

# Client Update

10 MARCH 2020

## Silicosis – it's been around for ages, so why all the fuss now?

### AT A GLANCE:

- The NSW Government has accelerated its new silicosis exposure standard to commence on 1 July 2020, two years ahead of the nationally agreed start date.
- The legislative changes make silicosis a notifiable disease, so there is an increased prospect that SafeWork NSW will investigate OHS practices on site.
- Given the legislative change and the surge in silicosis claims in the past two years, largely due to Australia's building boom, silicosis claims are emerging as an issue insurers should monitor to ensure they continue to allocate risk appropriately.

### WHAT'S CHANGING?

Silicosis is not a new phenomenon. It has long been recognised as an occupational lung disease impacting the mining and quarrying industries. It's considered to be largely manageable with improved workplace health and safety.

So why is it now being seen as an emerging risk for the insurance industry? At a headline level, there have been spikes of reported silicosis that have triggered a quick and robust response from the NSW Government.

The Government has accelerated its new exposure standard to **commence on 1 July 2020**, two years ahead of the nationally agreed start date.

The legislative changes will make silicosis a notifiable disease to be recorded in the Silicosis Health Register. SafeWork NSW will also need to be notified so that it can commence investigating sources of exposure.

### WHAT IS SILICA AND SILICOSIS?

Crystalline silica is a naturally occurring and abundant compound. It is generally found in commonly used construction materials, such as granite, shale and sandstone. It is also a key ingredient in synthetic or manufactured stone.

When these materials are sanded, drilled, ground or polished, respirable crystalline silica dust particles are released into the air. Silicosis occurs when the particles are inhaled and cause serious and irreversible lung damage.

Silicosis is one of the oldest recognised occupational lung diseases, with Australia first regulating silica exposure in the 1920s. However, the number of reported cases has dramatically increased in recent times. In NSW, nine cases were reported in each of the 2014/15, 2015/16 and 2017/18 financial years and only six in the 2016/17 financial year.

In stark contrast, 40 new cases were reported in the 2018/19 financial year, increasing to 70 new cases in the first half of the 2019/20 financial year alone. These incident rate spikes are also reflected in other states, particularly Queensland.

## WHY ARE WE SEEING SUCH A SURGE IN NEW SILICOSIS CASES?

Improved occupational health and safety practices have bettered rates of silicosis exposure in traditional stone and quarry industries. However, Australia is in the middle of a construction boom. To meet demand, there has been a dramatic increase in the use of labour hire (skilled and unskilled) on sites to meet project timelines, as well as a growth in the popularity of synthetic or engineered stone products.

The use of synthetic stone for kitchen and bathroom benchtops, splashbacks and feature walls provides a more cost-effective and durable alternative to natural options making it viable for the quick and cheap construction of a project.

Synthetic stone, however, contains up to 65% more crystalline silica than natural stone, and if appropriate and proper protective measures are amiss when working with synthetic stone, the quantity of respirable silica in the air per cubed metre significantly increases.

## WHO IS AT RISK OF DEVELOPING SILICOSIS?

Unlike reforms involving asbestos, there is no banned use of silica. It is used extensively in construction materials and other industry sectors.

Construction workers are at an increased risk. The natural landscape of a medium to large-scale construction project sees multiple trades working adjacent to each other at any one time. The risk is not confined to those involved in the fabrication and installation of synthetic stone. Any worker in the immediate vicinity of the stone work is susceptible to considerable exposure.

The WHS standards adopted and enforced become paramount to mitigating risk to workers.

## WHAT IS THE IMPACT ON INSURERS?

The potential impact for life and general insurers is multi-faceted:

- Aside from workers' compensation claims, there is likely to be an increased rate of claims on life policies where a worker becomes totally and permanently disabled. Underwriters in this space will need to factor the short latency period into their underwriting considerations.
- With legislative changes coming into effect on 1 July 2020 that make silicosis a notifiable disease, there is an increased prospect that SafeWork NSW will investigate OHS practices on site. These investigations may potentially trigger the supplementary payments extensions in many general liability policies that extend to cover an insured for a SafeWork NSW investigation and/or prosecution where breaches are identified.
- Underwriters with exposure to the construction industry, manufacturers and installers of synthetic stone, and labour hire companies should be alert to potential increased exposures. Underwriting risk assessment will assist in reducing exposure. When evaluating a risk where use of synthetic stone is prevalent, underwriters should consider issues including what measures an insured, or prospective insured, adopts to ensure:
  - relevant personal protective equipment (PPE) is used by workers, particularly with reference to the use of suitable dust masks
  - proper tools are used that suppress dust and and/or filtrate their working environment, and
  - no dry-cutting occurs, and dusty areas are wetted down to suppress airborne dust particles.
- Underwriters need to be mindful that claim sizes are potentially significant because of short latency and increased life expectancy. Unlike asbestos-related diseases:
  - Silicosis generally has a latency period of between 5-10 years<sup>1</sup>. With intense exposure, symptoms can appear within weeks. A short latency period means that those exposed are at risk of contracting the disease at a much younger age – reported data suggests some as young as 22 have been diagnosed<sup>2</sup>.
  - Silicosis does not have the very short life expectancy associated with asbestos-related illnesses. This will have an impact on the value of future treatment expenses, care and domestic assistance and loss of income.

<sup>1</sup> Standing Committee on Law and Justice, First Review of the Dust Diseases and Lifetime Care and Support Schemes (Uncorrected Proof) dated 28 June 2017

<sup>2</sup> [abc.net.au/news/2019-05-30/stonemason-silicosis-class-action-slater-and-gordon/11162554](http://abc.net.au/news/2019-05-30/stonemason-silicosis-class-action-slater-and-gordon/11162554)

## WHAT'S NEXT?

As the dangers of working with asbestos became better understood, the general insurance market introduced “asbestos exclusions” to their policies, effectively excluding any liability arising from, or regarding the use or exposure to, asbestos and producing specific asbestos liability insurance.

Unlike asbestos, however, silica is not a banned product. A complete exclusion may, at this point in time, be an extreme response in circumstances where proper OHS practice and procedure will mitigate any exposure.

The spike of incidents provides an opportunity for the industry to take a closer look at the risk management practices of insureds, allocate risk appropriately through different deductible structures, and appropriately price a risk where there is a greater exposure.



**Legislative changes come into effect on 1 July 2020 that make silicosis a notifiable disease.**

## Need to know more?

For more information please contact us.



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