

Failure to Act

Submission by the Australian Council of Trade Unions to
National Dust Disease Taskforce – Second Consultation Paper
September 2020

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About the ACTU

Since its formation in 1927, the ACTU has been the peak trade union body in Australia. There is no other national confederation representing unions. For more than 90 years, the ACTU has played the leading role in advocating in the Fair Work Commission, and its statutory predecessors, for the improvement of employment conditions of employees. It has consulted with governments in the development of almost every legislative measure concerning employment conditions and trade union regulation over that period.

The ACTU consists of affiliated unions and State and regional trades and labour councils. There are currently 39 ACTU affiliates. They have approximately 2 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

The protection and enhancement of every worker's fundamental right to a safe and healthy working life has always been, and remains, a core goal of the ACTU and its affiliates.

To achieve this goal the ACTU and its affiliates support the following principles:

1. all workers have an equal right to healthy and safe work, without discrimination on the grounds of any personal attribute
2. health is a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity
3. workers must be protected from all hazards and risks at work, including psychosocial as well as physical hazards and risks
4. workers who are empowered to act collectively through their unions are safer and healthier at work.

Introduction

“We are approaching the 100th anniversary of the Hawk’s Nest Tunnel disaster, where hundreds of young minority workers developed acute and accelerated silicosis while drilling a tunnel through the pure quartz of Gauley Mountain, West Virginia, to bring water to a power station.

In this new millennium, fashionably stressed denim jeans and colorful countertops are not worth the price paid by these workers”¹

The National Dust Disease Taskforce (NDDT) has invited submissions following the publication of the Interim Advice and the commencement of the second phase of the consultation process.

The ACTU has reviewed the Interim Advice and Consultation Paper and engaged with our affiliates in preparing this submission. Our analysis is focused on the areas of concern to which unions can most relevantly contribute and as such we have confined our responses to those questions that deal directly with work health and safety.

Additionally, we also address a number of issues which the Interim Advice, and subsequent Consultation Paper, have failed to consider and urge the NDDT to expand the areas for reform to be undertaken.

We believe that it should be a matter of grave concern to the Federal government that Australian workers across a range of industries are still being exposed to a well-known carcinogen and dust which causes irreversible lung damage. As exposure to silica dust and subsequent ill health affects workers across a broad range of industries increases it is imperative that the NDDT addresses **all exposures** to silica and other work-related dusts.

The ACTU does not oppose any of the recommendations contained in the NDDT Interim Report. However, the cautious and conservative approach in the Interim Report and the second Consultation Paper ignore many key issues which are again reiterated in this submission. The ACTU has deep concerns that by narrowing recommendations to the engineered stone industry the work of the National Dust Disease Taskforce will again become another example of a ‘failure to act’.

Whilst it is acknowledged that the COVID-19 pandemic may have delayed some governments’ activities, a stock take of our November 2019 Recommendations indicates faltering and patchy progress. The response by state governments, through the health and safety regulators has been encouraging but, in many cases, limited.

¹ Artificial Stone Silicosis; Removal from exposure is not enough, Cohen R and Go L, Chest, 2020
<https://doi.org/10.1016/j.chest.2019.11.029>

Neither the Interim Report or the Phase 2 Consultation paper discuss how:

- **all diseases caused by silicosis²** are to be recorded, notified or be subject to health surveillance requirements³
- all exposures to silica are to be prevented, irrespective of the source of the exposure
- the application of methods of prevention will vary on the source of exposure, e.g. ban on certain products through to a combination of risk control measures when working with naturally occurring silica
- all industries are to be subject to clear, comprehensive health and safety regulations and requirements
- all industries will need to comply with a WES of 0.02mgm/m³, as recommended in the SWA WES Consultation paper 2019 and subsequent SWA decision⁴.

Immediate action is required, as the evidence is clear that the industry will not protect workers safety, unless it is mandated. It is clear we have a business model that accepts that workers will become seriously ill, and rather than address the underlying health and safety hazards is simply 'pricing in' the costs associated with exposure and ill health.

It is very important that the NDDT take heed of the actions taken by industry unions to protect worker health and safety. In particular, the ACTU draws the NDDT's attention to the silica training and awareness initiatives of the CFMMEU and the reaffirmation by the AWU that workers will not be protected from silica exposures if the NDDT limits its recommendations and activities to those involved in fabrication of engineered stone products.

The ACTU thanks the NDDT for the opportunity to provide a submission on this important issue and supports and endorses the submissions made by individual unions.

² It is imperative that lung cancer and other diseases with silica exposures are included in any health surveillance, registry etc.

³ [Shtraichman, O et al, Outbreak of autoimmune disease in silicosis linked to artificial stone, Occup Med \(Lond\) 2015 Aug;65\(6\):444-50. doi: 10.1093/occmed/kqv073. Epub 2015 Jun 12.](#)

⁴ *Reducing the TWA to 0.05 mg/m³ as soon as possible (aiming for a set date in early 2020). Then, reducing the TWA to 0.02 mg/m³ with a three year transitional period (i.e. 2024) pending evidence-based confirmation from the Agency that this level can be reliably measured and adjusted for extended work shifts.*

Response to NDDT Interim Report

1. The ACTU and individual unions have variously submitted *“that the arbitrary narrowing of the NDDT’s enquiries to accelerated silicosis risks stymying discussion and progress on the prevention, identification and management of other occupational lung diseases, such as pneumoconiosis (‘black lung’)”*⁵ Equally, unions remain concerned that the NDDT’s interest in silicosis, and subsequent policy reforms are needlessly confined to its incidence in the engineered stone industry. This narrow approach to dust diseases, and the industries in which they are prevalent, risks limiting our ability to prevent further workers from exposure and ill health and repeating the mistakes of the past.
2. The development of a National Dust Disease Registry has been recommended by numerous inquiries for over 20 years. This long overdue reform is essential to ensuring that we track the incidence of the disease. The ACTU understands that the Department of Health has been exploring the possibilities for a National Dust Disease Registry for accelerated silicosis related to engineered stone. Whilst we understand the desire to take small steps, it has been the bitter experience of workers and unions in this country that small steps end up being the only steps taken. It took over 20 years of vigorous campaigning by unions and some health professionals before the cessation in the use of asbestos manufactured building materials was extended to all other products, including friction products [e.g. brake and clutch manufacture]. It is unclear why the Interim Report severely restricted the development of a National Dust Disease Registry to accelerated silicosis related to engineered stone, rather than addressing all forms of silicosis related to silica exposures.
3. Education and communication of the risks associated with exposure to silica directed at all industry participants is a critical element to minimising worker exposure and preventing the disease. The ACTU is unaware of any education and communication campaigns other than those of individual health and safety regulators aimed at workers in the industry. Whilst these initiatives are extremely important they do not address those in the supply chain, from architects to installers, or educate consumers that the aesthetic appeal of an engineered stone bench top comes at the cost of health and lives of workers/business owners involved in the fabrication and installation of the product. Small business owners involved in fabrication shops need information from trusted sources which are embedded in their communities. Community education around lung disease needs to be targeted, including involvement of the many non-health community groups representing relevant CALD communities. These groups should be considered for funding and engaged to deliver information about the dangers and prevention measures necessary and consulted about the design of re-training programs needed to redeploy workers from this hazardous industry.
4. The Interim Report does not refer to, nor does the second Consultation Paper reference, the Queensland governments’ engagement with suppliers and importers of

⁵ Para 4 CFMEU Construction and General Division submission.

engineered stone or that governments advocacy for an investigation by the Australian Competition and Consumer Commission into product safety of imported engineered stone. The ACTU is concerned that such advocacy appears not to have been supported by the NDDT.

5. Health surveillance is essential to ensuring that disease is identified in workers early to enable appropriate and effective treatment as well as ensure effective hazard controls and prevention strategies can be implemented. Whilst current health and safety laws require health surveillance of those exposed to crystalline silica, this requirement is found in the hazardous chemical part of the WHS Regulations (Reg 370). It is not unreasonable, and it is entirely foreseeable that a PCBU would not look in the hazardous chemicals section for requirements to deal with a “dust”. There is no dust specific regulation, other than asbestos.
6. The ACTU reiterates our recommendation that a *Regulation be adopted that requires the application of the hierarchy of controls for silica and other inorganic dusts*. A dust regulation would be easily accessible [not buried in the Regulation on hazardous chemicals] and clearly outline a PCBUs obligations with regard to air monitoring and health surveillance.

Phase 2 Consultation Paper

7. We do not directly address all the questions asked in the Phase 2 Consultation Paper [the paper], as many were discussed in the ACTU submissions in November 2019 and January 2020.⁶
8. The principal action necessary is the implementation of a ban on the use of high silica content engineered stone. Unless we eliminate the installation of these products, we will face a similar legacy issue to that with asbestos containing materials, which is something we should be trying to avoid. Along with other organisations, unions have suggested a three-year, explicit, staged approach to a ban on the importation and manufacture of engineered stone with a high silica content⁷.
9. It is clear, based on information contained in the Caesarstone Ltd Annual Report,⁸ along with moves towards self-regulation,⁹ that little will be done by industry to protect workers health unless it is backed by a strong regulatory framework based on the hierarchy of control – commencing with elimination.

⁶ Ibid

⁷ Joint letter to National Dust Diseases Taskforce November 2020 – ACTU, ASMOF, CAA, PHAA, AIHS, Lung Foundation Australia and Thoracic Society

⁸ Caesarstone Ltd., Annual Report 2019, Annual Report Pursuant To Section 13 Or 15(D) Of The Securities Exchange Act Of 1934, For the fiscal year ended December 31, 2019, United States Securities and Exchange Commission

⁹ Australian Engineered Stone Advisory Group Application to ACCC 2019

10. The ACTU and affiliated unions acknowledge the challenges to implementing a ban, including but not limited to, the necessary restructuring of the industry and retraining and redeployment of workers affected by a ban require time.¹⁰ However, we are also very cognisant that without a clear deadline and timeline industry and others will be slow to act. Previous experience with the ban on the importation of raw chrysotile and asbestos containing products is a good example of inaction unless timelines are mandated.¹¹

11. Such a staged approach should include the following:

- researching alternatives to engineered stone material for benchtops
- development of an Australian-manufactured safer product
- financial incentives for safer product development
- customer and supply chain education regarding the risks of silicosis from engineered stone products such as granite, laminate, marble, manufactured solid surface, concrete, stainless steel, wood, ceramic surfaces
- a regulatory approach that uses approaches like the various Regulations and Codes of Practice used in the asbestos removal industry, such as licensing enterprises, with differing licensing requirements dependent upon the nature of work performed
- supply chain education and awareness – including those who draft the specifications for building fit outs and customer education
- retooling of industry
- retraining of the workforce
- funding of relevant research
- support for workers who are displaced by a ban.

12. The ACTU suggests that the NDDT establish a working party that is focused on risk elimination. The group, which should include representatives with expertise in relevant regulation, the engineered stone industry, causation epidemiology, health and safety and the union movement, should focus on how the product responsible for the problem might be banned, modified or otherwise controlled so as to avoid future exposure to products with high and damaging levels of silica content.

13. As with any industry restructuring that impacts the availability of jobs, the principles of “just transition” must be applied. The 2015 ILO *Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for all*, apply the basic principles such as:

1. *governments to pay special attention to assisting MSMEs, including cooperatives and entrepreneurs*

¹⁰ CFMMEU C&G Division Submissions to National Dust Disease Taskforce, November 2019 and November 2020

¹¹ Victorian Occupational Health and Safety Commission, *Asbestos an Inquiry – Usage in Victoria, Substitutes and Alternatives*, October 1990. – page 15, industry supplied data indicated usage of raw asbestos was expected to cease in 1999. Importation of raw asbestos occurred just before the 2003 Federal government ban.

2. *transition policies through social protection, including unemployment insurance and benefits, skills training and upgrading, workforce redeployment and other appropriate measures to support enterprises and workers in sectors negatively impacted by the transition*
3. *formulate accompanying policies through social protection, including unemployment insurance and benefits, skills training and upgrading, workforce redeployment and other appropriate measures to support enterprises and workers in sectors negatively impacted*
4. *provide financial incentives (grants, low-interest loans and tax incentives) for businesses*
5. *review skills development policies to ensure they support responsive training, capacity building and curricula*
6. *coordinate skills development policies and technical and vocational education and training systems*
7. *match supply and demand for skills through skills needs assessments, labour market information and core skills development, in collaboration with industry and training institutions*
8. *give high policy priority and allocate resources to the identification and anticipation of evolving skills needs and the review and alignment of occupational skills profiles and training programmes*
9. *give high policy priority and allocate resources to the identification and anticipation of evolving skills needs and the review and alignment of occupational skills profiles and training programmes.*¹²

Regulatory and Governance

Q.1 From a regulatory perspective, what should be considered 'engineered stone'?

14. As discussed in Ophir et al the association of changes in clinical signs in patients with silicosis and dust characteristics highlight the need for specific risk controls for exposures to engineered stone dust.¹³

15. The industry union, the CFMMEU has submitted that as 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 [CFMMEU] maintains that engineered stone should be defined as follows:

¹² 2015 ILO Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for all https://www.ilo.org/wcmsp5/groups/public/—ed_emp/emp_ent/documents/publication/wcms_432859.pdf

¹³ see appendix Ophir N, et al. *Occup Environ Med* 2019;76:875–879. doi:10.1136/oemed-2019-105711

*“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”.*¹⁴

16. The Victorian Regulations banning the use of dry cutting define engineered stone as a product containing greater than 80% of silica.¹⁵ The ACTU recommends that the NDDT seek direct information from the Victorian regulator to ascertain if any difficulties have arisen that may need to be addressed through the use of this definition.
17. Any definition is likely to produce some anomalies. A definition is necessary, however, in light of the current high rate of disease, inactivity by the industry to change to a safer product or any industry development work to encourage the manufacture of safer forms of engineered stone product - a ban is required and a definition is necessary.

Q2. 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?

18. A generic dust regulation, as outlined in the ACTU November 2019 submission, is required so that PCBUs identify the risks associated with the use of engineered stone and apply a hierarchy of controls to eliminate and reduce exposure. How the hierarchy is applied will be dependent on the source of the exposure and the practicability to apply higher order controls – for example it is not possible to eliminate silica at source during tunnelling operations.
19. In addition to a specific regulation dealing with dust exposure, many of the immediate challenges posed by engineered stone fabrication can be addressed in the first instance through:
- the adoption of Recommendations 1, 4, 5, 10, 13, 19, 21, 23a, 26 and 27 of the 2018 Review of Model WHS Act.¹⁶
 - adoption of Recommendation 27 would ensure that the hierarchy of control explicitly applies to the risk controls applied to work related dust exposures
 - ensuring all duty holders along the supply chain be subject to compliance activity by the relevant health and safety inspectorates – importers have duties under WHS laws to ensure that their products are safe. Importers have known for years about the hazards associated with the use of these products and have not effectively informed buyers of the risks associated with the fabrication of such a deadly product. Suppliers, as recently as January 2020, have advocated for self-regulation. This will not protect workers. The ACTU has previously outlined our concerns with the industry guidance produced in 2018 and the application to the

¹⁴ CFMMEU C&G division Submission November 2020

¹⁵ See ACTU submission November 2019

¹⁶ These Recommendations are pertinent to the nature of the industry – Recommendations 1,4,5; the ability of regulators to cooperate and increased options for compliance activity – Recs 19,21,23a, 26; improved rights for workers – Recs 10 and 13 and improved architecture of WHS Act – Rec.27.

ACCC.¹⁷ It is disappointing that the Interim Report and the Phase 2 Consultation paper are silent on these attempts to self-regulate.

The ACTU is unaware of any compliance activity aimed at suppliers of engineered stone – all of whom have clear obligations under the relevant Health and Safety Acts.

20. The ACTU submission of November 2019 made practical suggestions, of which only three were taken up in the Interim Report [ACTU Recommendations 6,7 and 9]. In tandem to the ACTU submission individual unions or representative state union organisations submitted clear advice to the first consultation. These submissions are of particular importance as these organisations visit worksites and hear directly from workers about the conditions under which they work and the real barriers to improving working conditions. The recommendations from the ACTU submission November 2019 included:

Recommendation 1

Reduction of the Workplace Exposure Standard for respirable crystalline silica to 0.05 mgm/m³ by January 2020. The ACTU notes the general agreement to adopt health-based standards. The current impediment to a reduction to 0.02 mgm/m³ [the health-based standard] relates to some expressed uncertainty about quality of measurement. This issue can be resolved over the next 12 months which would enable a lowering to 0.02 mgm/m³.

Progress: All jurisdictions except Tasmania have reduced or have a date for reduction of the WES respirable crystalline silica to 0.05 mgm/m³.¹⁸ As far as the ACTU is aware there has been no progress on the reduction to 0.02mgm/m³.¹⁹

Recommendation 2

The reduction of the Workplace Exposure Standard for Respirable Coal Dust to 1.5 mgm/m³ by January 2020.

Progress: As of 1 September 2020, the following OELs apply in the Queensland Mining Industry - 1.5 mg/m³ for Respirable Coal Dust and 0.05 mg/m³ for Respirable Crystalline Silica (RCS).

Recommendation 3

All jurisdictions adopt a Regulation based on the Victorian Occupational Health and Safety Amendment (Crystalline Silica) Regulations 2019. These regulations

¹⁷ ACTU Submission to NDDT November 2019, ACTU submission to ACCC, January 2020

¹⁸ As of November 2019

¹⁹ A 2019 meeting of SWA indicated that this issue could be resolved within 12 months

formalise the current administrative directives in some jurisdictions which are aimed at controlling “dry cutting of engineered stone products”. The Victorian Regulations require:

employer or self-employed person must ensure that a power tool is not used for cutting, grinding or abrasive polishing of engineered stone at a workplace unless the use is controlled. Note: Engineered stone is defined as a manufactured composite stone material that contains resins and has a crystalline silica content of 80 percent or greater. ²⁰

Progress: A prohibition on the dry cutting of engineered stone products has been achieved either administratively, via a compulsory Code of Practice or by Regulations. The lack of a Regulation in some jurisdictions is regrettable as regulations are a much clearer and more easily understood regulatory tool. In June 2020 NSW enacted a similar regulation to the 2019 Victorian Regulations; the Queensland Compliance Code section 5.2 banned dry cutting in October 2019.²¹ Other states use administrative measures such as prohibition notices when an inspector visits a site.

Resulting from initiatives by workers and their unions, parts of industry are prohibiting any on-site cutting – all cutting is performed in a controlled fabrication shop environment. This is a good control measure, one that has been overlooked by government health and safety audits, some of which have ignored installation work.²²

Recommendation 4

By the end of 2020, a Regulation be adopted that requires the application of the hierarchy of control for silica and other inorganic dusts. This is to apply where elimination of the work is not feasible, e.g. tunnelling, demolition work. Many industrial activities produce high levels of respirable crystalline silica.

Progress: there has been no progress on this approach and the NDDT Interim Report was regrettably silent on the issue, which is concerning. The ACTU reiterates the case made in our original submission, submissions by individual unions and the evidence presented to the NDDT during the October 2020 consultations by workers with significant disease, who are/were not working with engineered stone.

Recommendation 5a

A ban be implemented on the importation, manufacture and use of engineered stone with over 80 percent crystalline silica content, i.e. using the definition from

²⁰ Victorian Occupational Health and Safety Amendment (Crystalline Silica) Regulations 2019

²¹ Queensland 2019, Managing respirable crystalline silica dust exposure in the stone benchtop industry

²² NSW SafeWork Audits

Occupational Health and Safety Amendment (Crystalline Silica) Regulations 2019:

Engineered stone means a manufactured composite stone material that contains resins and has a crystalline silica content of 80 per cent or greater.

Progress: the ACTU welcomes the questions posed in the second consultation paper.

Recommendation 5b

During 2020, whilst the preparatory work for a ban is being conducted, regulators and industry must develop a strategy to encourage the use of non-crystalline silica products as replacements for engineered stone of greater than 80% crystalline silica. Our current health and safety laws provide the framework for such an approach.

Progress: the ACTU is unaware of any progress or activities that seek to encourage the use of non-crystalline silica products.

Recommendation 6

Improved awareness campaigns – investment in a broad-based community campaign around the dangers of silica coupled with specific targeted campaigns for employers and workers in higher silica industries.

Progress: State health and safety authorities have provided information. In the ACT the construction industry, via the union, have developed a silica awareness training course that has been nationally accredited. A similar course has been rolled out in Queensland.²³

Recommendation 7

Requirement for comprehensive health screening programs that extend to workers post- exposure and retired workers. There will be a requirement to update the Silica Health Monitoring Guidelines currently issued by Safe Work Australia.

Progress: The ACTU understands that both Victoria and Queensland have engaged researchers to evaluate state based²⁴ stonemasons health surveillance programs and Queensland has also adopted the *Guidelines for clinical assessment of workers fabricating and installing engineered stone*. The ACTU is unaware of any progress on the adoption of a nationally consistent approach.

²³ See details in section on Workforce Organisational Structure

²⁴ Ibid Hoy et al

Recommendation 8

A review be conducted of the capacity of health professionals to conduct and interpret occupational lung health screening.

Progress: The ACTU is unaware of any national review.

Recommendation 9

The adoption and implementation of a National Notifiable Disease System based on the *Queensland Health Notifiable Dust Lung Disease Register*, for all dust related diseases. Such a scheme to be operational by the end of 2020. Further work should be conducted for a future expansion of the scheme to all work-related lung conditions.

Progress: Queensland implemented its scheme in 2019. New South Wales passed legislation in September 2020 requiring the WHS Regulator to be notified of a diagnosis of silicosis, a scheduled medical condition under the Public Health Act 2010.

Recommendation 10

By the end of 2020, every workers' compensation jurisdiction should adopt the 2015 Safe Work Australia Deemed Diseases list with amendment to cover all silica related diseases.

Progress: No progress and no revision has been undertaken of the 2015 document to ensure that all forms of silicosis and types of exposures are properly addressed.

Recommendation 11

The establishment of compensation funds to support those suffering from dust diseases such as silicosis and coal workers pneumoconiosis, and their families. These funds should be funded by particular industries, on the basis that 'you pay for the harm you cause'.

Progress: The ACTU is unaware of any initiatives and given the response by industry²⁵ it is imperative that such an approach is taken – engineered stone products have become very popular in the last 15 years and there will be many workers exposed during renovations, remodelling and re-installation in the future. Banning the use in 3 years will not be helpful for those workers.

²⁵ Ibid Annual Report 2019

Recommendation 12

Improved workers' compensation processes for sufferers of occupational lung diseases. This submission does not detail all the limitations in the current systems. Plaintiff law firms representing sufferers are best placed to outline the limitations of the system and recommendations for reform.

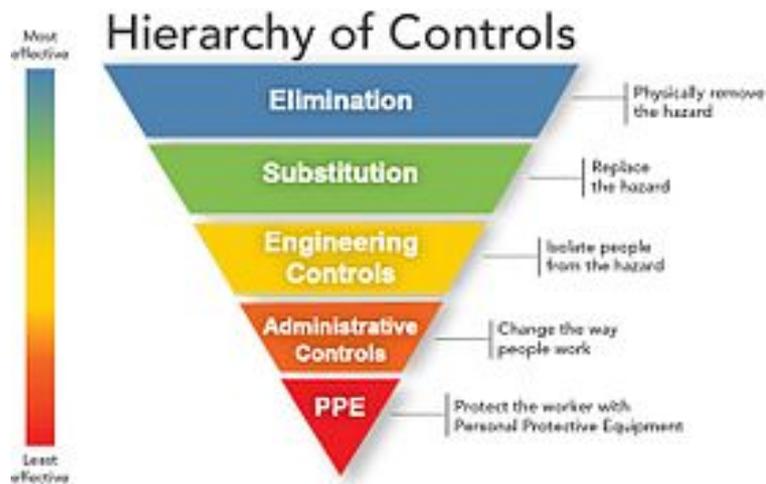
Progress: The ACTU is aware of changes made to the Queensland workers' compensation Act and concurrent programs to increase support for workers during the workers' compensation process.²⁶ Activities in other jurisdictions is severely limited.

For example, the current Victorian workers' compensation scheme does not provide any real assistance to silicosis sufferers. If a worker has terminal silicosis, then it is possible under the 'imminent risk of death' provisions of the WIRC Act to pursue a common law claim relatively quickly and to expedite it such that it may be heard in the worker's lifetime. In terms of the impairment process, workers with silicosis can have their claims expedited and turned around in a matter of weeks by the insurer, provided that legal representatives can prove progression but that isn't mandated in legislation – it is just the ad hoc approach by the particular insurer. These claims are generally successful because of the relationships between legal practitioners and insurers. Relying on "relationships" is no substitute for a legal right and process mandated by law.

Q4. Hazard elimination sits at the top of the hierarchy of control measures (see <https://www.safeworkaustralia.gov.au/risk-for-an-example-of-a-hierarchy-of-control-measures>). 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?

21. As previously submitted, there is a need to apply the hierarchy of control to occupational dust; for engineered stone products the hierarchy would apply from elimination and substitution; for other silica exposures, where elimination and substitution are not practicable, control measures would commence from isolation.

²⁶ Queensland Government Submission to the National Dust Disease Taskforce, November 2019



22. Engineered stone bench tops, like faded jeans, are a consumer product for which there are many alternatives including natural stone, timber, laminates etc. It is reasonably practicable to eliminate the use of engineered stone given that a person knows or ought to have known that the hazard, and the ways of eliminating the hazard, are suitable and available ways to eliminate the risk and there is a high likelihood of risk occurring with a high degree of harm.
23. The Victorian and Queensland Codes for Engineered stone state the risk control measures necessary when working with engineered stone. Neither document addresses elimination or substitution adequately; however the other controls will work to lower the risk, but not eliminate the risk of silicosis in these workers. It is noted that all other jurisdictions are relying on guidance material which has less impact at a worksite and does not have to be followed. This approach of information to the sector has clearly failed all those workers who have contracted disease. The approach is not proportionate to the risks.
24. Some indicative actions for each level of the hierarchy include [noting that many are required in combination, see diagram]
- elimination – ban on importation and manufacture of engineered stone
 - substitution – use of a safer engineered stone product, with a lower silica content, or another less hazardous material
 - isolation – for installers - ban of all on-site cutting of engineered stone, an initiative of the relevant industry union
 - cutting etc in controlled atmosphere sections of a workshop
 - provision of air-conditioned cabins for tunneling work
 - licensing system – it is a recognised method of enforcing higher levels of risk control by licensing systems for high risk industries – for example major hazard facilities and asbestos removal work. The latter is an excellent prototype, as the nature of the work dictates the conditions of the license – A or B class licensed removalists. A licensing system would be an interim requirement during the phase-in period of a ban on the importation and use of high silica content engineered stone
 - engineering controls – wet cutting, local ventilation, general ventilation

- administrative controls – limitations on numbers of workers in areas performing cutting etc, housekeeping, prohibition on dry clean up methods
- respiratory protection
- review of risk control measures including health surveillance.

25. Recent Victorian research found that 15% of those with silicosis had been involved in installation work.²⁷ It is imperative that the hierarchy of control is applied to installation and this activity is audited to ensure these exposures are not overlooked. The initial work in the NSW jurisdiction did not include installers.²⁸

26. Substitution should be the objective of any policy response into managing exposure to silica arising from engineered stone. Accordingly, the ACTU calls on the NDDT and the federal government to invest in product development that could replace engineered stone with a much safer product. Such an investment would have the following benefits, in addition to improving the health of fabrication and installation workers:

- engagement of Australian research and development personnel and organisations, e.g. CSIRO
- expansion of Australian manufacturing capabilities and the development of export opportunities
- employment of Australians in safe work.

Q5. 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 licence) or otherwise prohibited manufacture in Australia?

b. restricted (under licence) or otherwise prohibited importation and distribution?

c. fabrication and installation performed only under licence?

d. licence required after installation modifications or repurposing of installed engineered stone?

27. In January, the Australian Engineered Stone Advisory Group sought approval for an industry-based system through their Application for Authorisation to the ACCC for an accreditation scheme for fabricators of engineered stone. This application was subsequently withdrawn following opposition from various groups including health and safety regulators and unions who had not been consulted prior to the application to the ACCC.²⁹

²⁷ Roy et al, of 86 workers with silicosis, 72 were currently employed in the stone benchtop industry at the time of diagnosis; the remainder were no longer working in the industry. Seventy-three workers with silicosis had a primary work location in the factory and 13 were predominately involved in onsite benchtop installation work.

²⁸ CFMMEU C&G submission 2019

²⁹ *This is not compliance – workers need regulation not voluntary accreditation schemes.* ACTU Submission to Australian Competition and Consumer Commission regarding Australian Engineered Stone Advisory Group application for authorisation January 2020 ACTU D. No 04/2020

28. The ACTU and affiliate unions opposed the application and we wish to reiterate that any licensing scheme, like that applied to asbestos removal work, must be administered by a state regulator, outline the key requirements for safe work practices, including banned activities and be subject to compliance auditing by regulators.
29. Licensing systems are implemented when the risks associated with the work are severe or catastrophic and there are known mechanisms for control. For example, as applies to asbestos removal work and Major Hazards facilities.
30. As submitted by the CFMEU C&G Division participants in the industry would have to satisfy conditions relating to matters such as to include:
- Development of Safe Work Method Statements (SWMS);
 - The provision of information to workers and prospective workers regarding:
 - risks associated with using engineered stone;
 - risks and health effects associated with silica,
 - need for and proper use of control measures and the selection, use and maintenance of PPE and RPE;
 - Requirement to report health and air monitoring results to the regulator. In relation to air monitoring, this must be in accordance with the time intervals and triggering events outlined earlier in these submissions; and
 - 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.
 - A failure to comply with all health and safety standards in the jurisdiction could result in a loss of license.
31. The success of such a scheme must be accompanied by robust enforcement and compliance action 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.

Q 6. What learnings from the re-emergence of accelerated silicosis as an occupational health and safety risk can be applied to enhance workplace health and safety systems more generally?

32. As discussed above and submitted in November 2019, the prevention principles are embodied in our health and safety law framework. The best way to achieve prevention is by the application of the hierarchy of control;³⁰ elimination and, if elimination is not

³⁰ For example

Elimination – ban on importation and manufacture of engineered stone
Substitution – use of a safer engineered stone product or other
Isolation – for installers - ban of all on site cutting of engineered stone

reasonably practicable,³¹ minimising exposure as far as reasonably practicable. Application of the hierarchy of control for **all** occupational dust exposures is essential.

33. The importance of primary prevention, in all circumstances, is well recognized³² but is often not applied in practice and in compliance activity by regulators.
34. A prevention framework must be linked to a systemic health surveillance system that detects early disease for both treatment and prevention purposes, i.e. detection of early disease must inform risk control measures. Those who are unfortunate enough to become ill must have access to good treatment options and the provision of safer alternative work for those affected by dust disease.
35. There are existing models, for risk controls and health surveillance in the health and safety system, which can easily be adapted to occupational lung and dust diseases. The Queensland governments submission to the Taskforce³³ clearly outlined the process and the outcomes of the review of health surveillance programs.³⁴ Since the release of the Interim Report further work has been done in Victoria.³⁵
36. The ACTU remains concerned that despite these excellent models there does not appear to be much progress nationally, either for silicosis or other occupational dust diseases. As we submitted to the NDDT in November 2019, the model used by Queensland Mining industry uses a clinical pathways model that could be adapted to all occupational lung disease. The evidence presented to the NDDT, and study referred to below, highlight the importance of a comprehensive health surveillance scheme, of which a model already exists in the Queensland Coal Industry (Queensland coal industry – CMWHS Clinical Pathways Guideline).³⁶
37. Adherence to this model has improved outcomes for ill workers and is strongly supported by the industry union.³⁷ [We understand there would be different steps dependent upon disease and exposure].
38. There is increasing evidence that chest X-rays fail to detect occupational lung disease. The information contained in the submission by the Lung Foundation of Australia to the NDDT³⁸ is reinforced by a recent paper which concluded *“the results suggest that chest*

³¹ Section 17 WHS Act and Section 20.1 OHS Victoria

³² Lung disease from open cut mining, limits of respirators and why primary prevention matters
Cecile Rose, MD, MPH Professor of Medicine, Denver, CO GLOBAL CUT THE DUST CONFERENCE
Gold Coast, Australia February 25, 2020

³³ Queensland Government Submission to the National Dust Disease Taskforce, November 2019
[https://www1.health.gov.au/internet/main/publishing.nsf/Content/B9108A1CB059515CCA2584F60008ACBD/\\$File/Queensland-Government.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/B9108A1CB059515CCA2584F60008ACBD/$File/Queensland-Government.pdf)

³⁴ See <https://www.worksafe.qld.gov.au/silicosis/background-to-silicosis>

³⁵ Ibid

³⁶ Department of Natural Resources Mines and Energy, Queensland government

³⁷ Personal communication CFMMEU Mining Division Queensland

³⁸ “In one cohort of Queensland workers 43% with ILO (International Labour Organisation) classified normal chest x-rays had disease visible on CT [scans]. Lung Foundation Australia strongly recommends that where lung disease is

*HRCT is indicated for screening of workers with high exposure to silica and DLco should be added to spirometry in health surveillance”.*³⁹

39. As the ACTU and other organisations observe,⁴⁰ the WHS/OHS Lead regulations are an existing model on how to mandate health surveillance in high risk industries. The WHS/OHS Lead regulations define lead risk work and lead processes; that is, the potential for exposure is deduced from the nature of the work and materials being used. Given the monitoring results conducted by various regulators,⁴¹ potential exposures to RCS should be well characterised and known and would provide the data necessary to classify “silica risk work and processes”. Health surveillance requirements could be linked to the nature of the silica work.
40. As accelerated silicosis is a progressive disease, it is imperative that health surveillance continue after cessation of employment. Contact tracing and systems to follow-up exposed and ill workers must be established to follow those from high-risk industries. Given the progression and chronic nature of these diseases - silicosis, lung cancer - the health of workers must be monitored after exposures have ceased.
41. A National Lung Disease Register⁴² is also essential to monitor and analyse the incidence of notifiable dust lung disease, coupled with arrangement with relevant State bodies for follow up and review of risk control measures, where appropriate. The applicability of the Queensland model to all occupational dust diseases, including accelerated silicosis, should have been the focus of the Interim Report. The Notifiable Dust Lung Disease Register (the NDLD Register) was established on 1 July 2019 after amendments to the *Public Health Act 2005* (Qld) and *Public Health Regulation 2018* (Qld) came into effect. The purposes of the NDLD Register are to monitor and analyse the incidence of notifiable dust lung disease and enable information about notifiable dust lung diseases to be given to a State body.

Workforce Organisational Culture

Q7. 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?

suspected in workers from high risk industries (mining, construction, stone masonry, tunnelling), these workers are immediately referred for CT scans. These scans must be provided at no cost to the worker”. Lung Foundation of Australia, National Strategic Action Plan for Lung Conditions: Occupational Dust Diseases, November 2019, page 3

³⁹ Silicosis in finishing workers in quartz conglomerates processing, Guarnieri G et al, *Med Lav* 2020; 111, 2: 99-106 DOI: 10.23749/mdl.v111i2.9115

⁴⁰ Joint letter ACTU and others Nov 2020

⁴¹ Queensland Government submission November 2019, jurisdictional reports to SafeWork Australia Members meetings – available on request

⁴² The ACTU supports a register with scope to cover all occupational lung diseases. In the interim, a National Notifiable Dust Disease Lung Register is urgently needed.

42. Training is essential in ensuring that all industry players, including persons conducting business and undertakings and workers, are able to implement safe work practices. It is acknowledged, when considering the hierarchy of controls, that training is a lower order control and less effective than measures such as elimination and substitution. That being said training does deliver important health and safety benefit and it is essential that training is not limited to “workers” and that the solutions are not seen as resting solely on “training and competencies” of workers. This approach obviates the legal duties of others and is a mechanism to focus on individual worker behaviour instead of behaviour by the industry. Any training modules must be linked to licensing systems and require proof of due diligence by the relevant duty holders including officers.
43. Significant work has been done by the key industry union regarding training and awareness. This is another demonstration of the leading role unions perform in health and safety. If unions, with limited resources, can take action, any claims of lack of resources or personnel by governments, its agencies and regulatory bodies is hollow indeed. These training packages need to be recognised, enforced and replicated nationally.
44. As detailed in the CFMMEU C&G Division submission, silica awareness needs to be a mandatory component of white card induction training and distinct silica awareness training should be provided to workers that *fabricate and install* engineered stone. In the ACT the CFMMEU has developed a comprehensive course – which has obtained formal support of the Construction Industry Training Council and BLOC ACT Pty Ltd (a Principal Contractor operating within the ACT) – it 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
45. This course has also been adopted by the union’s Queensland/Northern Territory Branch and is being actively considered in other jurisdictions. It provides a leading example of the training that should be mandatory for all workers in the engineered stone industry and could easily be expanded and adapted to cover all sources of exposure to silica dust. Such training could then be given formal support through the relevant industry training councils.
46. A condition of obtaining (and retaining) an engineered stone license should be that new workers undertake an approved silica awareness course, and existing workers regularly undertake refresher training.

Q9. 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?

47. The ability to return to work is dependent upon the nature and severity of disease and the nature of exposure. Unfortunately for many workers the current options are limited, and workers' compensation systems are not designed to support those with chronic disease or provide comprehensive vocational training and redeployment to safer work.

48. Any analysis of the various workers compensation systems is beyond the scope of this submission, but the following principles must apply:⁴³

- effective rehabilitation and return to work programs, as well as the provision of economic security through workers' compensation arrangements, are critically important to injured workers, their families, and the wider community
- all workers are entitled to comprehensive and quality rehabilitation services and to return to suitable and decent employment. Further, injured workers are entitled to compensation that restores them to the position they enjoyed prior to their injury, including full access to superannuation and leave entitlements
- improvements and consistent arrangements are needed for all injured workers in terms of rehabilitation, return to work programs and compensation
- introduction of genuine rehabilitation options, including full technical or tertiary retraining
- removal of time limits and step downs on weekly payments that effectively shift the injured worker onto social security benefits
- the relevant tribunals or commissions should provide a quick, easy, effective and legally binding mechanism to resolve disputes about all aspects of the workers compensation system
- return to work should be elevated as a central tenet of workers compensation by:
 - placing an absolute obligation on employers to provide suitable duties;
 - preventing termination of employment unless the injury management plan states that the return to work goal is a different job and a different employer; and
 - providing incentives for the employment of injured workers
- weekly payments should be set at a level equivalent to an injured worker's pre-injury average weekly earnings irrespective of their fitness for work and should not be subject to any caps or step-downs
- costs associated with medical and all related treatment, as well as supplements to loss of income for childcare or other expenses should be covered for workers' compensation purposes with no arbitrary caps or limits
- work capacity reviews and decisions should be removed from the workers' compensation legislation. Consideration of a worker's functionality should be properly addressed as part of their rehabilitation plan.

⁴³ ACTU Congress 2018 – Workers Compensation policy extracts

49. Our recent awareness and characterisation of silicosis associated with engineered stone exposures has occurred after 2015. The Safe Work Australia (SWA) funded report, *Deemed Diseases in Australia Report 2015*, needs to be reviewed to ensure that the criteria for silica related diseases are accurate in light of this recent experience. Once that review is completed all jurisdictions need to adopt the Deemed Diseases 2015 Report.

Resourcing and Capability

Q11. What specific resources (e.g. information, education, other supports etc.) are required, that are not currently available, for small to medium sized businesses, to ensure that owners and staff are fully informed of the availability and correct use of control methods, including by workers from non-English speaking backgrounds?

50. Generally, community members, including the workforce, believe that if a product is available for sale, someone will have checked that it is safe. This is not an unreasonable assumption but contributes to many behaviours which would be appropriate if the assumption was correct. Information must be clear, and suppliers must not be able to insert indemnity clauses to shun their legal responsibilities. Training and education of all involved in the industry is essential. As discussed above the training must also be aimed at all duty holders and should be linked to a licensing scheme.

51. Many of the owners of these businesses are from non-English speaking backgrounds. The obligations on importers and suppliers of the product are ignored here. The question should be addressed across the supply chain:

- what clear technical information is provided to buyers?
- what information is provided in languages other than English?
- what examples of risk control measures are provided to buyers of the product?

Research and Development

Q13. What industry mechanisms could be introduced to ensure workers have appropriate competencies for handling engineered stone or performing processes that generate silica dust?

52. As discussed above the training system like white card should be developed to equip workers for working in “silica risk work and processes”. Licensing is the most appropriate mechanism for business.

Q16. What alternative products are currently available which could replace high silica-content engineered stone? How could we drive innovation in relation to products?

53. It imperative that research is focussed on:

- development of safer products and exploration of existing substitute products such as Beta Stone
- programs for re-training and job opportunities for affected workers and businesses
- grants for alternative business developments
- how to inform and change consumer demand – and this must focus on all elements of the supply chain, e.g. those that write up the specifications, architects, builders, showrooms.

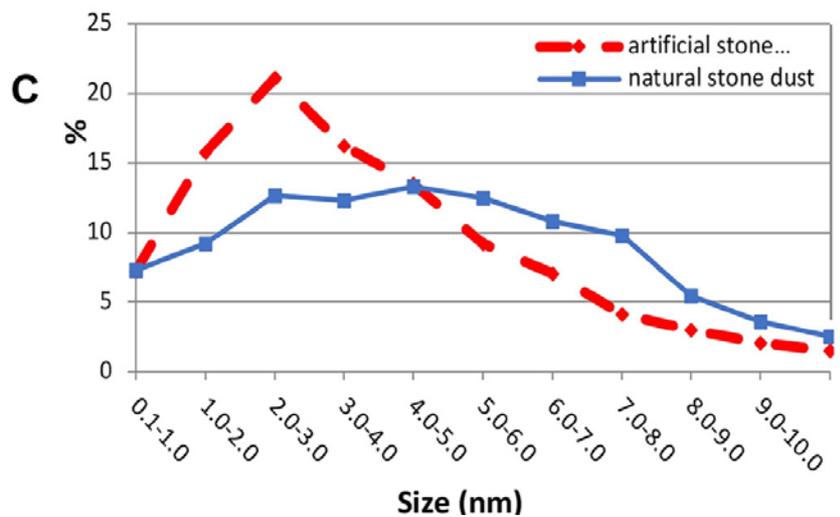
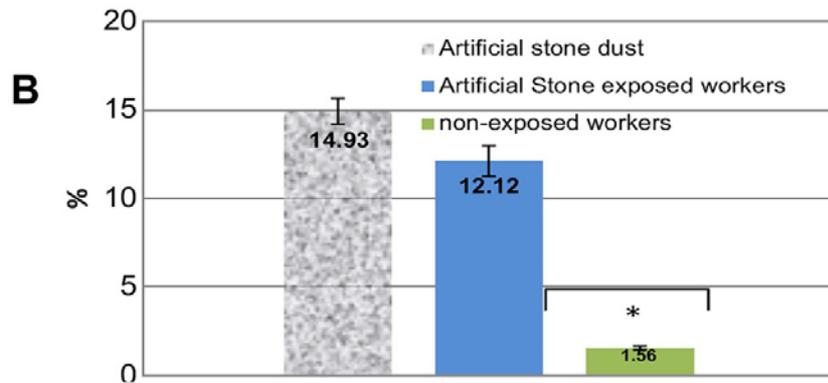
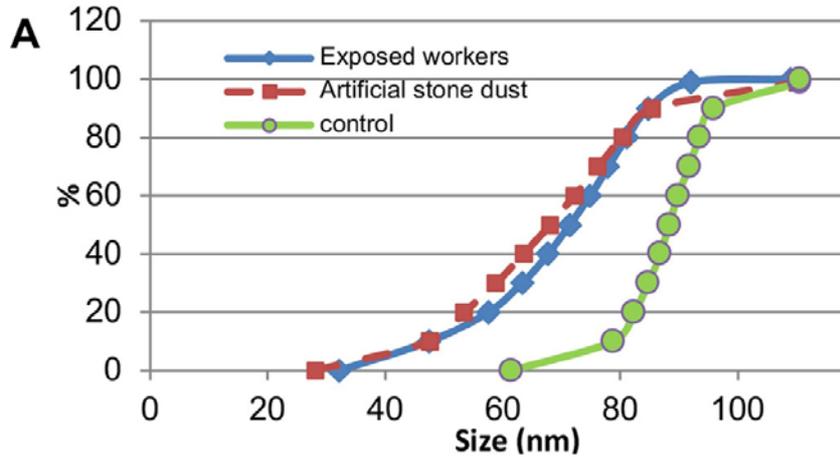
54. Previous experience gained during the banning of the importation of asbestos containing friction materials needs to be explored and adopted. Prior to the banning of the importation of asbestos, representatives from manufacturers, the Australian Automotive Aftermarket Association [AAAA], government and unions were called together to discuss how to implement the ban.⁴⁴ This work contributed to the development of friction materials that did not contain chrysotile asbestos. This was crucial as there were at least 800 direct jobs involved in handling of raw asbestos [brake manufacture] and in garages across the country there was a strong, erroneous belief that non asbestos friction materials would cause vehicle accidents. The involvement of the AAAA was essential to educating the supply chain and reversing the asbestos industry propaganda. Additionally, many anti asbestos campaigners have engaged consumers at retail outlets, home shows etc, to educate the public about the dangers of legacy asbestos. The Asbestos Safety and Eradication Agency and the Victorian equivalent should be consulted regarding effective education and awareness work.

⁴⁴ Int J Occup Environ Health 2004;10: 209–211, Vallance D

APPENDIX

Images from Ophir N, et al. *Occup Environ Med* 2019;**76**:875–879. doi:10.1136/oemed-2019-105711

In conclusion, the results of this study demonstrate, for the first time, an association between UFP, decreased PFT results, worsening of findings on CT and elevated inflammatory cytokines, and exposure to ASD at the workplace.



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