Australian Industry Group

Feedback on the National Dust Disease Taskforce Interim Advice to Minister for Health - December 2019

Submission to the National Dust Disease Taskforce

NOVEMBER 2020

INTRODUCTION

The Australian Industry Group (Ai Group) is a peak industry association and has been acting for business for more than 140 years. Along with our affiliates, we represent the interests of large and small businesses employing more than one million staff. Our membership is diverse, operating across a broad spectrum of the industrial sector of the economy including manufacturing, engineering, construction, logistics, labour hire, mining services, defence, airlines and industrial ICT means we are genuinely representative of Australian industry.

Our vision is for ***thriving industry and a prosperous community*****.**

We have ongoing contact and engagement with employers across Australia on the broad range of issues related to the operation of their businesses, informing them of regulatory changes, discussing proposed regulatory change, discussing industry experiences and practices and providing advice, consulting and training services.

Ai Group is a member of Safe Work Australia and its sub-group Strategic Issues Group – Work Health and Safety (SIG-WHS), which had oversight of the development of the Model Work Health and Safety (WHS) Laws. We are also actively involved in consultative forums with state and territory regulators in relation to the application of safety and workers' compensation legislation.

Ai Group is also represented on the Asbestos Safety and Eradication Council and the NSW Dust Diseases Board.

INTERSECTION WITH SILICA AND OTHER OCCUPATIONAL DUST ISSUES

Ai Group represents a broad range of manufacturing companies including many in the building products supply chain. We also have members who import, distribute and service manufactured products without making them here. Our membership also includes general and specialist contractors in commercial, engineering, mining services and housing construction. We have members who operate foundries and quarries and many who weld. Within the range of products our members make, supply or work with are products across

the range of silica intensity and operate with other chemicals and processes that carry known risks of dusts and lung disease.

Within that context, we provide the following comments on the interim findings and recommendations across the four areas of focus.

Regulatory and Governance

The Interim Advice findings on Regulatory and Governance issues reinforce the value in the harmonisation of WHS laws in enabling a consistent national response to development of guidance and Codes of Practice, where needed to fill gaps in practical knowledge on accepted control measures for identified risks.

However, the incompleteness of harmonisation remains a barrier to this operating in the future, although it appears that soon only Victoria will remain outside the harmonised framework. Individual jurisdictions should be able to share resources to enable rapid development of consistent guidance and Codes, and just as importantly, free up jurisdictional resources for the important tasks of education and monitoring compliance which the findings suggest are the bigger problems.

It makes little sense for each jurisdiction to devote time and resources to developing their own materials if they end up "similar across jurisdictions". Harmonisation takes away the excuse that individual jurisdictions have to develop that material within different legislative frameworks or language and just leaves the task of agreeing on the core substantive provisions.

Despite harmonisation, we acknowledge that there can be delays in achieving a national outcome when all jurisdictions, or a 2/3 majority of jurisdictions on Safe Work Australia, need to sign on to any proposal. There is merit in developing a *rapid response* regulatory development process within Safe Work Australia to address this issue for future cases of dust diseases or other risks that emerge quickly and where controls are known but have been poorly communicated.

Our experience is that regulators do have greater competence in assessing visible and acute risks than invisible risks. The evidence is that some parts of industry struggle with this as well, although that depends on the history and technical focus of each sector.

This should be an important professional development focus for regulators, but should be done in conjunction with industry, so that there is broad understanding of why the new focus is being pursued and the compliance tools are available for use as much by regulated entities as the regulators. There is always a risk that sudden changes in regulator focus are misunderstood as reactionary and temporary *blitzes*, or that important previous areas of focus are somehow now not important.

A valuable approach may be to ensure that regulator engagement and education strategies are consciously structured to cover visible risks and invisible risks, physical risks and behavioural risks as well as emerging risks and historical risks. This, or something similar, may model a useful framework that encourages industry, particularly those companies without a structured approach to such matters to think widely, but practically, about risks they may face.

We have noted within industry increased use of tools to make invisible risks more visible, as electricity has long been. One example is colour coded wrapping for materials that are packed or stored under stress to warn that unwrapping may release significant forces.

The levels of understanding the requirements of WHS regulatory provisions in some workplaces, particularly smaller ones, often require additional assistance in understanding what the higher-level duties in the Act require of them in respect of particular risks. In its simplest form, this desire for detail is expressed as - “just tell me what to do”. The regulatory system’s answer to this is usually in the form of Codes of Practice or guidance materials, a range of further detail on how to meet the high-level duties for specific risks or in specific sectors or contexts.

There is a natural tension in this framework between the objective of outcomes or performance-based legislation and the desire for the certainty of an explicitly prescriptive regulatory framework. The first requires regulated entities to internalise risk management processes and thinking that can proactively adapt to their particular workplace circumstances which will not be fully known to even the best regulator. The second involves the risk management thinking being largely done by regulators and the workplace task is reactionary. On a simple analysis, larger companies prefer the flexibility of the outcomes-based approach because they have the resources to accommodate it and smaller companies are less keen on it. In addition, sectors with highly competitive commercial arrangements such as construction contracting appreciate certainty because it is less commercially risky. In these sectors as much as possible needs to be resolved pre-contract, when it can be fully accounted for in commercial bids.

As a result of these factors, it is useful for regulators to provide guidance for specific risks that is:

- Based on widely accepted and effective control mechanisms;
- Written in a form (or forms) that is understood by the range of entities to which it applies; and
- Recognises and reflects the commercial structures of the sectors in which it will be used.

The reduction in the workplace exposure standard (WES) for respirable crystalline silica to 0.05 m^3 may have been appropriate based on health evidence and similar standards globally. However, we note that the recent spike in silicosis cases is almost solely sourced to specific sectors of the engineered stone industry where compliance to the previous standard does not seem to have been universally strong; for a range of reasons including the rapid recent growth of that product along a disaggregated supply chain as well as regional differences in enforcement. Many firms operated with engineered stone under the previous WES threshold without increased incidence of silicosis, as did a range of other operations exposed to products or processes with the potential to generate RCS.

The re-emergence of accelerated silicosis points to a failure of compliance rather than an inadequacy of standards *per se*, nothwithstanding that standards have been enhanced in response. Industry shares with regulators an intense interest in ensuring the standards are understood, enforced and met at whatever level they are set, both for health reasons and to provide a commercial level playing field, which are mutually reinforcing drivers. A standard without effective enforcement drivers punishes the compliant. In this context, care needs to be taken in setting exposure standards that are proper, and not introduced because they are relatively simple levers for government to activate, and therefore may have superficial appeal without addressing real underlying issues.

Once the agreed control measures are in place, air monitoring is a key factor in identifying if the control measures are achieving their intended outcomes. Ai Group has been utilising the Safe Work Australia review of workplace exposure standards as a platform to increase the awareness of employers about the obligation to meet exposure standards and utilise air monitoring to ensure that the standards are met. This is an area of education that regulators and others could pursue to increase awareness and increase compliance.

Exposure monitoring is important but its main function is to confirm the control processes are working as intended. In more dynamic workplaces such as construction sites, it would be counter productive for difficulties in exposure monitoring and measurement to divert attention from the primary effort on implementing controls.

The re-emergence of accelerated silicosis, and the similarly surprising spike in disease from respirable coal dust, shows the dangers of complacency. Complacency does not necessarily derive from a careless attitude, it can result from the fact that the challenge of managing WHS has expanded significantly. PCBUs are required to contemplate more risks including long term diseases and mental health; they are required to engage in more formal collaboration and consultation with both workers (employees and others) and other PCBUs; and they have infinitely more material to consider when evaluating the body of knowledge about risks as the internet removes any excuse of ignorance. There are also new "priorities" that emerge from community concerns that whilst genuinely held, may not be grounded in strong knowledge. It may not be surprising that risks that have been managed well over time slip lower in consciousness. Proper risk management should prevent this. However even risk management recognises there are limited resources, financial and cognitive, that must be prioritised.

The current pandemic is a case in point. As organisations have to deal with a range of novel risks and mitigation measures, WHS experts inside and outside industry point to the risk of succumbing to spikes in more traditional forms of injury as companies and individuals are distracted by the immediate concerns of COVID-19 and the unprecedented shared community stress of a global pandemic and the severe economic downturn it has induced.

Regulators must bear in mind that the total burden of regulation, especially in WHS, is significant. making regulation simple to comprehend and improving the absorptive capacity of regulated entities, including sensible use of supply chain influences (as contemplated by the Australian Work Health and Safety Strategy 2012-22) are important considerations.

On the proposal to ban high silica content engineered stone, it is now 17 years since we banned the use of asbestos in Australia. Even with the high level of awareness and almost global bans, we still see asbestos product entering the country. It is difficult to see how a ban on a product based on its level of silica content could be appropriately communicated and enforced at the border. It would most likely be more difficult to implement a ban a product based on a percentage content than has been the case with asbestos which is a much clearer "zero content".

It is unclear how an alternative licencing system would work or be enforced. There are a number of issues that would need to be resolved - would the licence be with the person manufacturing or importing slabs, with the fabricator, or with the installer? What role would each player have in ensuring the other parties were licensed and/or compliant? A licencing scheme, especially if run on a cost recovery model, would increase the cost for compliant businesses, but without enforcement, the non-compliant businesses may still operate underground to avoid scrutiny.

We note that attempts by the vendors/importers of engineered stone to improve compliance among the users of their products through accreditation, a quasi-licensing approach, were not successful, challenged by unions and regulators and by the risk of being found to be acting in an anti-competitive manner.

Workforce Organisational Culture

The formal training system is important to the building and construction industry, across all sizes and structures of businesses in the sector. It also links to the licensing requirements for builders. It is a large employer of apprentices, and a high user of other accredited training in specific skills and safety related processes, such as safety representative training. It is also one of the few industries with a common industry level induction in most states, undertaken by well over 100,000 people each year.

The system that delivers this training is a good vehicle to deliver key messages on safety, including awareness of invisible and emerging risks. It is a high leverage point with the leadership and workforce of the construction industry, including key trades. As workforces form and reform for each project, finding common points of intersection such as training is important to drive the response of the industry to new issues.

According to the National Centre for Vocational Education Research, the construction sector employs about 35,000 new apprentices each year across Australia, although this number is expected to have dropped in 2020.

In the broader VET sector, there are about 200,000 enrolments in building-related training programs annually. These enrolments include trade qualifications and pre-apprenticeships, as well as higher-level programs. The two most popular higher-level programs are the Certificate IV in Building and Construction (required for licensing purposes) and the Diploma of Building and Construction.

According to the Department of Education, Skills and Employment, at the higher education level, about 42,500 people enrolled in programs in the Architecture and Building field in 2019. Most (about 30,000 are at the Bachelor level with most of the rest (about 10,000) in post graduate programs.

Similarly, the manufacturing industry is a high user of vocational training. However, the sector is more static in its organisational structure, with each workplace largely independent

of others. On the other hand, managing risks in a more controlled environment is generally easier and the entities are more permanent and should be more visible to regulators.

A common risk factor is many recent areas of policy challenge has been markets that are undergoing rapid growth – either through private investment or through government stimulus. Rapid growth often leads to many new entrants, straining the capacity of the sector to access experienced and knowledgeable staff and stretching the capacity of industry-level corporate memory. It can also break well established links between regulators and the industry that enabled effective compliance to be performed efficiently. The engineered stone industry is probably one such case. We suggest that regulators look to such rapid growth as a leading indicator of the potential for previously well managed risks to re-emerge. In some cases, such growth can also mislead observers to think that increases in numbers of cases are an indication of an increase in incidence, which it may not.

Most jurisdictions, individually and through Safe Work Australia, are constantly examining return to work performance of compensation schemes and strategies to improve the aggregate rates of RTW as well as individual outcomes across the full range of claimant experiences and profiles. These strategies include addressing the stigma attached to having been injured at work and having made a claim.

Resourcing and Capability

Further to our comments above, we refer to the submission of James Hardie to this second round of consultation on how industry and product manufacturers and suppliers can contribute to ensuring reduced exposure across a range of products containing silica.

Research and Development

One of the challenges in linking workplace exposure with later disease development is that workplace exposure is easier to point to than non-workplace exposure, there usually being much less independent evidence of the latter, as well as less incentive for such evidence to be found if compensation is linked only to workplace exposure. Evidence of workplace exposure can be adduced from employment records, workplace materials and chemicals records and evidence from contemporary colleagues that there was, or may have been, workplace exposure to a particular hazard. Even a very short period of provable workplace exposure risk will carry more weight than a possibly much longer or more intense, but less provable, non-workplace exposure, especially in a private or domestic setting.

We understand the need to focus on silica in light of recent trends. However, a broader campaign on dusts and other airborne contaminants more generally could lead to increased understanding and compliance. It would also assist in reducing the risk of the emergence of other diseases from airborne contaminants.

At Safe Work Australia, Ai Group has suggested that a fertile ground for research would be to explore how regulations, Codes and guidance resources are actually comprehended and used in workplaces. There is a risk that they can be ineffective or even have the opposite effect to that intended due to literacy levels, technical capability and commercial pressures. There is also good reason to support increased use of visuals, videos, QR codes linked to video and other non-text resources for the same reasons.

Ai Group
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Contact: Mark Goodsell Head – NSW 0418 408871; mark.goodsell@aigroup.com.au