



# Expansion of functions of ASEA

Consultation on the expansion of the role of the Asbestos  
Safety and Eradication Agency (ASEA) to include matters  
relating to silica

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# Introduction

## About the ACTU

Since its formation in 1927, the ACTU has been the peak trade union body in Australia. It has played the leading role in advocating for, and winning the improvement of working conditions, including on almost every Commonwealth legislative measure concerning employment conditions and trade union regulation. The ACTU has also appeared regularly before the Fair Work Commission and its statutory predecessors, in numerous high-profile test cases, as well as annual national minimum and award wage reviews.

The ACTU is Australia's sole peak body of trade unions, consisting of affiliated unions and state and regional trades and labour councils. There are currently 43 ACTU affiliates who together have over 1.7 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

The ACTU and affiliates have been actively pursuing measures to prevent exposures to silica and the prevention of silica related diseases for decades. This includes but is not limited to:

- ACTU submission to the 2005 Senate Inquiry into Toxic Dust
- Mining unions have persistently pursued changes to the regulatory and compensation frameworks for miners exposed to coal and silica dust – this led to numerous Parliamentary inquiries and significant change in industry and medical practice
- Recent campaigns for the banning of engineered stone and;
- Reform of the regulatory framework for all high-risk silica processes.

The ACTU welcomes the opportunity to contribute to the consultation on the expansion of functions for the Asbestos Safety and Eradication Agency (ASEA), noting that ASEA would not have been established had it not been for the advocacy and campaigning by the ACTU, union affiliates, asbestos support groups, plaintiff lawyers and public health organisations. Similar organisations are involved in calling for better protections for all those workers exposed to respirable crystalline silica dust.

## Overarching comments

The ACTU acknowledges the reasoning outlined in the consultation paper for the selection of ASEA as the government agency to take on responsibility for a national response to silica related diseases,<sup>1</sup> however it is essential to acknowledge the inherent differences between asbestos and silica exposure issues.

ASEA was established to deal with the legacy issues of widespread use of ACMs which have continuing impacts in our built and natural environment. The use of raw asbestos and new asbestos products was prohibited and the regulatory framework and compliance activity for the protection of workers from asbestos fibres was well established prior to the establishment of ASEA.

This contrasts with the current situation for silica dust exposures which are contemporary, are almost exclusively occupational, there is no prohibition on the use engineered stone products and it is not possible to prohibit the use of most silica containing materials used in construction, mining, and manufacturing.

For the reasons above, the ACTU does not accept the proposition that dealing with silica issues is “working with the same stakeholders” as for legacy asbestos issues.<sup>2</sup>

The February 2023 Draft National Silicosis Prevention Strategy 2023-2028 and accompanying National Action Plan<sup>3</sup> calls for a governance mechanism that is underpinned by the following:

- prevention
- independence
- engagement of those with lived experience
- innovation
- multidisciplinary and
- representation.

This is the framework that must be applied to an expansion of the role and function of ASEA.

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<sup>1</sup> Page 2 ASEA – additional of silica related function – consultation paper June 2023

<sup>2</sup> Ibid

<sup>3</sup> <https://lungfoundation.com.au/advocacy/national-silicosis-prevention-strategy/consultation-hub/> page 46

Given the content of the Draft National Silicosis Prevention Strategy (NSPS) and Action Plan (AP), the ACTU is very concerned that ASEA, with expanded functions, will not have the resources to implement the actions in the Draft NSPS and Action Plan.

The ACTU's key affiliate with significant experience in dealing with dust related issues has raised similar concerns noting that *"the annual \$1.1m additional budget demonstrates a real understanding of the extent of the problem facing industry and the necessity for significant effort and resourcing to protect exposed workers"*.

This is a high-risk strategy where the lack of resources is likely to be detrimental to both ASEAs current work, and its expanded functions related to silica. This could lead to a position where workers in both areas are left vulnerable due to the lack of monitoring, educational and enforcement capabilities.

## Recommendations

### **Recommendation 1:**

The functions of ASEA will need to be strengthened to enable the following:

- mandate reporting and information sharing between and across agencies and jurisdictions
- publicly report on jurisdictional, industry and health system successes and failures
- establish clear benchmarks against which to report and
- evaluate all aspects of the strategic plans.

### **Recommendation 2:**

ASEA must be empowered to move from a coordinating agency to one with direct authority to require action. This should include the power to require jurisdictions to report on matters necessary to monitor and evaluate progress on the implementation of measure to prevent exposure to silica

### **Recommendation 3:**

ASEA should be responsible for implementing, monitoring, updating and developing the national plan for silicosis. This plan should be separate to the NSP for asbestos.

### **Recommendation 4:**

The ASEC membership be expanded to include representatives with specific expertise in silicosis prevention. In addition to the expanded membership of the Council and subordinate advisory committee should be established that includes:

- Heads of Workplace Health and Safety Authorities
- Representatives of social partners
- Representative of those with lived experience
- Health experts including but not limited to industrial hygienist, occupational and respiratory physicians and epidemiologists
- Ability to co-opt other experts as required.

## Responses to Consultation Questions

### Q1. Should the Agency's name be changed?

Yes, the name of the agency should be changed to reflect the expansion of its operations to include silica related diseases. A revised name that encompasses both asbestos and silica related issues would accurately represent the agency's broader scope and mandate, for example Asbestos & Silica Safety & Eradication Agency (ASSEA). A broader dust diseases label might be appropriate.

### Q2. Should ASEA's current functions in relation to asbestos be the same for silica, or different?

The rise in cases of silica related diseases is due to a comprehensive systems failure. Any agency tasked with addressing these failures must be equipped with powers to:

- mandate reporting and information sharing between and across agencies and jurisdictions
- publicly report on jurisdictional, industry and health system successes and failures
- establish clear benchmarks against which to report and
- evaluate all aspects of the strategic plans.

The draft NSPS includes outcomes such as:

- high compliance with a ban on engineered stone
- reporting of over exposures to jurisdictional regulators and action taken
- increased uptake of safe work practices and compliance with WHS duties
- suitably trained and equipped medical and health care professional workforce
- improved compliance with WHS duties.

The Draft NSPS outcomes are underpinned by success measures such as:

- robust evaluation that informs ongoing delivery of a national, comprehensive education and communication and awareness campaign
- uptake of training among employers and workers in at risk industries.<sup>4</sup>

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<sup>4</sup> [Draft National Silicosis Prevention Strategy and Action Plan, February 2023](#)

**Recommendation 1:**

The functions of ASEA will need to be strengthened to enable actions like the above.

The framing of Section 8 of the ASEA Act 2013 (the Act) details an advisory, collecting, coordinating, and liaising Agency, without powers to “*influence workplace policy, practice and behaviours and drive preventative action to better protect workers*”.<sup>5</sup>

It is essential that functions relating directly to silica are separated from those to do with asbestos, given the fundamental differences i.e., legacy vs contemporary, built and natural environment vs occupational, and already prohibited vs prohibition of use for engineered stone.

The ACTU supports a suggestion of amending Section 8 with regards to strategic plans and prevention strategies to ‘implementors’ of those, not just to ‘encourage, coordinate, monitor and report’ on its implementation.

The ACTU proposes an additional function in recognition of the budget announcements on home energy performance advising government on risks associated with home improvements contemplated under those budget measures. The risk of exposures to both asbestos and silica will be significantly magnified because of the investment in home energy efficiency and the agency is well placed to advise government on its development of policy programs and their implementation.

**Q3. Should the expansion of ASEA's functions include:**

- **Undertaking and ensuring regular evaluation and review of silica measures and initiatives?**
- **Promoting the use of the latest research?**
- **Sharing information and identifying activities considered to be best practice?**

The ACTU supports the expansion of ASEA functions covering the topics listed above – however the role of ASEA must be more than sharing, collecting, identifying, and promoting.

The systemic change to prevent silica related diseases requires:

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<sup>5</sup> Ibid, Kate Cole page 46



- Evaluation of prevention measures
- public reporting on the progress and effectiveness of prevention measures
- assessment, and
- instigation of systems behaviour change

if we are to reduce the numbers of workers suffering from entirely preventable diseases.

In our comments to the Draft NSPS the ACTU and other organisations noted the failure to include monitoring and evaluation of all activities in the Draft NSPS.

**Q4. If you agree that ASEA should carry out the functions listed in question 3, what additional powers would ASEA need to carry out those functions?**

ASEA must be empowered to move from a coordinating agency to one with direct authority to require action, as discussed above.

ASEA functions need to include the ability to maintain information and report upon, for example, databases relating to workplace exposures, confirmed cases of silica related diseases, noncompliance with WHS duties and evaluation of jurisdictional activity.

The ASEA functions need to separately list the 2023-2028 National Silicosis Prevention Strategy and Action Plan and include annual reporting of progress against all the key outcomes.

Given that the Draft NSPS and AP have been extensively consulted upon, including with relevant federal and jurisdictional bodies and departments it would be most disheartening and a retrograde step, if these Drafts were substantially changed or had to go through another administrative or consultative process.

The Draft NSPS includes guiding principles of “*comprehensive, coordinated action across government departments and portfolios*”.<sup>6</sup> To enable ASEA to adopt these principles ASEA must be required to report to the relevant Ministers on all activities associated with the NSPS and AP.

The ACTU comments on the draft NSPS included concerns regarding some limitations of the Guiding Principles failing to mention that primary duty holders for action are employers, suppliers, importers and manufacturers. This must be reflected in the final NSPS and AP.

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<sup>6</sup> Ibid page 16

ASEA functions need to include:

- the ability to commission, conduct, and fund research specifically focused on asbestos and silica related diseases.
- the mandate to enhance communication and coordination among relevant government departments, industry stakeholders, unions, and public health agencies.

**Recommendation 2:**

ASEA must be empowered to move from a coordinating agency to one with direct authority to require action. This should include the power to require jurisdictions to report on matters necessary to monitor and evaluate progress on the implementation of measure to prevent exposure to silica

**Q5. Should ASEA be responsible for developing, administering, and updating a national strategy or plan for silicosis prevention?**

It is essential that ASEA is seen as implementing the national strategy or plan, not just administering as suggested in the question.

It is understood that ASEA is about to develop the next phase of the Asbestos National Strategic Plan for 2024 and beyond. The ACTU does not support any proposal to combine the two strategic plans. A strong and separate focus must be maintained on the two different preventative activities, i.e., preventing non-occupational exposure to asbestos and the occupational exposure to silica dust.

**Recommendation 3:**

ASEA should be responsible for implementing, monitoring, updating and developing the national plan for silicosis. This plan should be separate to the NSP for asbestos.

**Q6. Should a national strategy or plan for silicosis be a requirement under the amended ASEA Act? If so, noting ongoing work on the regulatory framework for silica, should there be flexibility in implementing a strategy or plan to enable ASEA to adapt its approach for silica as required?**

Yes. There is a need for governments at all levels to be open and transparent about how the national strategy or plan for silicosis is being implemented and how effective it is in preventing disease.

There should be the ability to adapt to emerging challenges and evolving knowledge about silica related diseases, allowing ASEA to modify its approach as required to effectively tackle the issue. However, in at least the first few years the actions in the Draft NSPS should be adhered to.

**Q7. Should ASEA publish annual reports on actions, including jurisdictional actions, to implement a national strategy or plan for silicosis?**

Yes. It is essential that there are publicly available annual reports that monitor and evaluate actions taken to reduce silica exposures and compliance with the ban on engineered stone.

Such reporting is necessary to meet the governance criteria listed in the Draft NSPS and will provide transparency and accountability. The reports will need to include information on industry and jurisdictional actions, highlighting both achievements and areas where further efforts are needed to ensure consistent implementation across all jurisdictions.

**Q8. Should jurisdictions be required to provide information to ASEA to report on actions to implement the national strategy or plan?**

Yes, jurisdictions should be required to provide information to ASEA to report on their actions to implement the national strategy or plan. Standardized reporting mechanisms should be established to ensure consistency and facilitate the collection of relevant data. It is essential to have comprehensive information from all jurisdictions to accurately assess the effectiveness of strategies and identify areas for improvement.

**Q9. Are there currently any barriers to jurisdictions in providing information to ASEA? Should amendments provide for the CEO of ASEA to request information from any persons, including jurisdictions?**

The CEO of ASEA should have the authority to request information from any relevant persons, including jurisdictions, and the ability to report back to those persons/bodies on barriers or, to overcome potential barriers and ensure comprehensive reporting. This provision would empower ASEA to gather necessary data and maintain the integrity of the reporting process.

**Q10. Are the current functions of ASEC appropriate for silica related matters?**

The current functions of ASEC need to be expanded and strengthened, as discussed above to ensure that effective action is taken to address silica related matters.

**Q11. Are there other groups that might be represented on ASEC to ensure silica-related issues are given appropriate consideration?**

Yes – the list includes public health experts, epidemiologists, occupational and respiratory health professionals, researchers, and occupational hygienists.

**Q12. What kind of specific silica related knowledge or experience should be represented on the Council?**

The ACTU agrees that the Council needs its membership reformed to give a focus to both asbestos and silica issues.

As silica related diseases are predominately occupational in origin and the issue is contemporary, the ACTU strongly recommends that there is the ability for a representative body within ASEA, and prescribed in legislation, that deals exclusively with silica related issues. To be reflective of the governance mechanisms proposed in the Draft NSPS, the body should be constituted in the following way:

- Heads of Workplace Health and Safety Authorities
- Representatives of social partners
- Representative of those with lived experience
- Health experts including but not limited to industrial hygienist, occupational and respiratory physicians and epidemiologists
- Ability to co-opt other experts as required.

This body must be required to report regularly on the progress of the NSPS and AP to the ASEC.

The ASEC needs to be expanded to include other members with expertise in silica related matters. The silica exclusive body should nominate expert representatives to an expanded ASEC. This would ensure continuity and accountability between the two bodies.

**Recommendation 4:**

The ASEC membership be expanded to include representatives with specific expertise in silicosis prevention. In addition to the expanded membership of the Council and subordinate advisory committee should be established that includes:

- Heads of Workplace Health and Safety Authorities
- Representatives of social partners
- Representative of those with lived experience

- Health experts including but not limited to industrial hygienist, occupational and respiratory physicians and epidemiologists
- Ability to co-opt other experts as required.

## Conclusion

The ACTU's preferred position was for a separate agency to be established to deal with silica related issues but given this is not what the government has decided, the ACTU gives qualified support to the expansion of the functions of the ASEA.

The rise in cases of silica related diseases is due to a comprehensive systems failure. Any agency tasked with addressing these failures must be equipped with powers to:

- mandate reporting and information sharing between and across agencies and jurisdictions
- publicly report on jurisdictional, industry and health system successes and failures
- establish clear benchmarks against which to report and
- monitor and evaluate all aspects of the strategic plans.

The ACTU strongly supports changes to the functions of ASEA and the membership of the ASEC to ensure that the focus of ASEA is on implementation, monitoring and evaluation of all aspects of the Draft NSPS and AP.

This is an extensive remit and must be accompanied by investing powers with ASEA to mandate reporting to ensure that changes occur at the workplace level.

The ACTU is very concerned that the allocation of annual \$1.1m additional funds will be inadequate and unable to ensure all the actions necessary to protect exposed workers are implemented, as per the timelines outlined in the Draft NSPS and AP.

The timelines in the Draft NSPS and AP were proposed in the context that the Interim Report of the National Dust Disease Taskforce was tabled in December 2019. We are now midway through the fourth year since the Interim Report. The potential to drag out any longer these activities designed to protect exposed workers would be reprehensible.

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