

Silica Worker Register

Consultation Paper

October 2024



Acknowledgement of Country

The NSW Department of Customer Service acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past and present and acknowledge the Aboriginal and Torres Strait Islander people that contributed to the development of this Consultation Paper.

Silica Worker Register

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Introduction

1.1 Purpose of this consultation paper

The purpose of this consultation paper is to seek feedback from the public and key stakeholders on the proposed provisions to bring into effect a silica worker register.

Silica continues to be a high priority for the NSW Government. As such the Government has made a number of election commitments relating to silica reforms, to address the rise in silicosis cases in NSW over recent years. One of these election commitments is to increase the health screening of at-risk silica workers by registering all workers engaged in the fabrication of engineered stone. This commitment includes the development of a silica worker register, to monitor the health of at-risk workers exposed to silica dust.

Your feedback will help inform these reforms, ensuring the NSW Government has the required systems in place to fulfil its election commitment, which will see the ramping up of health screening for those working with silica.

SafeWork NSW is conducting the consultation and will carefully consider all feedback received.

1.2 Have Your Say

We invite you to read this consultation paper and share your views. This consultation is an opportunity to ensure that the silica worker register meets the needs and expectations of workers, persons conducting a business or undertaking (PCBU) and the broader community.

To provide feedback, you can:

- **complete the survey** on the NSW Government's *Have Your Say* website.
- **upload a written submission** to the NSW Government Have Your Say website:
haveyoursay.nsw.gov.au/silica-worker-register
- **email a written submission** to whspolicy@safework.nsw.gov.au
- **post a written submission** to:

Silica Worker Register Consultation
Policy, Strategy and Governance
SafeWork NSW
92-100 Donnison Street
Gosford NSW 2250

The closing date for submissions is Sunday, 3 November 2024.

All submissions will be published on the NSW Government Have Your Say website after the closing date unless, you request otherwise. When lodging your submission, you can request that all or part of your submission remain confidential.

Submissions may be referred to in a report on the outcome of the consultation, however any anonymous submissions will be referred to as such.

Please note, there may be circumstances where the Government is required by law to release the information in your submission. For example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*.

1.3 Background

The prevention of workplace fatalities, injuries and illnesses is a top priority for the NSW Government. Every worker who goes to work should come home safely at the end of the day. SafeWork NSW want workers to have healthy, safe and productive working lives.

NSW is a party to the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (IGA)*, agreed to by jurisdictions in 2008. Under the IGA, NSW adopted the harmonised work health and safety regime, which has been in place since 1 January 2012.

Safe Work Australia (**SWA**) is the agency responsible for developing national policy relating to work health and safety (**WHS**). SWA is a tripartite decision-making body, established under the *Safe Work Australia Act 2008*. It consists of the Commonwealth and each state and territory, two members representing the interests of workers and two members representing the interests of employers, and the CEO of SWA.

The model WHS laws consist of the model WHS Act, model WHS Regulation and model codes of practice, developed by SWA in 2011 following extensive consultation.

SWA does not regulate WHS laws, the Commonwealth, states and territories are responsible for implementing, regulating and enforcing WHS laws in their respective jurisdictions. The model laws have now been implemented in all jurisdictions except Victoria. There are some differences in the approaches across the jurisdictions to make sure the legislation is consistent with relevant drafting protocols and other laws and processes but overall, WHS laws are largely harmonised.

This framework aims to manage risk in workplaces by requiring that risks to health and safety be eliminated, or otherwise minimised, through an assessment of the risks and use of control measures to create a safer workplace. The *NSW Work Health and Safety Act 2011 (WHS Act)* and the *Work Health and Safety Regulation 2017 (WHS Regulation)* enables workplaces in NSW to manage health and safety issues.

1.3.1 Silicosis and silica dust

Silicosis is a progressive, irreversible and incurable occupational disease caused by the inhalation of and exposure to respirable crystalline silica (**RCS**) dust.

Impairment of lung function and the severity of symptoms increase with disease progression, even after the cessation of RCS exposure. Silicosis is a long latency disease, with the latent period from exposure to development of the disease being from one to ten years. However, some cases of accelerated silicosis can develop over a period as short as three to five years.

When exposure is not controlled, silica dust is a major hazard to workers. A broad range of industries such as manufacturing, stone masonry, construction, tunnelling, demolition, mining and quarrying may expose workers to RCS.

NSW has seen a dramatic increase in cases of silicosis since 2017, and SafeWork NSW has been focusing on the dangers posed by RCS since this time. Silica continues to be a high priority for SafeWork NSW and the government with continued reforms being progressed. For further information please visit the [NSW Silica Dashboard](#).

1.3.2 National silica reforms

The increase in cases of silicosis has been an Australia-wide issue which has and continues to require a national and coordinated response. It has been vital to have a national approach to address the risks of silica exposure to workers, to guide the relevant agencies and ensure consistency across jurisdictions.

1.3.2.1 National Dust Disease Taskforce

The National Dust Disease Taskforce was established in 2019 and developed a national approach to the prevention, early identification, control and management of occupational dust diseases in Australia. The *All of Government's response* in April 2022 provided a strong commitment to reduce incidences of silicosis and other dust diseases among workers; and increase the quality of life for people affected and their families. The Taskforce's work is completed, and it has ceased operating.

1.3.2.2 National Occupational Respiratory Disease Registry (NORDR)

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

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

1.3.2.3 Prohibition on the use of engineered stone

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

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

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

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

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

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

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

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

1.3.3 SafeWork NSW

Silica has been a high priority for the NSW Government since 2017. It has undertaken significant work including:

- From 1 September 2024 - the WHS Regulation has been strengthened to capture high-risk crystalline silica (HRCSS) processes for all materials across all industries.
- From 1 July 2024 – prohibition on the use of engineered stone.
- From 21 June 2024 – amended the WHS Regulation to eliminate duplicate reporting requirements for the Secretary of Health to report silicosis cases and deaths to SafeWork NSW. These cases are now captured through the NORDR.
- 24 October 2023 – amended the WHS Act to create the framework to establish a silica worker register.
- Delivery of state-wide compliance programs focusing on silica.
- October 2020 – Established the NSW Dust Diseases Register and the Silica dashboard.
- 1 July 2020 – Banned the practice of dry cutting of engineered stone containing crystalline silica and halved the WES from 0.1mg/m³ to 0.05mg/m³.

SafeWork NSW continues to conduct educational, compliance and enforcement activities to ensure PCBU's are fulfilling their WHS duties. SafeWork NSW also has a range of educational and awareness initiatives including task focused silica safety videos, fact sheets, easy to follow visual checklists and other guidance materials, to support PCBU's and workers by providing advice on how to comply with their WHS obligations.

1.4 NSW Government Commitment

The NSW Government made a commitment to increase health screening of at-risk silica workers by registering all workers engaged in the fabrication of engineered stone.

This commitment includes the development of a registration system for engineered stone persons conducting a business or undertaking (PCBU's) to register their workers to allow for the tracking and tracing of workers, as well as the long-term monitoring of their health.

The Government made this commitment prior to confirmation of the national engineered stone ban and on the assumption that the ban would be on materials above 40 per cent silica content rather than a ban regardless of the level of silica content (other than trace levels under 1 per cent).

The Government has since supported the prohibition on the use of engineered stone containing at least 1 per cent silica, which came into effect in NSW on 1 July 2024.

1.5 Recent amendments to the NSW *Work Health and Safety Act 2011* – silica worker register

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

Regulations are required for the silica worker register to become operational. Once established, the register will deliver on the Government's election commitment to increase health screening of at-risk silica workers by registering all workers engaged in the fabrication of engineered stone (as well as all other at-risk silica workers).

At the time of the Amendment Act passing NSW Parliament, Safe Work Australia's *Decision Regulation Impact Statement: Prohibition on the use of engineered stone* had not been released for WHS Ministers to consider. Therefore, section 273A of the WHS Act provides discretion for SafeWork NSW to establish a register and is broader than the election commitment which specifically called out those working in the fabrication of engineered stone. It was also known that WHS Ministers would consider further amendments at a later date regarding national crystalline silica substance reforms.

2

Proposed Regulation

2.1 Proposed provisions for the NSW Silica Worker Register

The Silica Worker Register is a key component of one of the NSW Government's Election Commitments.

2.1.1 Scope of the silica worker register

As mentioned above, in October last year the NSW Parliament passed the Amendment Act, introducing new sections 273A and 273B of the WHS Act. These new sections of the WHS Act provide regulation making powers for SafeWork NSW to establish and keep a silica worker register, in accordance with the regulations.

The draft *Work Health and Safety Amendment (Silica Worker Register) Regulation 2024 (Amendment Regulation)* proposes that the silica worker register apply to all workers who conduct high-risk crystalline silica substance processing. This aligns with the recent WHS Regulation amendments which commenced on 1 September 2024, relating to high-risk crystalline silica substances (HRCSS) processing, supporting the national reforms agreed to by WHS Ministers.

This is considered the most practical approach as it simplifies the process for PCBU's to know when to register their workers by aligning the criteria with the HRCSS requirements for when to conduct air monitoring and health monitoring. It will provide consistency and clarity for all stakeholders.

The risk of worker exposure to unsafe levels of RCS is across a wide range of industries, not just those within the engineered stone industry, which is transitioning following the implementation in NSW of the national ban from 1 July 2024.

The draft Amendment Regulation requires PCBU's to provide worker information to SafeWork NSW for inclusion on the silica worker register when a PCBU is carrying out or directing or allowing a worker to carry out the processing of a crystalline silica substance that is high risk.

This is consistent with other key duties that must be adhered to by PCBU's monitoring the processing of CSS that is high risk under clause 529CE to:

- Undertake air monitoring in accordance with clause 50
- Report exceedances of the RCS workplace exposure standard (**WES**); and
- Provide health monitoring in accordance with Part 7.1, Division 6.

Aligning the register, where practicable, with these duties aims to minimise confusion and reduce administrative burden for industry and will best ensure compliance so that at-risk silica workers are accurately captured. This information will be shared with icare, to enable the provision of health monitoring services. icare provides support to people who have developed a dust disease because of exposure while working in NSW and it is appropriate that it has access to this information, and it provided for under the WHS Act. This can include providing lung screening services that PCBU's can organise for workers at risk of being exposed to harmful dust, including RCS.

The requirement for PCBU's to inform the SafeWork NSW about when their workers undertake HRCSS processing, will enable health screening to be ramped up, as per the election commitment, so at-risk silica workers will not miss out on being provided the opportunity to access these critical health screening services, if required. This is **in addition** to the health monitoring requirements already contained within the WHS Regulation.

2.1.2 Proposed provisions for the silica worker register

Establishing the requirements within the WHS Regulation for the silica worker register will operationalise the register.

The proposed key requirements within the draft Amendment Regulation are set out below:

1. Commencement date
2. Information for inclusion on the register
3. Use of information on the silica worker register
4. Penalty notice offences.

These provisions are discussed below, which SafeWork NSW is seeking your feedback on.

2.1.2.1 Commencement date

The Amendment Regulation proposes to commence on 1 March 2025, which is the date PCBUs will have to commence their reporting requirements. This is six months after the introduction of the national silica reforms regarding HRCSS processing, which commenced in NSW on 1 September 2024.

Commencing six months after the national reforms commence, will allow time for PCBUs to ensure they are familiar with the regulatory requirements around HRCSS processing. It is also anticipated that PCBUs would know if their workers are undertaking HRCSS processing within 6 months.

During this time, SafeWork NSW will work closely with icare and other key stakeholders to ensure the silica worker register can be implemented as intended.

This timeframe also aligns with the time needed to deliver an ICT solution for the register. SafeWork has commenced scoping a robust ICT system with a focus on security that will be integrated with the online notification portal developed for the national crystalline silica substance reforms.

2.1.2.2 Information for inclusion on the silica worker register

The Amendment Regulation proposes that where a PCBU is themselves or has workers who are carrying out, HRCSS processing, they must give the following information to SafeWork for inclusion on the NSW silica worker register as soon as practicable, but no more than 14 days from the date the work commences:

Worker details:

- Name of worker
- Date of birth
- Phone number
- Email address
- Residential Address

PCBU details:

- Business name
- Australian Business Number (ABN)
- Phone number
- Email address
- Business address
- Current workers' compensation policy insurance number.
- Address of HRCSS processing site (if different to above)
- Date the processing of HRCSS processing commenced.

It is proposed the above information, such as collecting a person's birthdate and residential address to verify a person's identity, is submitted by the PCBU to enable icare to effectively cross reference with existing records and facilitate health monitoring services for at risk workers where appropriate,

noting that this type of worker information is usually collected by a PCBU when engaging a worker. These provisions are deemed necessary to ensure the purpose of the register is met. Use of this information will be restricted, see 2.1.2.3 below. The Amendment Regulation requires the PCBU to provide the worker information to SafeWork NSW as soon as practicable, and no more than 14 days of the HRCSS processing commencing. This period aligns with the PCBU duty to report RCS workplace exposure standard (WES) exceedances to the regulator under the national HRCSS reforms, for consistency with similar reporting duties.

There are confidentiality provisions within the WHS Act that protect any information obtained by SafeWork NSW in the course of exercising its statutory functions, including the keeping of the silica worker register. SafeWork NSW further complies with the applicable privacy and health privacy obligations in relation to the management of personal information and health information, as per the *Privacy and Personal Information Protection Act 1998 (PPIP Act)* and the *Health Records and Information Privacy Act 2002 (HRIP Act)*.

The silica worker register will be an online portal in which PCBU's will be able to enter their workers details into. The system will compliment and be integrated with the portal developed for the legacy engineered stone notifications to support the national ban from 1 July 2024 and the RCS WES exceedance reporting under the national CSS reforms, which commenced in NSW on 1 September 2024. Integrating the systems will make it easier for PCBU's and more efficient for government.

Question 1: Do PCBU's currently have the information about workers that they will be required to provide to the silica worker register? If not, please specify which information is not being collected.

Question 2: Does the 14-day period allow PCBU's enough time to register their at-risk silica worker? Please specify reasons.

2.1.2.3 Use of information on the silica worker register

Section 273B(3)(b) of the WHS Act enables additional purposes of the register to be prescribed in the regulations. The draft Amendment Regulation proposes that in addition to the purposes prescribed in the WHS Act, *to track the health and safety of a worker with information on the register, including epidemiological research*, the register may also be used to:

- Monitor and enforce compliance with the following laws:
 - the WHS Act and this regulation
 - the *Workers Compensation Act 1987*
 - the *Workplace Injury Management and Workers Compensation Act 1998*
- Assist or support a corresponding regulator or WorkSafe Victoria to monitor and enforce compliance with a corresponding WHS law or with the *Occupational Health and Safety Act 2004* of Victoria.
- to provide advice, information, education and training in relation to work health and safety
- to provide health monitoring services to eligible workers.

There are community expectations that the government will be able to take appropriate actions, if required, regarding at-risk workplaces identified through the register where workers are conducting HRCSS processing. This may include compliance programs targeting specific industries, involving both proactive and reactive inspector visits to workplaces. The information captured within the silica worker register may also assist WHS Regulators with identifying and subsequently developing a targeted education and awareness initiative towards at-risk workers or industry cohorts.

It is also anticipated that PCBU's may provide information about at-risk workers who are regulated by the NSW Resources Regulator (mining or petroleum workplaces), or who are in another state or territory, or whose work is regulated by the Commonwealth WHS Regulator. SafeWork NSW wants to ensure that information can be shared with these agencies, where appropriate, so they can take

any necessary action. As at-risk workplaces may be identified through the register, it is important that the appropriate regulator is informed. Therefore, enabling any necessary action to be undertaken to minimise exposure to respirable crystalline silica dust, which can cause life threatening dust diseases such as silicosis.

A crucial element of the Government's election commitment is about ramping up health screening for at risk workers. SafeWork NSW does not undertake health screening services. This is provided by icare, along with private health monitoring providers, so it is critical that SafeWork NSW can share the information provided by the PCBU about the at-risk workers to enable the provision of any health monitoring services that may be required. It will also enable icare to monitor these workers, where necessary, to follow their health journey in relation to exposure to HRCSS processing.

Health monitoring services for silica typically involves a medical examination with a focus on the respiratory system. Minimisation or elimination of exposure and then early detection through these screening services can minimise the impacts of these diseases on the worker's health. The silica worker register will be an important way to help inform early action for this serious disease.

Question 3: Do you agree with the proposed use of information from the silica worker register? Please explain your reasons.

2.1.2.4 Penalty notice offences

The National Compliance and Enforcement Policy provides that penalty notices are an important mechanism for regulators and inspectors to impose an immediate sanction for certain types of breaches. Penalty notices are used to send a clear and timely message that there are consequences for non-compliance with WHS requirements and exposing persons to risk of injury or death.

Penalty notices are generally issued where a sanction is appropriate for a breach, but the nature of the breach does not necessarily warrant prosecution.

Under the National Enforcement and Compliance Policy, penalty notices are an important part of the regulatory toolkit. They are an immediate form of punishment for certain types of breaches. The issue of a penalty notices sends a clear and timely message that there are consequences for non-compliance.

It is important for SafeWork NSW to have the availability of an immediate punitive sanction for non-compliance with the silica worker register requirements, through a penalty notice offence. The Amendment Regulation prescribes the offence under section 273A of the WHS Act as a penalty notice offence.

The penalty notice amount for section 273A(2) of the WHS Act, that being where a PCBU fails to provide the required information for inclusion on the silica worker register, is proposed to be:

- \$1,500 for an individual
- \$7,450 for a body corporate.

This penalty notice amount aligns with that of s 38(1) of the WHS Act, which requires a PCBU to notify the regulator immediately after becoming aware that a notifiable incident arising out of the conduct of the PCBU has occurred.

By setting these penalty amounts at the same level, the importance of timely notification to the regulator is emphasised. This approach highlights the necessity for PCBUs to register their at-risk silica workers as soon as practicable, due to potential exposure to crystalline silica dust.

Effective notification will enable icare to review the data about the at-risk worker and arrange any necessary lung screening services (health screening and monitoring) in accordance with the government's silica reforms.

The Government's election commitment is to ramp up the screening of at-risk workers, allowing for the tracking and tracing of workers, and monitoring their long-term health and safety. It is

anticipated this will assist with the prevention and early intervention / detection of respiratory health issues among this cohort of at-risk workers.

Question 4: Do you have any other comments?

3

Discussion Questions

3.1 Discussion Questions

This paper is seeking specific feedback on the proposed key elements of the draft WHS Amendment (Silica Worker Register) Regulation 2024.

Discussion questions

The following questions have been developed to guide your feedback and comments within your submission:

Question 1: Do PCBUs currently have the necessary worker information to provide to the silica worker register? If not, please specify which information is not being collected.

Question 2: Does the 14-day period allow PCBUs enough time to register their at-risk silica worker? Please specify reasons.

Question 3: Do you agree with the proposed use of information from the silica worker register? Please explain your reasons.

Question 4: Do you have any other comments?

3.2 Next steps

SafeWork NSW will carefully consider and assess all feedback received in response to this paper. This feedback, along with any other relevant information, will inform the further development of the draft regulations regarding the NSW silica worker register.

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