



Level 5, 1 Macarthur Street
EAST MELBOURNE VIC 3000

03 7005 9772

contact@betterreg.vic.gov.au

betterregulation.vic.gov.au

CM: D20/245754

Mr Colin Radford
CEO
Worksafe Victoria
1 Malop Street
GEELONG VIC 3220

Dear Mr Radford

**REGULATORY IMPACT STATEMENT FOR OCCUPATIONAL HEALTH AND SAFETY
AMENDMENT (CRYSTALLINE SILICA) REGULATIONS 2021**

I would like to thank your staff at WorkSafe Victoria for working with the team at Better Regulation Victoria on the preparation of the Regulatory Impact Statement (RIS) for the Occupational Health and Safety Amendment (Crystalline Silica) Regulations 2021 (the Regulations).

These regulations are proposed to be made under the *Occupational Health and Safety Act 2004* (OHS Act) which sets out general duties that apply to employers, employees, manufacturers, and suppliers of substances

As you know, under section 10 of the *Subordinate Legislation Act 1994* (the SLA), the Commissioner for Better Regulation is required to provide independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 19 November 2020 meets the adequacy requirements of the SLA.

Background

Engineered stone is often used in the construction of benchtops, flooring and tiles. This type of stone (, sometimes called reconstituted stone) can contain up to 95 per cent crystalline silica, which can be hazardous to health if inhaled. When engineered stone products are processed, very fine dust containing respirable crystalline silica is released into the air. People involved in the shaping and cutting of engineered stone, such as stonemasons.

can be at risk of being exposed to the dust if it is not controlled. Stonemasons are employed in certain manufacturing industries, in construction and earth resources.

In September 2018, the Queensland Government issued a safety alert for engineered stone benchtop workers after a spike in silicosis claims. Following this, over 300 silicosis cases emerged nationally. Victoria responded by introducing the Silica Action Plan, which committed to strengthening legislation, raising awareness, providing education and support for affected workers.

In August 2019, the Victorian Government amended the OHS Regulations to introduce interim measures for specific activities involving engineered stone. In effect, these regulations impose a ban on using power tools to cut, grind or abrasively polish engineered stone unless certain integrated water delivery or on-tool dust extraction systems are in place (this means there is a ban on uncontrolled dry-cutting of engineered stone). This ban sunsets on 19 February 2021.

Worksafe explains that reforms to these OHS Regulations are being considered in order to adequately protect the health and safety of those employed within industries which have a high risk of exposure to respirable crystalline silica (RCS).

The key objective of the proposed changes to the OHS Regulations is to eliminate (so far as reasonably practicable) the risk of adverse health effects from work involving materials containing crystalline silica.

The RIS considers the impact of two sets of options for replacing the interim regulations.

The first set relates to the implementation of a licensing or notification scheme for employers and self-employed persons who work with engineered stone. A second set of options is being considered to regulate activities that pose a high risk of silica exposure.

A break-even approach has been used to analyse the impacts of the proposed Regulations. Worksafe's preferred option is a licensing scheme plus changes to sections 4.1 and 4.5 of the OHS Regulations to reduce exposure to RCS (known as the full package of reforms), which include:

- Prohibition on dry cutting, grinding and abrasive polishing
- Banning the use of recycled water that has not been adequately treated
- Banning the use of compressed air for personal or area cleaning
- Preparation of risk assessments and hazard control statements
- Requirements for information provision

At a cost of \$171.5 million over 10 years, this option would need to be responsible for avoiding approximately 32 silicosis illnesses over 10 years to break even.

The proposed Regulations will be introduced on 19 February 2021 under Section 158 of the OHS Act, with elements that directly relate to worker safety coming into force immediately. The RIS notes that other provisions will have a 12 month transition period, including the requirement to hold an engineered stone licence and the requirement for

suppliers not to provide engineered stone to a person who does not hold an engineered stone licence.

Analysis

The RIS focuses its analysis on comparing the two sets of options. The first set of options is concerned with the implementation of a licensing or notification scheme for employers and self-employed persons who work with engineered stone. These are:

- Option 1: introduce a mandatory requirement for any employer or self-employed person to hold a licence if they are to work with engineered stone
- Option 2: introduce a negative licensing scheme where an employer who breaches the Regulations could be prohibited from working with engineered stone until compliance can be demonstrated
- Option 3: introduce a notification scheme whereby an employer must notify WorkSafe when an 'engineered stone process' is undertaken and the exposure standard is likely to be exceeded.

A second set of options is considered to regulate activities that pose a high risk of silica exposure. The chosen option will be implemented in addition to the option selected for a licensing or notification scheme. The two options are:

- Option 1: introduce a package of reforms to improve risk assessment and information provision relating to the control measures for reducing exposure to silica dust, as well as maintaining the ban on dry cutting of engineered stone
- Option 2: Retain the ban on dry cutting of engineered stone only.

The RIS considers these options against the base case, whereby the general duties that apply to employers, employees, manufacturers, importers and suppliers of hazardous substances under the OHS Regulations will remain the only regulatory mechanism and the interim Regulations are not re-made.

A break-even analysis approach (over 10 years) is used to estimate the number of fatalities that would need to be prevented for an option to generate the level of benefits that would offset or equal the costs of the option – the results are shown below:

Option	Cost	Required avoided non-fatality
licensing plus a ban on dry cutting	\$4.2 million	0.8
licensing plus the full package of reforms	\$171.5 million	32.1
licensing plus the full package of reforms for stonemasons only	\$27.2 million	5.1

Proposal

The licensing scheme plus the full package of reforms is chosen as the preferred option, with a cost to business and government of \$171.5 million over 10 years. This is significantly more costly than the option that includes only stonemasons.

In addition the RIS states that although it is unlikely that the preferred option will result in 32 illnesses being avoided over the next 10 years, which is the point at which the quantified benefits of the regulations exceed the quantified costs, it is not implausible and that:

- there is merit in taking a precautionary approach to the issue, given the recent spike in illnesses, and the fact that the extent of latent illness associated with past exposure is not fully known;
- the quantification of the benefit of avoided silicosis illness has been estimated conservatively in this RIS; and
- there is a range of qualitative benefits of reducing exposure to silicosis, which is not captured in the breakeven analysis. This includes benefits associated with reducing the mental health impacts that are associated with a silicosis diagnosis, the uncertainty this can cause, and being able to participate in life activities that those with silicosis cannot.

The RIS states that around 300 stonemason employers will be required to apply for the proposed licences at an estimated total cost of \$1,090 per business (application, site inspection, supply restriction and licence fee costs). The RIS notes that the licensing and notification scheme only applies to stonemasons.

Other businesses working with materials containing crystalline silica (for example, those working in the construction, manufacturing and earth resources sectors such as bricklayers, carpenters and joiners, cement manufacturing, concreters, plasterers, and tilers) will also be affected by the Regulations, with the RIS noting that they will need to comply with risk assessment/high risk silica hazard control statements and other information requirements. These are additional obligations over and above existing requirements for businesses to manage the risks of hazardous substances.

The RIS highlights the fact that WorkSafe will face upfront costs in implementing the package of reforms as well as ongoing operation and enforcement costs. These include around:

- \$750,000 in upfront costs to purchase licensing software; and
- \$180,000 to implement the licensing scheme and assess licence applications.

To inform preparation of the RIS, consultations were held with five types of organisations involved in the stone industry including: individual businesses, employee representatives, employer representatives, health practitioners and suppliers.

Implementation and Evaluation

The RIS notes that WorkSafe will prepare a full implementation and communications strategy for the proposed Regulations, which will draw on actions taken to implement the current prohibitions, which came into effect in August 2019, and on the engagement that is currently taking place as part of the Silica Action Plan.

Transitional arrangements will apply to some of the proposed regulatory provisions, with a 12-month transition period applying to the requirement to hold an engineered stone licence and the requirement for suppliers not to provide engineered stone to a person who does not hold such a licence. These arrangements reflect the practicalities of WorkSafe assessing an expected 300 licence applications.

The RIS also proposes a formal **mid-term review** of the proposed Regulations to be conducted in 2024 - following three full years of operation.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 7005 9772.

Yours sincerely



Anna Cronin
Commissioner for Better Regulation