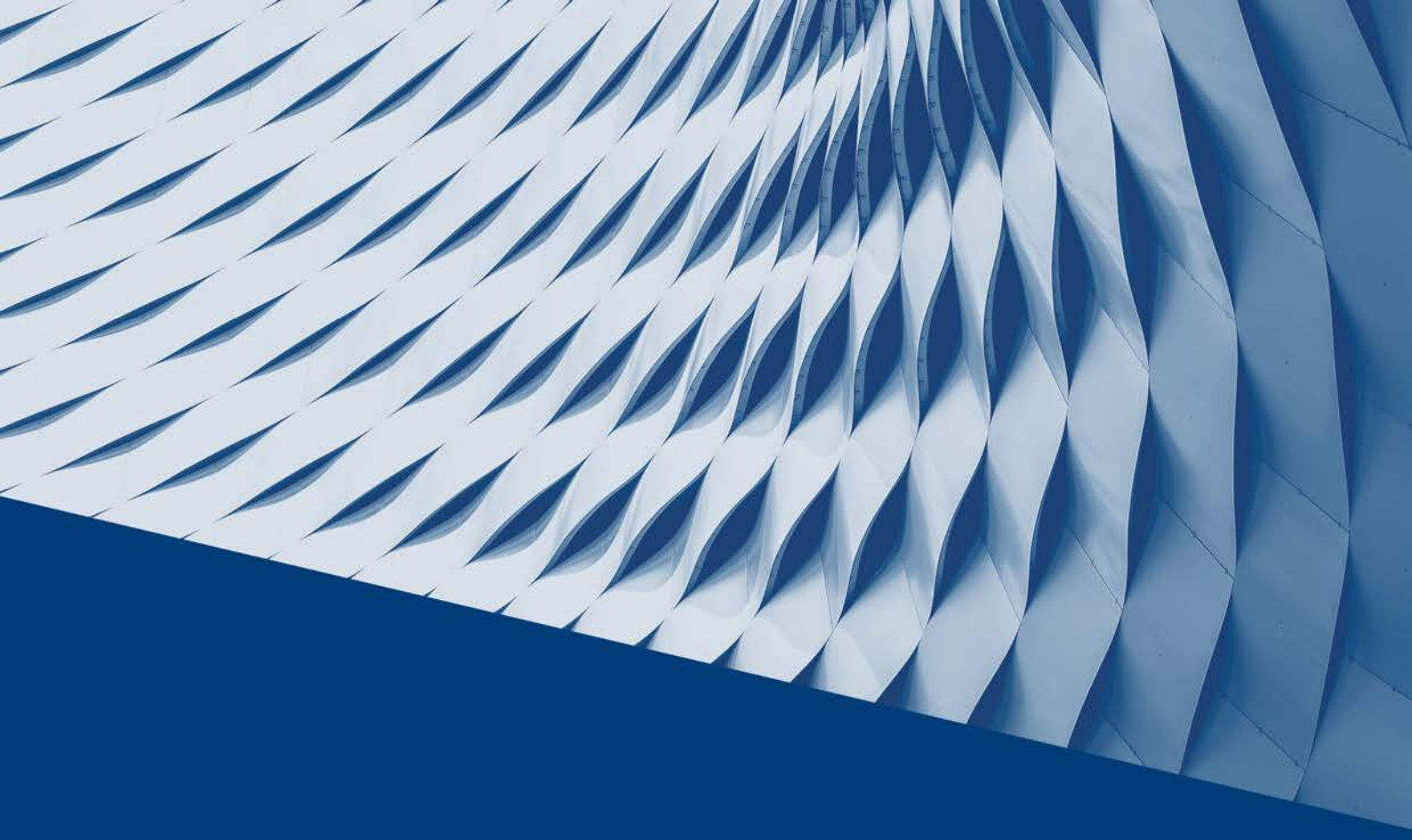

Not quite enough to prevent exposures

Submission by the Australian Council of Trade Unions to the National Dust Disease Taskforce Draft Vision, Strategies, and Priority Areas for Action

ACTU Submission, 29 April 2021
ACTU D. No 21/2021

ACTU
australian council of trade unions

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Introduction

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 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 43 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.

General Comment

The ACTU and affiliated unions have been actively engaged with the National Dust Disease Taskforce (NDDT) since its inception. We therefore welcome any progress to ensure that workers, across a range of industries, will be afforded better protections from exposures to silica and other hazardous dusts.

The ACTU welcomes the proposals which will progress priority areas for action outlined in our previous submissions to the National Dust Disease Taskforce.[1]

We support the key strategy areas particularly the inclusion of a licensing system for businesses using engineered stone. But we are concerned that the proposed Priority Action Areas (PAA) provide a 3-year time frame for a licensing scheme and omits any commitment to implement a ban on the importation and use of high content silica engineered stone. The timeframe to establish a licensing scheme is too long, especially given actions already underway in Victoria.[2]

The focus in the Draft Vision on prevention of disease is supported, but this is not accompanied by a parallel (and in the short and longer term more important) action on the prevention of exposures. For any sustainable change, prevention of exposures must be the approach taken at a national policy and regulatory level and at a workplace level.

In contrast to questions asked in the NDDT Second Consultation paper there is no reference to an exploration of the issues associated with a ban on the use of high silica content engineered stone or any industry development of safer substitutes. This is a significant oversight.

The ACTU acknowledges that actions have been taken but as previously submitted, the current regulatory framework does not provide adequate protection for workers – for example:

- there is no dust specific regulation or broad health and safety regulation that requires the hierarchy of control to be used by a PCBU/employer for ALL harmful dust exposures

[1] ACTU submissions to National Dust Diseases Task Force, 2019 and 2020
Joint letters to Chair, NDDT, 14 November 2019 and 11 November 2020
[2] Occupational Health and Safety Amendment (Crystalline Silica) Regulations Exposure Draft

- there is no proposed national Regulation to prevent exposures to respirable crystalline silica dust when using engineered stone

- the revised workplace exposure standard is a move in the right direction, but is not health based

- there is no National Code of Practice regarding general silica or other occupational dust exposures.

It is very important that any recommendations of the NDDT are cognizant of the principles of our health and safety regulatory framework. The objects of the WHS Acts in Section 3.1.g note that the objects of the Act include:

> *providing a framework for continuous improvement and progressively higher standards of work health.*

The adoption of a ban on the importation and use of high silica content engineered stone supplemented by a licensing scheme is totally consistent with these objectives.

Conclusion

The ACTU welcomes the work of the NDDT but is concerned that the prevention of work-related dust diseases, and particularly silicosis, will not be achieved unless there is a sense of urgency to inform our actions and the much-needed regulatory change and accompanying enforcement activities.

The ACTU continues to call on the NDDT to recommend the actions included in our submissions to the First and Second Consultation papers.

Responses to selected questions in the Draft Vision Consultation Paper are listed below.

Purpose of this document

The ACTU calls on the NDDT to revise the second paragraph in the section titled "Purpose of this document".

The paragraph begins with the following:

> *The consultation process identified that while existing regulations have been designed to provide protection for workers, a lack of awareness of the requirements amongst businesses and the costs involved in implementing effective control measures have led to a significant level of non-compliance.*

It is hard to reconcile the above statement with the 2019 Annual Report of one of the world's largest producers of engineered stone products and filed with the US Securities and Exchange Commission which says in part:

> ***Since 2008,*** *we have been named, either directly or as a third party defendant, in* ***numerous lawsuits alleging damages caused by exposure to silica dust related to our products*** *filed by individuals (including fabricators and their employees, and our former employees), their successors, employers and the State of Israel, and in subrogation claims by the National*

*Insurance Institute of Israel (the "**NII**"), WorkerCover Queensland, Australia, and others. As of December 31, 2019, we were subject to pending lawsuits or had received pre-litigation demand letters related to silicosis claims with respect to 152 injured persons globally, of which 132 were in Israel and 20 in Australia.*[3] (emphasis added)

*As of December 31, 2019, 21 of our employees, out of which 13 are currently employed in our plants in Israel, **have been banned by occupational physicians from working in a workplace with dust due to diagnose or suspected diagnose of silicosis or other lung diseases**, and any expenses not covered by the National Insurance Institute of Israel which we may incur in this respect are not covered by our employer liability insurance. In addition, two former employees filed lawsuits against us.*[4] (emphasis added)

*For example, **in 2015,** the Israeli Ministry of Economy and Industry ("**IMEI") proposed a new law aimed at improving the health, protection and safety of persons engaged** in fabrication of engineered quartz surfaces by imposing, among other things, obligations to obtain permits for operating a fabrication business.*[5] (emphasis added)

The above declaration indicates that the industry is well aware of the hazardous nature of their products. Businesses, down the supply chain, should have been made aware of these risks and were not.

A. Vision

Q1: Does the Taskforce's Vision resonate with you and your agency? If not, what else should be captured in the Vision?

The Vision is a positive step. However, the focus must be on primary prevention i.e. prevention of exposures.

The Vision needs to include clear indicators that demonstrate a significant reduction in exposure to harmful dusts and a significant increase in the application of the higher order of controls – i.e. elimination and substitution of products to remove exposures, where this is achievable (in some industries, like tunnelling, elimination/substitution are not achievable).

The significant evidence of non-compliance with lower order controls, such as implementing dry cutting procedures and the application of appropriate PPE highlights the need to focus on these higher order controls such as elimination and substitution.

The ACTU supports national approaches, but this must provide the highest level of protection, not the lowest common denominator or a compromise which will undermine better protection in other jurisdictions.

Q2: **Will the Vision drive a collective focus on the critical changes required? If not, what else needs to be included to inspire and drive collective effort?**

[3] Annual Report, Caesarstone Ltd, United States Securities and Exchange Commission Washington DC, December 2019, page 7
[4] Ibid, page 7
[5] Ibid, page 8

A focus on prevention and recognition of the hierarchy of control is necessary to convey and create a sense of urgency and importance in lowering exposures and hence prevalence of disease.

Q3: **Is the suggested timeframe for change achievable? If not, what timeframe do you suggest and why?**

The proposed timeframes are long - three years is a significant period. Actions by state governments – for example, Queensland and Victoria – have shown that regulation and support for industry and workers can be rolled out quickly.

The ACTU is a signatory to a joint letter which calls on three years from June 2021, for the implementation of a ban on the use and importation of high content silica engineered stone.

B. Strategies

Q1: **Are the identified strategies the right ones? If not, what alternate strategies do you suggest, and why?**

The proposed strategies refer to appropriately managing risk related to silicosis and does not prioritise prevention strategies – these are referred to with the same emphasis as "education strategies" (page 8, point 1).

The strategy must not limit health screening and surveillance to workers at risk of silicosis – the screening must apply to all those at risk of occupational lung disease (page 8, point 3).

This lack of emphasis on prevention is again expressed in point 5 of the strategy. There has been no national approach to research on exposure prevention, product development of safer substitutes etc. Exposure reduction strategies were specifically excluded from the research funding whereas funds were made available for treatment. The latter is of course supported but prevention must not continue to be the second cousin of tertiary interventions.

C. Priority Action Areas (PAA)

Q1: **Will the key priority actions identified lead to the right recommendations, and deliver the desired outcomes?**

The PAAs 1.1-1.4 fail to include Regulations for all harmful dust exposures, lowering of WES for RCS and coal dust or reference to WES for other respiratory agents.

PAA 1.2

This PAA refers to draft principles in Appendix B which are potentially misleading. The evidence shows that those working with engineered stone get silicosis quicker, contract severe disease and for a significant proportion, disease progresses after cessation of exposure.

The evidence does not support the statement that *"so long as appropriate laws and regulations are adhered to… the risk of using engineered stone may be managed appropriately"*. The statement needs revision as:

- currently there are no clear Regulations in all jurisdictions to prevent exposures
- the current WES for RCS is not health based
- enforcement of control measures in SMEs is notoriously difficult to achieve and has only occurred due to an escalation of regulators activity that may not be sustainable

- and additionally, the health screening undertaken in many jurisdictions may be underestimating the level of disease – for example, early information from Western Australian work found:

  2.2 Review action list from previous meeting
  The Chair drew members' attention to general action list item 2.2 of 4 November –Action 2 - Executive Officer to seek an update from Ms Sally North in relation to action item 3.1 of 2 September 2020 – Action 6 and include information in the next Commission meeting agenda.

  The Chair provided an update from Ms North, which advised that 103 offers for low dose chest computed tomography (CT) scans had been made, with 90 people accepting the offer. Of those scanned, five cases of silicosis were found, with six found to be 'probable' cases and 11 'possible' cases. The oldest person to receive a low dose CT scan was 54 years old and the youngest 24 years old. The Chair noted that the scans were conducted on people who had previously undertaken respirable crystalline silica health surveillance. A full report of the CT recall project will be available early in 2021.

  A UnionsWA representative raised that 22 possible cases from just 90 scans was alarming, highlighting the need for swift action.

  In response to a question from Dr Julia Norris, Mr Ian Munns advised that initial X-rays of the recall project participants had not identified abnormalities. Dr Norris noted that the Commission had already taken action to introduce low dose CT scans and highlighted their benefit in detecting silicosis.

  Mr Chris White advised that no new silicosis workers' compensation insurance claims had been received since the initial seven; acknowledging there may be more cases.

  Dr Matthew Davies requested that information regarding advice provided to the workers who received low dose CT scans be included in the report provided by Ms North.

  Commission members AGREED to close the action item and review the full report when it becomes available in early 2021.[6]

The ACTU assumes that further information would now be available from the Western Australian government.

PAA 1.2

The PAA fails to mention elimination of exposures.

PAA 1.3

Regulators should be doing much more than 'promote' compliance activities – their role is to enforce compliance with laws – the word 'promote' needs to be replaced with 'implement'.

PAA 2.1 - 2.7

[6] https://www.commerce.wa.gov.au/sites/default/files/atoms/files/2_december_2020.pdf

The preamble needs to focus on prevention – reorder the following wording 'approach to awareness and prevention' to 'prevention and awareness'. There is no reference to research and development of alternatives to the use of crystalline silica in engineered stone products. This should include reference to industry incentives to undertake product development – for example, use of recycled products to produce tiles - this must be a PAA.

PAA 2.2

Are we correct in assuming that the term 'manufacturers' is meant to apply to importers, suppliers, fabricators and installers? Similarly, is the term 'designers' meant to apply to building developers, architects, members of the Property Council of Australia etc? The PAA needs to explicitly name the relevant key groups.

PAA 2.5

This PAA has a focus on occupational hygienists but fails to include those who design work processes and practices or who are responsible for the safe operation of work processes e.g. engineers, health and safety officers etc.

PAA 2.6

This PAA lacks vision. Consumers need to be educated about the harmful effects of high content silica engineered stone products, encouraged to use safer alternatives and provided with assistance on where to source said alternatives. Engineered stone bench tops are a fashion item – fashions change and are the outcome of promotion of product advertising, which means it is possible to intervene to change consumers preferences.

PAA 2.7

This PAA refers to workers ahead of employers and consumers – workers do not have either the legal duty or often the power to make decisions about changing how work is performed. The priority focus of any behavioural insight work must be on importers, suppliers, designers, building developers and PCBUs.

PAA 3.1

See comment on PAA 1.2 above.

PAA 3.2

Communication strategies must be focussed on PCBU/employers to <u>offer</u> health surveillance and screening programs. Until H&S regulators took the initiative most workers were not being offered health screening – if they were, then the severity and numbers of cases of silicosis may have been smaller.

The emphasis must be on PCBUs and on insurers to provide screening post removal from exposures. Currently there are no obligations to provide ongoing health surveillance of either those with disease or those who may develop diseases as a result of work-related exposures.

PAA 4.1 - 4.3

These PAAs fail to include the need for PCBU/employers to be aware of the Guidance for Doctors.

PAA 4.1 - 4.3

This section fails to mention anything about workers' compensation systems. This is crucial, as many workers will have no access to income support upon the cessation of workers' compensation payments. These issues were highlighted in submissions to the previous two consultation papers from the legal profession. There is no mention of the industry providing ongoing support or access

to vocational retraining/rehabilitation. This is very disappointing, given that the engineered stone industry has known about the risks associated with their products for years.[7]

PAA 5.1 – 5.7
This section would greatly benefit from a broader vision by referring to:

- research and policy development for implementation of an importation ban on high content silica engineered stone products
- industrial processes that reduce the exposure of workers, in all industries, to harmful dusts and respiratory agents
- mechanisms to encourage safer product development
- possible investment strategies to limit the use of these harmful products
- avenues to ensure that research funding is available into primary prevention
- mechanisms to encourage collaboration for research into primary prevention, especially as current NHMRC processes do not prioritise occupational exposures.

PAA 6.1
It is unclear whether the proposed new body would look at the public health and health and safety issues or would be broader to include issues such as research, industry development and retraining, workers' compensation systems etc. Unless such a body has a broad scope, it runs the risk of merely replicating what is already in existence.

Q2: **Are there any critical issues missing from the key priority actions? If so, please detail what else needs to be included.**

The PAA does not refer to training of worker representatives or industry-based training efforts that currently exist that could easily be extended across other industries and jurisdictions.

Q4: **To ensure the effectiveness of the proposed regulatory changes, it is important that various stakeholders work together to promote change. Do you have any suggestions to foster collaboration amongst the stakeholders, in particular (a) industry and regulators; (b) occupational hygienists and WHS regulators; (c) public health, WHS system and medical experts, and (d) overall collaboration to ensure worker safety?**

Collaboration between the relevant government departments and agencies should not be difficult and has already been implemented in states such as Queensland where the H&S regulators have worked with Public Health authorities.

As submitted in November 2020 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.

[7] Ibid, page 7

Q6: **Does the proposed timeframe of three years from the implementation of a nationally consistent licensing scheme by a jurisdiction allow sufficient time to collect the necessary data to support the consideration of further regulatory improvements?**

The provision of a 3-year timeframe for a licensing scheme is too long, especially given actions already underway in Victoria.[8] This PAA scheme omits any commitment to implement a ban on the importation and use of high content silica engineered stone.

Q7: **Licensing schemes are usually accompanied by a suite of non-regulatory measures for improved effectiveness, for example, education, auditing and reporting. How can consistency be improved in relation to the development and delivery of education and awareness sessions to PCBUs?**

Unfortunately, the question posed here is about consistency, not relevance or adequacy. Consistency is desirable but if the information and activities fail to aim for the highest level of protection for workers and business owners, then consistency will have failed the community.

There is currently no impediment, other than willingness, for Health and Safety Regulators to cooperate and draft consistent messaging – such approaches have been used in the past, e.g. the WorkSafe Victoria – Go Home Safe program which has been adopted by other jurisdictions.

[8] Occupational Health and Safety Amendment (Crystalline Silica) Regulations Exposure Draft

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