution?***
  - c. ***Fabrication and installation performed only under a license?***
  - d. ***License required after installation modifications or repurposing of installed engineered stone***
  - e. In the event that a ban on the importation, manufacture and use of engineered stone is not considered feasible, a mandatory licensing system should be introduced for all aspects of the engineered stone industry – supply, manufacture, fabrication and installation and those modifying, removing or repurposing the product. This will ensure better standards and increase the ability for regulators to monitor those operating within the industry.
  - f. It important that such a scheme be conducted, overseen and managed by regulators and not industry. In early 2020, the Australian Engineered Stone Advisory Group (representative of engineered stone suppliers) applied to the ACCC to be excluded from provisions in the *Competition and Consumer Act 2010* in order to create a licensing scheme for the fabricators it supplied its product to. The C&G Division opposed this proposal for a number of reasons, including the following:
    - i. That the scheme required that the prospective license holders comply with model WHS laws when several states now have occupational health and safety standards in relation to engineered stone that exceed the requirements contained in the model WHS laws (Queensland and Victoria being examples);

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[%20Australian%20Engineered%20Stone%20Advisory%20Group%2%20Submission%20by%20Construction%2C%20Forestry%2C%20Maritime%2C%20Mining%20and%20Energy%20Union-%2030.01.20%20-%20PR.pdf>](#)

<sup>26</sup> Kirby, T, *Australia reports on audit of silicosis for stonecutters*, The Lancet, Vol 393, March 2, 2019.

- ii. It attempted to shift the burden onto fabricators and ignored the duties of suppliers under the WHS Act;
  - iii. The industry should be granted the power to police itself – this should be the role of independent regulators; and
  - iv. It still permitted suppliers to provide their product to non-compliant fabricators.
- g. Instead, under the proposed regulator-administered scheme, in order to obtain and retain a license, participants in the industry would have to satisfy conditions relating to matters such as:
- i. Development of Safe Work Method Statements (**SWMS**);
  - ii. The provision of information to workers and prospective workers regarding;
    - 1. risks associated with using engineered stone;
    - 2. risks and health effects associated with silica,
    - 3. need for and proper use of control measures and the selection, use and maintenance of PPE and RPE;
  - iii. Must undertake to comply with all health and safety standards that apply within their jurisdiction for working with engineered stone. A failure to comply could result in a loss of license;
  - iv. Requirement to report health and air monitoring results to regulator. In relation to air monitoring, this must be in accordance with the time intervals and triggering events outlined earlier in these submissions; and
  - v. Requirement to provide employees a statement of work upon leaving the employer that includes information such as the nature of the work typically performed, time spent performing that work and adverse health and air monitoring results.
- h. Whilst a ban on the import, manufacture and use of engineered stone is being considered, a licensing scheme administered by regulators may assist with oversight and improving standards within the industry. **However**, the success of such a scheme again depends on active and robust enforcement by regulators that are sufficiently resourced. For instance, requiring license-holders to provide air monitoring results could be an important tool but will be of limited value if regulators simply file such reports away to gather dust and not attend worksites where there has been an adverse report.

**6. Given the nature of the building and construction industry, and the increase in the number of smaller, often independent businesses and suppliers, what particular strategies and supports are needed to ensure that these businesses are able to provide adequate protection for workers?**

As per our submission above, the introduction of licensing schemes administered by regulators across the country would offer an important tool in modifying the behaviour of business and improving safety standards for workers. If business – regardless of their size – are aware that a failure to comply with the applicable standards could result in the variation or loss of their license to operate, they will invest resources into improving their safety practices.

**7. What return to work support is available or should be considered to assist workers following a diagnosis of silica-associated disease, including for those who are unable to return to the engineered stone industry?**

- a. All workers' compensation jurisdictions should direct resources to a dedicated support service to assist those workers who have developed a silica-related disease. Such a service is

currently in place in Queensland and it offers workers diagnosed with a silica-related disease the following support:

- i.* Engaging with employers to consider alternative roles within the workplace;
- ii.* Arranging host employment;
- iii.* Offering short re-training courses;
- iv.* Assistance with resume writing and job search providers; and
- v.* General assistance with the management of their future health requirements.

**8. *What are examples of good dust exposure workplace monitoring processes? (Where possible please provide evidence to support the effectiveness of these processes).***

- a.* With regards to air monitoring, we refer to our above response at 2(c)(ii) but note that this could be complemented by static air monitoring, which is discussed in the Victorian Compliance Code (noting that static air monitoring is not sufficient on its own).

**9. *What industry mechanisms could be introduced to ensure workers have appropriate competencies for handling engineered stone or performing processes that generate silica dust?***

- a.* In previous submissions the C&G Division has advocated for silica awareness to be a component of white card induction training at a minimum and we remain of that view. However, distinct silica awareness training should be mandatory for workers that fabricate and install engineered stone and recommended for workers exposed to RCS more generally. As discussed earlier in these submissions, a possible condition of obtaining (and retaining) an engineered stone license could be ensuring that new workers undertake silica awareness course and existing workers to regularly undertake refresher training.
- b.* The ACT Branch of the C&G Division has been on the forefront of training in this area and has developed the first nationally accredited course in crystalline silica exposure prevention in response to a gap in the Vocational and Education Training Sector. This course has also been adopted by the Division's Queensland – Northern Territory Branch and is being actively considered in other jurisdictions.
- c.* The comprehensive course – which has attracted the formal support of the Construction Industry Training Council and BLOC ACT Pty Ltd (a Principal Contractor operating within the ACT) – covers matters such as:
  - i.* Identification of crystalline silica containing products;
  - ii.* The relevant legislation, guidelines and standards;
  - iii.* The consequences, hazards and risks to health due to exposure;
  - iv.* Exposure standards;
  - v.* Safety data sheets;
  - vi.* Hierarchy of controls;
  - vii.* Systems for prevention of exposure;
  - viii.* Risk assessments and hazard prevention; and
  - ix.* Safe Work Methods Statements
- d.* This training course provides a leading example of the training that should be mandatory for all workers in the engineered stone industry.

**10. What are the specific challenges related to linking workplace exposure with disease development (at a later date) and how should these be addressed?**

- a. A challenge posed by a delayed onset of silica-related disease includes a possible inability for workers – who may be employed by various employers in the engineered stone industry – in attributing liability to a negligent employer who has failed to comply with applicable health and safety regulations. Further, this delay could inhibit the ability of regulators to identify non-compliant workplaces for the purposes of enforcement activity.
- b. These challenges could foreseeably be addressed by measures that include the following:
  - i. As previously discussed, the development of a licensing scheme administered by regulators that retains records of employer’s compliance (or non-compliance) with licensing conditions, including air monitoring and health screening records. A condition of the licensing scheme should be that employees be provided with a statement upon leaving employment which details their length of their service, hours of work and that nature of the tasks performed by the employee;
  - ii. If such a scheme is not developed there should be, in any event, a requirement that health screening results and air monitoring reports be provided to regulators;
  - iii. Employers in the engineered stone industry be required retain employee records beyond the current 7-year retention period;
  - iv. All workers’ compensation jurisdictions should amend their deemed diseases list to cover all silica-related diseases; and
  - v. Importantly, the establishment of a compensation scheme funded by industry - similar to the Asbestos Compensation Industry Fund in which James Hardie pays an annual levy to compensate those diagnosed with an asbestos-related disease in Australia.

**11. What alternative products are currently available which could replace high silica-content engineered stone? How could we drive innovation in relation to products?**

- a. Natural stone - such as granite and marble - in addition to laminate and wood are all products with lower or no silica content. Should it be determined that engineered stone be banned at a future date, in the interim consideration should be given to strategies to make natural stone a more affordable and therefore, more attractive product to consumers.

**12. Other matters not covered in the above responses**

- a. *Health monitoring*
  - i. Under current WHS regulations, employees working with crystalline silica must be offered regular health monitoring by their employer if there are significant health risks as a consequence of it being recognised as a hazardous chemical.<sup>27</sup> SafeWork Australia Guidelines recommend that this screening occur annually.
  - ii. Consistent with the requirements of the Vic Compliance Code, the C&G Division submits that this must be undertaken when an employee is hired by a new employer and before they start work to establish a baseline. It needs to be undertaken regularly throughout the employment and when the employment

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<sup>27</sup> Work, Health and Safety Regulations 2011 (Cth) regulation 368

relationship is ended. This health monitoring should include a requirement for low dose high resolution CT scans. Low dose high resolution CT scans should be used over chest x-rays following recent studies revealing a tendency for chest x-rays to lead to false negative results.<sup>28</sup>

- iii. Further, all jurisdictions should introduce government-funded programs that provide access to free health screening to all workers in the engineered stone industry. Such programs have been introduced in Queensland and Victoria, with 810 and 1400 stonemasons having received (or in the process of receiving) the screening respectively.<sup>29</sup>

b. *Case finding study*

- i. The C&G Division also supports calls for regulators to co-ordinate with other agencies on a state-level to conduct case finding studies to identify the prevalence of silica-related disease in the industry. The importance of undertaking such a study was emphasised in the NSW Legislative Council 2019 Review of the Dust Diseases Scheme:

*'This type of exercise could focus on identifying those workers at risk who may not be working in fabrication sites or factories, for example, installers who are independent contractors. It could also consider the risk posed to workers within certain cohorts of the industry, such as those working in new high rise apartment complexes.*

*We believe that this type of study will help to paint a clearer picture in terms of prevalence of the disease, as well as identifying opportunities to better prevent and manage the risks of working with manufactured stone. The committee agrees that this study should be co-ordinated by NSW Health, with collaboration and support by SafeWork NSW and other government agencies.'*<sup>30</sup>

## Conclusion

- a. The C&G Division stresses the need for the NDDT to take decisive action and advance recommendations which will assist in *preventing* a dramatic rise in the diagnosis of silica-related disease amongst engineered stone workers. The interim recommendations appear to be focussed on education and clinical responses which - whilst important - will not stem the rise of silica-related disease that has been witnessed in recent years. Instead, we urge the NDDT to consider the recommendations contained in this submission and advocate for improved safety standards at a workplace and site level, which need to be robustly enforced

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<sup>28</sup> See discussion in NSW Legislative Council: Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme: Silicosis in the manufactured stone industry*, Report 73 – March 2020, pg 34-35 <<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2538/Report%2073%20%E2%80%93%202019%20Review%20of%20the%20Dust%20Diseases%20Scheme%20%E2%80%93%2024%20March%202020.pdf>>

<sup>29</sup> See ABC News, *Silica death dust audit reveals 'major epidemic worse than asbestos'* <<https://www.abc.net.au/news/2019-02-21/silicosis-death-dust-audit-reveals-major-epidemic-worse-asbestos/10830452>> and Department of Premier and Cabinet, Premier of Victoria - The Hon Daniel Andrews, *Silica Health Assessments Pass Halfway Target* <<https://www.premier.vic.gov.au/silica-health-assessments-pass-halfway-target/>>

<sup>30</sup> NSW Legislative Council: Standing Committee on Law and Justice, *2019 Review of the Dust Diseases Scheme: Silicosis in the manufactured stone industry*, Report 73 – March 2020, pg 101 <<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2538/Report%2073%20%E2%80%93%202019%20Review%20of%20the%20Dust%20Diseases%20Scheme%20%E2%80%93%2024%20March%202020.pdf>>

by well-resourced and proactive regulators. A failure to do so will inevitably result in the continued deaths of workers from debilitating and preventable diseases.