SUBMISSION

Consultation Regulation Impact Statement:

Managing the risks of respirable crystalline silica at work

Instructions

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- Use the saved version to enter your responses under each question below. These questions are from the Consultation Regulation Impact Statement on managing the risks of respirable crystalline silica at work.
- Once you have completed your submission, save it and upload it using the upload your submission link on the Engage submission form.

Submissions will be accepted until **11.59 pm on 15 August 2022.**

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Your details

(Please leave blank if you wish to remain anonymous)

1. Name or organisation

Caesarstone Australia

2. Email used to log into Engage

[redacted]

Questionnaire

(Consultation RIS questions)

Statement of the problem (Chapter 2)

2.1 Do you agree with the identified problem? Has the entirety of the problem been identified? Please provide evidence to support your position.

Overall, Caesarstone believes the CRIS accurately identifies the scale of issues related to RCS and the urgency of addressing them to improve worker safety. We make the following observations:

1. The CRIS recognises but underestimates the current lack of enforcement – and the funding and resources required – to police existing WHS legislation, regulations and standards, let alone any new legislation, regulations or standards.

Caesarstone has consistently taken action to promote a safe engineered stone industry since it began operating in Australia. These efforts have been impacted by a lack of regulatory enforcement and the absence of a national standard.

This is notwithstanding recent efforts by various work safety bodies to increase surveillance and enforcement – and the general improvement in compliance observed in the engineered stone sector since 2018.

Caesarstone argues that any regulatory regime must be supported by rigorous enforcement, including site inspections and random audits. Appropriate fines to ensure compliance would be essential. Caesarstone recommends the introduction of regulator KPIs to ensure the industry is being policed effectively.

A robust enforcement regime would require material investments by governments and/or licensing and regulatory fees and fines to match regulatory requirements. These investments would more than pay off in the long term by reducing the financial pressure on workers' insurance schemes and from lawsuits. Worryingly, the CRIS puts the net present cost to

government of ‘compliance and enforcement’ of a national licensing scheme (Option 4) at $8.65 million over 10 years – an average of $865,000 a year for thousands of PCBUs and worksites.

2. The CRIS overestimates the risk of RCS of at installation.

Caesarstone acknowledges the risk of RCS wherever silica-containing materials are handled, including at the point of installation for products such as engineered stone kitchen benchtops. However, the risks to workers at the point of installation are overestimated in the CRIS because very little fabrication should be required outside workshops and, should any fabrication be required, this can be addressed through regulation and with the use of tools and procedures that enable safe handling.

Caesarstone, for one, has been putting clear warnings on its products about safe handling practices for more than a decade. Our guidance and training for the installation of engineered stone products has always been that all slabs must be fabricated in workshop – where there are typically better safety controls – not at the installation site. If significant cutting is required upon installation, the slabs should be returned to the plant for re-cutting.

However, if on-site cutting or adjustments are required, there are safe handling tools and procedures, including water-integrated tools for wet-cutting and equipment with integrated dust collectors connected to vacuum with a high-efficiency HEPA particulate air filter. In addition, PPE such as pressurised masks, which may be impractical for long periods of wear at a workshop, can be worn for short periods of on-site work. Already, most major jurisdictions have banned dry-cutting techniques in workshops or on site.

Well-resourced work safety regulators have the capability to enforce these standards if they are included in any state-based or nationwide regulatory regime. Meagan McCool, Director of Construction Services Group Metropolitan at SafeWork NSW, told the Committee that 85 per cent of workers engaged in installation were connected to a fabricator, either as direct employees or contractors. This made monitoring and enforcement of these workplaces easier. Ms McCool said SafeWork actively carried out inspections at the point of installation:

‘Our strategy covers all industries, whether it is tunnelling, construction or cutting bricks, concrete and manufactured stone. When we are checking the fabrication workshops, we look at what we call SOPs – standard operating procedures – or their safe work method statements, including right through to the installation. Wherever we issue notices or compliance, it applies to the whole end-to-end chain.’

3. Worker safety should take priority over competition concerns

Caesarstone acknowledges that micro- and small businesses are overrepresented in the stonemasonry and fabrication industry. The Quantum Market Research analysis cited in the CRIS, which shows 44 per cent of stonemasonry businesses are sole traders and a further 24 per cent have between 1 and 5 staff, is consistent with Caeserstone’s experience.

We know from our experience that many of these businesses are facing financial pressure, particularly in terms of sourcing labour and, more recently, managing rising input costs. There is no doubt that many of these businesses would struggle to absorb the financial burden of additional regulations and compliance measures. As the CRIS recognises, this could have an effect on competition in the industry, with micro- and small businesses forced to close. Some may choose to join with other micro- and small businesses to reach a scale where they can address hazards and provide a safe working environment.

Caesarstone does not want to see any business fail and is committed to supporting stonemasons and fabricators comply with existing and new regulations. However, we contend that these competition concerns should not outweigh worker safety. The reality is that if PCBUs cannot provide a safe environment for workers, they should not be in business or should be restricted from working with silica-containing materials.

4. The CRIS focuses too heavily on the role of engineered stone as part of the problem and solution

The risk of silicosis from RCS is not unique to engineered stone. As the CRIS notes, citing Safe Work Australia, while engineered stone can contain up to 97 per cent silica, natural sandstone (encountered by workers in tunnelling and construction) contains 70-95 per cent silica, granite contains 20-45 per cent silica and slate contains 25-40 per cent silica.

As Ms Cole has noted: 'This is not just an issue in engineered stone but, indeed, across other industries, highlighted most recently with 42 per cent—or almost half—of cases of silicosis reported to 30 June 2021 being from industries outside of engineered stone.'

The CRIS itself acknowledges that workers who handle engineered stone are 'subset' of workers exposed to RCS. The reality is that to eliminate the risk of silicosis, all the safety measures used to cut and polish 90 per cent-silica engineered stone must apply to cutting or grinding sandstone or any lower percentage silica stone on the basis that workers should not be exposed to dust containing any level of silica.

That is why we believe the definition of engineered stone in the Victorian scheme (and in any nationwide scheme) should be widened so the regulations apply to all materials containing silica (and not just engineered stone that contains 40 per cent or more silica).

As the CRIS notes, stakeholders have already 'raised concerns with explicitly naming some industry sectors in the overarching problem statement' given 'the different context and varied levels of RCS exposure across industry sectors'. In addition, Caesarstone and other engineered stone suppliers are developing lower silica products, including stone than contains less than 40 per cent silica. When these lower-silica ranges are fully introduced into market, natural stone will have a higher silica content and, as a result, a higher risk of silicosis.

Caesarstone's recent experience is that some fabricators have found the definition of engineered stone under the Victorian licensing scheme so complicated they are considering ceasing work with engineered stone and working only with natural stone. This is an unfortunate consequence of the Victorian scheme and is a clear indication that the industry still does not fully appreciate the risks of RCS with any material containing silica, including natural stone, and the need for appropriate safety measures throughout the stone industry.

Capturing all silica-containing products in any regulatory regime would resolve any confusion, reduce substitution to products that do not reduce RCS risks and overcome any complacency or misunderstanding among workers and PCBUs that some stone products can be handled with lower levels of safety.

As the CRIS notes in discussion of Option 4, 'as this option is only limited to engineered stone, it will not address the risks of silicosis and silica related diseases for workers in other industries outside of the engineered stone sector'.

2.2 Do you have further information, analysis or data that will help measure the impact of the problem identified?

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Why is Government action needed? (Chapter 3)

3.1 Do you agree with the case for government intervention? Please provide evidence to support your position.

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3.2 Do you agree with the objectives of government intervention? Please provide evidence to support your position.

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What policy options are being considered? (Chapter 4)

4.1 Do these options address the problem? Please provide evidence to support your position.

As a consistent supporter of a nationwide mandatory licensing and enforcement scheme, Caesarstone believes Option 4 would be the most effective in addressing the problem of RCS, subject to the comments below and provided it is extended to all silica-containing materials, not confined to engineered stone. Option 4 could be combined with Options 5a – removing overlapping elements – to provide even greater protection for workers.

As discussed above, Caesarstone believes the new Victorian licensing scheme for engineered stone, introduced in 2021 as part of the Victorian Occupational Health and Safety Amendment (Crystalline Silica) Regulations 2021, should be the model for a nationwide scheme, subject to these changes:

- As discussed above, the definition of stone should be widened so the regulations apply to all materials containing silica (and not just engineered stone that contains 40 per cent or more silica);
- An independent audit of control plans should be required prior to the granting of a licence;
- In addition to the prohibition on selling controlled products to unlicensed fabricators, there should be a prohibition on purchasing controlled products from unlicensed fabricators; and
- There should be a publicly available database of licence-holders so that those who buy or sell controlled products can ensure they are dealing with valid licence-holders.

Other comments

Under Option 3, given a crystalline silica substance is defined as one containing more than 1 per cent crystalline silica and there is evidence that RCS can be released through the cutting of any material containing silica, it is not clear why cutting of any crystalline silica substance should not be considered a ‘high-risk crystalline silica process’.

Under Option 4, the line at 5.2.4.4 that 'many of the proposed initiatives, such as the licensing framework' are 'already in place' is not accurate, with the exception of Victoria. Stakeholder concern that high licensing fees may lead to employers allocating money away from other compliance activities is a consideration. But again, Caesarstone believes any PCBU or duty-holder that cannot comply with regulations and provide a safe working environment should not be in business or should be restricted from working with silica-containing materials.

Also under Option 4, it is possible that some PCBUs could seek to bypass a licensing scheme by buying engineered stone from unregulated sources, such as repurposing engineered stone from the second-hand market. It is Caesarstone's experience that the second-hand market for engineered stone represents a negligible percentage of stone products. In any event, a licensing scheme would cover any PCBU or duty-holder buying and handling engineered stone – new or second-hand – and could be extended to second-hand dealers. Regulators should be empowered to enforce appropriate penalties for anyone proven to be on-selling products without the appropriate authority or licence.

4.2 Are there any other non-regulatory or regulatory options you think should be considered to address the problem?

As the CRIS notes, the NDDT recommended a ban on the importation of engineered stone if, by July 2024, 'there is no measurable and acceptable improvement in regulatory compliance rates for the engineered stone sector' and 'evidence indicates preventative measures are not effectively protecting those working with engineered stone from silicosis and silica-associated diseases'.

While Caesarstone supports the urgency of improving workplace standards and like all stakeholders wants to see a reduction in silicosis diagnoses, it believes the NDDT date of July 2024 is premature for the following reasons:

- Since the NDDT report was handed down more than 12 months ago (June 2021) a national response has not been formulated, let alone implemented;
- The industry currently does not have the necessary resources to pay for basic compliance measures, such as air monitoring and health surveillance; and
- There has been no clarification of how the effectiveness of any reforms should be evaluated including:
    - How to take into account silicosis cases acquired before reforms are introduced; and
    - How to take into account a potential lack of enforcement by regulators and a lack of compliance by PCBUs and workers undermining the effectiveness of any reforms.

We believe a review of the effectiveness of any reforms should not occur until five years after the date of commencement of a national licensing scheme and should include:

• An assessment of whether regulatory compliance rates have improved, measured against clear compliance rate targets to be achieved by industry; and

• The commissioning of research to measure the effectiveness of the reforms at protecting fabrication licence-holders and their workers.

We are pleased the CRIS recognises that 'a ban on importation, manufacture and supply of engineered stone will not address the risks of silicosis in Australian workers exposed to RCS in other industries such as mining, tunnelling and construction …'.

There remains no rationale for banning one product that must be handled in exactly the same manner as all similar silica-containing materials. Even if engineered stone in banned, the presence of silica in all substitute materials (except wood) and in industries such as tunnelling and construction means workers will continue to be exposed to the risk of silicosis.

What is the likely impact of each option? (Chapter 6)

6.1 Is the cost modelling methodology appropriate to estimate the costs to industry and governments (Appendix D)? Please provide evidence to support your position.

Despite the costs to industry already identified in the CRIS, Caesarstone believes they are underestimated. In addition, costs can vary widely unless standards are established for measures such as air quality testing methodologies and equipment and assessments by occupational hygienists. As the CRIS notes, citing SafeWork NSW, 'regular air monitoring can take some businesses one to two weeks. In terms of the cost, it can be $10,000 to $20,000 per experience'.

From our experience, the cost of developing and maintaining a safe working environment is already challenging for many fabricators and stonemasons. Coupled with the lack of regulatory oversight and enforcement, we see this as a significant factor in the low compliance rates across the industry. There are many PCBUs that need to invest in their WHS practices to bring them into line with all current regulations and standards. If they do make those investments – or have already – there may not be a significant additional financial burden to comply with any new regime.

Based on Caesarstone's experience, these are our estimates of industry compliance costs.

Service	Cost estimates	Time frames	Comments
Air monitoring	Average cost in excess of $5,000 per facility	Depending on the State, either annually or twice yearly	Can be more if the results are high and tests need to be redone after controls are implemented
Health surveillance	$650-$800 per person	Annually	Some States have free services but it can take months to get an appointment. Due to the demand in Victoria, appointments are currently taking six months. This will inhibit the approval of licences in some cases.

Pre-employment Screening	$600-$1000 per person	Initial medical check	
PPE/RPE	$10-$4000	Mandatory	The cost of PPE/RPE will depend on the outfit of the operation and the results of the air monitoring as to the appropriate controls required. However, if Powered Air Purified Respirators are mandatory then costs can be $500-$4000 per unit, excluding servicing costs
Consultancy fees	$150-$350 per hour	8-10 hours (minimum)	Typically, occupational hygienists and safety consultants are engaged to assist with the development of safe systems of work and/or an Engineered Stone Control Plan.(**ESCP)** (If a consultant is engaged to only assist with the development of an ESCP, this is a minimum of 8-10 hours. Anecdotal evidence suggests complying with the Victorian licensing requirement costs $6000-$10,000 in consultancy fees.
Repairs or equipment/system modifications to be compliant		Prior to obtaining a licence	Typically relate to water filtration system and/or ventilation systems. Can be tens of thousands of dollars.

Regardless of the costs incurred, Caesarstone's position remains that reforms are necessary and PCBUs that cannot provide a safe working environment should not be in business.

6.2 Are the estimates of the number of businesses covered by each of the regulatory and non-regulatory options accurate? Please provide evidence to support your position.

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6.3 Are there other factors that should be considered in the assessment of the effectiveness of each option (Section 6.5)? Please provide evidence to support your position.

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6.4 Are the cost and other estimates (including worker wage assumptions) listed in Appendix D accurate and appropriate? If not, please provide additional data to support a more accurate estimate of costs.

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6.5 Do you have further information regarding the costs to the public health system for silicosis and silica related diseases?

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Discussion of options (Chapter 7)

7.1 Which option or combination of the options presented is most likely to address the identified problem? Please provide evidence to support your position.

While supporting the need for ongoing education and awareness campaigns regarding the risks of RCS and existing WHS requirements, Caesarstone concurs with the CRIS that Options 1, 2 and 3 alone will not adequately reduce workplace exposures to RCS.

Subject to the comments above in our response to consultation question 4.2, Caesarstone believes Option 4 would be the most effective in addressing the problem of RCS in the workplace. Option 4 could be combined with Options 5a – removing overlapping elements – to provide greater protection for workers.

Caesarstone has consistently advocated for uniform national regulations and safety guidelines and a mandatory licensing scheme in each State and Territory, modelled on the new Victorian scheme, all backed by rigorous auditing and enforcement.

Again, for the reasons outlined above, any regulatory reform must apply to the handling of all materials containing silica.

7.2 Are there any significant barriers to implementation of the options presented? What are those barriers? Is there a cost associated with them? How could they be overcome?

As discussed above, the biggest barriers to implementation already exist: the lack of enforcement by under-resourced regulators and the lack of resources in the industry to comply with current safety requirements let alone any new regulatory regime.

In addition, as the CRIS notes, there must be a continued focus on educating culturally and linguistically diverse workers. Caesarstone, for one, already publishes its training and safety guidelines in 11 languages.

Other comment

Do you have anything further you would like to add as part of this process?

Caesarstone is grateful for the opportunity to provide feedback to this important process.