



HOUSING INDUSTRY ASSOCIATION



Submission to Safe Work Australia

Public consultation on the prohibition on the use of engineered stone

16 April 2023



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ABOUT THE HOUSING INDUSTRY ASSOCIATION

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry, including new home builders, renovators, trade contractors, land developers, related building professionals, and suppliers and manufacturers of building products.

As the voice of the industry, HIA represents some 60,000 member businesses throughout Australia. The residential building industry includes land development, detached home construction, home renovations, low/medium-density housing, high-rise apartment buildings and building product manufacturing.

HIA members comprise a diversity of residential builders, including the Housing 100 volume builders, small to medium builders and renovators, residential developers, trade contractors, major building product manufacturers and suppliers and consultants to the industry. HIA members construct over 85 per cent of the nation's new building stock.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building development industry. HIA's mission is to:

"promote policies and provide services which enhance our members' business practices, products and profitability, consistent with the highest standards of professional and commercial conduct."

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into manufacturing, supply, and retail sectors.

The aggregate residential industry contribution to the Australian economy is over \$150 billion per annum, with over one million employees in building and construction, tens of thousands of small businesses, and over 200,000 sub-contractors reliant on the industry for their livelihood.

HIA develops and advocates policy on behalf of members to further advance new home building and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. New policy is generated through a grassroots process that starts with local and regional committees before progressing to the National Policy Congress by which time it has passed through almost 1,000 sets of hands.

Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis.

The association operates offices in 23 centres around the nation providing a wide range of advocacy, business support including services and products to members. This includes technical and compliance advice, training services and a range of other services.

1. INTRODUCTION

1.1 OVERVIEW

Thank you for the opportunity for the Housing Industry Association (HIA) to provide a submission to the Safe Work Australia Consultation Paper on the prohibition on the use of engineered stone (Consultation Paper).

The issue of worker exposure to respirable crystalline silica (RCS) when working with engineered stone is an issue that HIA takes extremely seriously. Further to this, HIA is fully committed to the need to minimise the potential exposure of workers to harmful levels of RCS when working with engineered stone.

HIA continues to remain committed to working with governments to improve industry understanding of the risks of working with silica products and in undertaking further awareness initiatives and in consideration of meaningful and practical reforms to improve work practices to safeguard workers.

Over the past five years there has been a broad range of significant government and industry activities that have occurred related to working with products containing silica.

Through these activities industry compliance have made a significant difference in minimising exposure and changed working practices both in factory and workshop settings and on site work practices.

At the WHS Ministers in February this year, Ministers supported further silica reforms including:

- national awareness and behaviour change initiatives; and
- additional administrative and engineering controls for high-risk crystalline silica processes

Whilst the full details of these measures are still be defined, HIA is supportive of these measures to complement those reforms already introduced over the past five years and the other planned activities previously agreed to.

Reforms already introduced and others planned are significant

As noted above, over the past five years there has been a broad range of significant government and industry activities that have occurred, at both national and state and territory level, including:

- lowering of workplace exposure standards
- bans on uncontrolled dry cutting of engineered stone
- publishing of new codes of practice
- mandatory labelling of engineered stone
- new silica regulations and a licencing scheme
- mandatory training and/or extensive industry training and awareness sessions; and
- development of checklists and information resources.

Through these activities industry compliance and understanding of the need to minimise exposure and implement adequate and proper controls for all products containing silica have made a significant difference in minimising exposure and increasing industry awareness of the risks.

Furthermore, there is presently a range of planned regulation and government initiatives such as the regulation on defining of high risk silica activities as part of 'Option 5a' of the DRIS and a further consideration on the lowering of the silica Workplace Exposure Standard (WES).

Consideration on a prohibition on engineered stone

Given the broad range of reforms already introduced and planned silica reforms, HIA does not believe that a full or partial prohibition on the use of engineered stone is necessary nor warranted or the most appropriate response to this issue.

Rather the focus should be on a systematic and holistic approach towards better awareness, industry specific information, clear and appropriate regulatory requirements and supplemented by government and industry working in collaboration to support continual improvements in work practices.

All products and activities have some level of risk that should be identified, assessed and controlled through good risk management practices informed by evidence and research. It is detrimental to shift thinking towards a defining line or label of 'safe' or 'unsafe'.

We believe that the combination of current regulation appropriately enforced, planned regulation as listed above including the agreed further regulation as part of 'Option 5a' of the DRIS are significant and sufficient regulatory responses to the issue.

A full prohibition on all forms of engineered stone would be a significant decision by governments and would severely disrupt the construction of over a million homes annually and impose significant impacts on businesses and consumers.

Further to this the potential precedence this sets for other products that contain various levels of silica content is extremely concerning for the industry broadly.

Preferred option if a prohibition is to be implemented

If any prohibition is to be implemented, HIA considers that Option 3 of the Consultation Paper would be the preferable option and give WHS regulators a high level of control over fabricators and installers of non-prohibited engineered stone.

Licensing of this nature could further improve safety outcomes beyond the improvements already made. In that it would clarify the obligations of PCBU's for working with engineered stone and improve their understanding of the appropriate risk control measures prior to issuing of a license permitting them to work with engineered stone products.

It will also enable WHS regulators to conduct audits of licensees to check for and ensure compliance with their risk control plan. However, this option also has a number of problems that are further discussed in this submission.

A more comprehensive regulatory assessment is required

The Consultation Paper nor the Decision RIS provide a full detail on the scope or application of the regulatory changes that would need to be applied if implementation of a prohibition were to be progressed.

This includes on the required licensing schemes for the use of engineered stone and for the licensing for exempt work under each of the options. This does not enable full and meaningful assessment of the impacts of each option.

Given the significance of this issue, prior to a final decision on a prohibition or adoption of any of the proposed options, the potential prohibition should be subject to its own comprehensive Regulatory Impact Statement (RIS).

The RIS in this regard would be able to assess the full range of impacts of each of the proposed option in much greater detail, than in this current Consultation Paper and the information in the Decision RIS which essentially was prepared an adjunct to other silica reforms considered in the Consultation RIS.

This would enable more fully scoped out proposals, an analysis of the full range of all available options of potential silica reforms available beyond that of a prohibition, including an analysis of the effectiveness of those already planned or recently introduced.

The RIS could also further analyse the effect of any potential prohibition for the legacy products in the market and the broad ranging transitional and practical issues as highlighted in this submission.

An appropriate and proportional transition period is critical

One of the most critical matters if Ministers are to support the introduction of a prohibition on the use and supply of engineered stone, the issue of an appropriate and proportional transition period.

Industry has an extensive volume of current orders in the pipeline, significant volumes of engineered stone imported and waiting to be processed, existing manufactured engineered stone products already in the market and in displays showrooms and display homes and pre-packaged products for sale presently that would all be substantially impacted by any decision on a full or partial ban.

The necessary business changes that would be required to meet any new regulations would also have business implications that can't be implemented overnight.

Therefore, it is imperative that industry is provided with an adequate and proportionate transition period, if a decision on a prohibition is agreed to, as well as the transition provision is clearly communicated to all parties.

2. DUPLICATIVE PROCESSES HAPPENING CONCURRENTLY

HIA is concerned that there is a number of concurrent processes with consideration of various silica reforms happening simultaneously both at a national level or at a state and territory level.

It appears that many of these are being considered in isolation from each other and many of these would result in overlapping or duplicative outcomes with recent decisions or current consideration.

Furthermore, they do not seem to be considering what regard or what impact each of them would have on other decisions.

For example:

A prohibition on 'working with' engineered stone and an import ban on engineered stone would overlap and have implications for the other.

At present, consultation is only occurring for a possible prohibition and so there is a concern that by undertaking consultation on related topics at different times we are likely to end up with unintended consequences such as contradictory or duplicative legislation.

Similarly, the options for a prohibition on engineered stone are to be combined with option 5a regulatory amendments however the specific details of 5a such as definitions and scope of changes are still to be settled.

The elements of option 5a were originally included in option 4 which was the proposed licensing scheme. Option 4 now forms the basis for how a licensing scheme would operate under the three prohibition options for engineered stone.

Compliance with the silica WES applies to all regulatory options being considered with particular impact on how option 5a will operate and consequently any prohibition on engineered stone.

Clarity on the use of RPE for determining compliance with regulation 49 and ensuring exposure to silica is not above the silica WES will then have significant implications for option 5a and compliance with a new WES.

The need for industry certainty

To achieve genuine improvements in WHS practices and outcomes, then it is critical that any proposed regulatory changes are well scoped, undergo appropriate consultation and are evidenced-based. Agreed changes should then be clearly communicated to industry with sufficient information on how to comply.

At present, multiple regulatory changes (at both federal and state and territory levels) are being consulted on in a piece-meal manner and with potentially contradictory or duplicative elements which are not necessarily fully scoped or with sufficient evidence provided.

Businesses are increasingly becoming frustrated and confused as to what the current legislative requirements are versus what is being proposed, what the implications of changes may mean and when any changes may be implemented.

This overlapping consultation is having a detrimental impact on PCBU's ongoing ability to comply with duties and their willingness to engage in consultation.

The current activity is on top of the last few years of activities where businesses have reviewed and implemented changes to WHS practices in order to comply with the change to the silica WES, introduction of engineered stone and silica Codes of Practice and in some jurisdictions, the introduction of a prohibition on dry-cutting of engineered stone.

Ministers should be provided with full picture of the regulatory landscape

Prior to the final decision on a potential prohibition on engineered stone, HIA recommends, that it is critical that Ministers are provided with a full picture of the regulatory landscape holistically as it relates to silica, this should include:

1. A stocktake of all silica regulatory reforms and non-regulatory initiatives introduced and undertaken at a national and state and territory level over the past five years, including those to be introduced in the next 6 months.
2. A full list of national and state and territory silica reforms that are currently under consideration and how these will operate together as a collective.
3. That an assessment of the effectiveness of these reforms be undertaken in presenting the improved base case over the past five years since these reforms were introduced.
4. That these matters be included into an updated section of the silica Decision Regulation Impact Statement, or prepared as a standalone RIS for Ministers consideration.

3. ASSESSMET OF THE OPTIONS

The Consultation Paper presents three options. Option 1 involves a full ban on the use of engineered stone. Options 2 and 3 involve a partial ban on the use of engineered stone.

All three options allow for exemptions for certain work on legacy products under license, and also including new or additional WHS regulations for high risk crystalline silica work.

3.1 OPTION 1 - FULL PROHIBITION ON THE USE OF ENGINEERED STONE

Option 1 is a full prohibition on the use of engineered stone irrespective of its silica content. It is proposed that this option will include exemptions for: sampling and identification; removal, repair and minor modifications of engineered stone already installed; and genuine research and analysis.

PCBUs wanting to undertake exempt work would require a license to do so. They will also need to develop and maintaining a risk control plan; ensure appropriate controls are in place; train workers; and undertaking air and health monitoring.

HIA does not believe that a prohibition on the use of engineered stone is warranted or the most appropriate response to this issue. We believe that this option is unnecessary and is not a proportional or practical response to the risks. The reasons for this are detailed below.

There is already sufficient regulatory control to ensure safety

As listed earlier in this submission substantial progress to keep workers safe from exposure to respirable crystalline silica (RCS) has been made since this issue surfaced about five years ago. This is elaborated on further.

Ample safety measures exist and more have been introduced and enforced to prevent or reduce exposures to RCS, particularly for engineered stone fabricators and installers. Work health and safety has improved substantially.

The model WHS Act, model WHS Regulations, and the model Codes of Practice have extensive provisions for managing risks to health and safety arising from exposure to RCS. Actions by the states and territories to enforce these laws have been, and continue to be, undertaken.

The model WHS laws framework imposes general duties on employers and others to manage risks to health and safety and to provide safe workplaces. Part 7.1 of the Model WHS Regulations applies to the generation of hazardous substances at a workplace.

This part requires PCBUs to manage, in accordance with Part 3.1, risks to health and safety associated with using, handling, generating or storing a hazardous chemical at a workplace. Part 3.1 provides for the elimination of risks to health and safety.

If elimination is not reasonably practicable, it provides that risks must be reduced so far as is reasonably practicable.

Duties and obligations in workplace health and safety legislation include:

- Obtaining information about hazardous substances and chemicals.
- Eliminating or reducing risks to health and safety arising from exposure to hazardous substances such as crystalline silica by implementing controls in accordance with a hierarchy of control.
- Ensuring the workplace exposure standard (WES) for RCS is not exceeded.
- Providing appropriate information, instruction, training and supervision of workers.
- Undertaking atmospheric monitoring to determine if there is a risk to health.
- Undertaking health monitoring of workers if they carry out ongoing work generating RCS, or there is a significant risk to the worker's health because of exposure to RCS.

The requirements of this framework for managing risks arising from exposure to RCS are acknowledged in the DRIS. These requirements are extensive and they already provide useful support to reduce the risk to workers

Better enforcement and compliance to prevent exposure to RCS

Most Australian jurisdictions have increased their focus on prevention and awareness activities around controlling exposure to silica when working with engineered stone and protecting against accelerated silicosis.

All Australian WHS regulators have taken action to prevent exposure of workers to RCS. Most WHS regulators are providing enhanced and targeted communication, education and stricter regulation on managing risks of working with engineered stone.

Various jurisdictions have banned uncontrolled processing of engineered stone. All have adopted the recently lower workplace exposure standard (WES) of 0.05 mg/m³ for RCS, and steps are underway to consider a further halving of the WES 0.025 mg/m³.

WHS regulators now play an active role in enforcing safety requirements at the highest level to encourage PCBUs in the important area of preventing of exposure to crystalline silica.

Australian work health and safety regulators have made crystalline silica a strategic priority in their operations and have implemented strategies, interventions and support measures, particularly in relation to engineered stone to ensure that engineered stone workplaces provide adequate protection for workers.

Such strategies include further compliance and enforcement action, as well as education and awareness raising about preventing and responding to RCS exposure.

Most jurisdictions have conducted, and continue to conduct, several hundred workplace visits and assessments over the past few years and taken effective enforcement steps to prevent exposure to RCS.

Most workshops manufacturing engineered stone products are doing all that is reasonably practicable to eliminate or minimise the risks to worker health posed by exposure to RCS.

There are a range of practical and highly effective dust control measures that many engineered stone manufacturing businesses are already implementing. These include:

- Using tools that have an integrated water delivery system that supplies a continuous feed of water (on-tool water suppression) or that are fitted with high efficiency dust extraction or similar system such as local exhaust ventilation that captures the dust generated.
- Making sure that people cutting, grinding or polishing engineered stone with these tools are provided with respiratory protective equipment that is designed to protect the wearer from inhalation of RCS.

It is important that WHS regulators have reported improved outcomes since they started auditing and scrutinizing the safe systems of work of engineered stone workshops and installers.

Significantly, it is acknowledged in the DRIS that state and territory regulators have observed a general improvement in compliance in the engineered stone sector since 2018 ¹.

The range of national reforms and initiatives carried out to date have almost certainly raised awareness and had an impact on reducing exposure to RCS in the engineered stone sector.

Although there is a need to objectively assess the full impact current actions have had on reducing exposures to RCS, undoubtedly the engineered stone industry is now much more aware of the health hazards posed by exposure to RCS and the measures that can be used to minimise exposure as a result of these reforms and initiatives.

¹ Safe Work Australia June 2022, *Decision Regulation Impact Statement – Managing the risks of Respirable Crystalline Silica at Work*, Section 2.4.1, p 28.

A survey carried out last year by the Australian Chamber of Commerce and Industry found that at least 90 per cent of industry respondents were aware of the hazards posed by RCS if not effectively controlled, and 72 per cent were using water suppression to control the risks of exposure to RCS.

This is consistent with some of the data presented in the Decision RIS that demonstrates that stonemasons are now much more aware of the risks and how RCS exposures can be avoided².

Industry has taken action to improve safety

Industry bodies such as HIA have undertaken a broad range of activities over the past 3 years to inform industry about the risks of crystalline silica and the suitable control measures that need to be applied to prevent exposure of workers to RCS.

For example, HIA has published a number of articles in HIA's national and state magazines, made online industry information sheets freely available and provided regular email information to our members.

HIA has carried out an extensive nation-wide silica awareness campaign consisting of silica awareness seminars that were attended in person by over 1,000 practitioners. The seminar was also recorded as a webinar for ongoing access by practitioners.

HIA also developed a range of information resources for members on how to prevent exposure of workers to crystalline silica and to raise greater awareness of the potential for exposure.

All the resources from HIA's silica awareness campaign are available in HIA's website (www.hia.com.au).

HIA continues to run dedicated silica awareness training sessions throughout the country and has developed other online training resources.

We have also actively participated in the development of the national recognised silica awareness training package and we are delivering silica training through our Certificate IV and HIA apprentices training.

Other industry groups also ran seminars and developed resource material on the safe use of materials that contain crystalline silica.

These activities have raised substantial awareness about the risks of exposure to crystalline silica in the construction industry over the last 3 years. This must be recognised prior to making any decision on prohibiting the use of engineered stone.

The proposed options are inconsistent with prior government recommendations

In 2019, the Commonwealth established the National Dust Disease Taskforce (NDDT) to develop a national approach for the prevention, early identification, control and management of occupational dust diseases in Australia, including silicosis.

The National Dust Disease Taskforce presented its Final Report to the Australian Minister for Health and Aged Care in June 2021.

This report recommended specific regulatory and non-regulatory actions designed to have an immediate impact on improving worker health and safety. The NDDT did not recommend an immediate ban on engineered stone but recommended to:

“Commence the processes required to implement a full ban on the importation of some or all engineered stone products if by July 2024:

- *There is no measurable and acceptable improvement in regulatory compliance rates for the engineered stone sector as reported by jurisdictions; and*

² Safe Work Australia June 2022, *Decision Regulation Impact Statement – Managing the risks of Respirable Crystalline Silica at Work*, Section 2.3.1, p 27.

- Evidence indicates preventative measures are not effectively protecting those working with engineered stone from silicosis and silica-associated diseases.³

The All of Australian Governments' response to the National Dust Disease Taskforce report noted this recommendation and stated that:

“Consideration of a ban will require Commonwealth, state and territory governments to work together to develop a comprehensive framework to evaluate the effectiveness of compliance with WHS duties and the effectiveness of measures to protect workers, including any further measures implemented following Safe Work Australia’s regulatory impact analysis process.

Any decision to ban engineered stone products will be dependent on an objective assessment of the requirements established under the framework, noting that more time than that proposed by the Taskforce may be required to make this assessment.”⁴

A comprehensive evaluation of the effectiveness of compliance with WHS duties and the effectiveness of measures to protect workers needs to be undertaken. This is essential in order to make informed decisions on this matter, particularly given the significance of the proposals and that a prohibition or ban is a very final measure.

A full ban on engineered stone will have substantial impacts on building and construction

The impacts of a full prohibition under Option 1 option are not limited to those working directly with engineered stone. A full prohibition will substantially disrupt the construction sector.

In particular, it will affect the construction of most new homes; the renovations of existing homes that mainly use engineered stone in kitchens and bathrooms; other residential and commercial construction; and the supply chains associated with trade of the product.

The number of construction businesses affected to some extent is shown in the table below.

No. of Construction Business affected, at June 2022 (source ABS)

ANZCIC sub-industry	Size of industry					Total
	Non employing	1-4 Employees	5-19 Employees	20-199 Employees	200+ Employees	
House Construction	34,608	21,079	3,567	499	21	59,774
Other Residential Building Construction	21,283	5,945	939	145	9	28,321
Non-Residential Building Construction	10,898	4,522	1,375	463	24	17,282
Plumbing Services	13,878	13,145	2,763	397	0	30,185
Electrical Services	20,275	21,322	4,328	735	21	46,681
Air Conditioning and Heating Services	2,837	3,113	1,079	210	6	7,245
Fire and Security Alarm Installation Services	1,625	1,582	558	143	5	3,913
Other Building Installation Services	2,992	2,387	593	123	5	6,100
Carpentry Services	31,679	17,461	2,440	315	4	51,899
Tiling and Carpeting Services	12,331	6,283	535	37	0	19,186

³ National Dust Disease Taskforce. *Final Report to Minister for Health and Aged Care, June 2021*, p 11 © 2018 Commonwealth of Australia (Department of Health),

⁴ Australian Government 2022, *All of governments' response to the National Dust Disease Taskforce Final Report*, p 12 (accessed 28 March 2023, [https://www1.health.gov.au/internet/main/publishing.nsf/Content/92C5AA016D3876FFCA25885D000D7244/\\$File/All-Govt-Response-Final-Report-Dust-Disease-Taskforce.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/92C5AA016D3876FFCA25885D000D7244/$File/All-Govt-Response-Final-Report-Dust-Disease-Taskforce.pdf))



					Total	270,586
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The residential part of the building and construction sector relies heavily on the use of engineered stone to build primarily kitchens and bathroom benchtops but also associated splashbacks and wall and floor tiling.

The cost of installing a bathroom and a kitchen is a substantial part of the cost of a home. It is estimated that over 60% of all kitchen and bathrooms benchtops installed in residences are of engineered stone.

The number of kitchens and bathrooms installed in new homes in 2020/21 was 215,500 kitchens and 446,700 bathrooms. There was also an estimated notional demand for around 154,600 kitchen renovation jobs and around 234,500 bathroom renovation jobs in 2021/22, based on the ageing of existing housing stock.

Adding the figures, the total number of kitchens and bathrooms or renovated in Australia in 2021/22 is estimated to be in excess of one million.

The number of kitchen and bathroom renovations may be even higher than this estimate. Since the onset of the pandemic, households have diverted funds that would have been spent on travel, entertainment and dining out, to renovating their homes.

All the extra time being spent at home, combined with these additional savings, is likely resulting in actual demand for kitchen and bathroom renovations that exceeds notional demand for renovations.

A full prohibition on the use of engineered stone, as proposed under Option 1, will affect the large portion of these new homes and renovations and they will have to find alternative replacements for engineered stone benchtops, splashbacks and tiling.

The disruption to the building industry will be substantial, at least in the short term, as alternatives are sought, developed and applied.

Engineered stone is also widely used in other types of construction, i.e., other than residential construction. This includes engineered stone used in the floors and facades of commercial buildings as well as in many other areas such as receptions, lobbies, bathrooms of hotels and many more applications.

A full prohibition on the use of engineered stone will cause much disruption to businesses, consumers and the importation, transport, supply and distribution of engineered stone slabs and finished products. An estimated over 6000 shipping containers of engineered stone slabs are imported annually in Australia.

The disruption to the building industry alone will be substantial. For example, builders will need to change their systems, contracting, pricing, displays, retrain staff, as the market contends with the alternatives.

The effects on consumers of engineered stone products will also be pronounced, given that currently most kitchens and bathrooms are made with engineered stone.

The following will be impacted:

- Suppliers of engineered stone slabs that will no longer be able to import slabs and will go out of business
- Fabricators and installers of engineered stone benchtops. The Decision RIS states that around 1000 business and 10,000 workers will need to switch to alternative products
- Existing stone imported and waiting to be processed for orders already in the pipeline in warehouses, processing yards, etc, that would be impacted by a or prohibition on use
- Current products in the market such as engineered kitchen and bathroom displays, engineered stone tiles, and other products that would be rendered worthless by a ban or prohibition on sale

- Retail sellers/suppliers of engineered stone, such as hardware stores, bathroom vanities suppliers, tile showrooms and businesses that sell pre-packaged products that will all have extensive pre-made or display products for sale.
- The supply and distribution chain for engineered stone products is substantial with approximately 6000 shipping containers of engineered stone slabs are imported annually in Australia.
- Kitchen and bathroom manufacturers and installers that will need to switch to alternative products and contend with additional costs, quality concerns, and the durability of alternate products.
- Tilers and façade installers using engineered stone will need to switch to alternative products
- Architects and designers that will no longer be able to include engineered stone in their designs.
- Builders who will have to modify their contracts, displays, systems of work, pricing, and retrain staff.
- Consumers who will no longer have access to engineered stone and most likely will have to pay more for equivalent products such as natural stone. The alternatives are relatively few and a full ban will significantly reduce the range and amount of available product.
- Such a ban will almost certainly result in increased costs to consumers, at least in the short term, until suitable alternatives are developed that are capable of meet the demand.

Other potential unintended consequences include:

- The implications for future renovations, refurbishments, etc. of new legislative arrangements for removal, disposal, alterations etc. that based on experience of other products brings with it a difficulty legacy of administration and oversight for correct removal, disposal etc.
- For example, disposal only at certain waste disposal locations, future home insurance or house sales declarations on homes with engineered stone and valuations.
- A full ban on engineered stone will also affect exempt work on legacy products. For example, when it might be required to ascertain whether an existing benchtop, tiles or products is in fact engineered stone, but information on silica content is not available.
- PCBUs will need to incur sampling and analysis costs and time delays. This applies to all the options and is further discussed in this submission.
- A full ban on engineered stone is likely to also have environmental effects arising from additional mining of natural stones to meet the demand for stone products.
- A full prohibition will probably not work without an import ban, which may have international trade repercussions.

3.2 OPTION 2 - PROHIBITION ON THE USE OF ENGINEERED STONE OF 40% OR MORE

Option 2 involves a prohibition on the use of engineered stone containing 40% or more crystalline silica, with additional regulation for materials containing less than 40%.

This includes developing and maintaining a risk control plan; ensuring appropriate controls are in place; training workers; and undertaking air and health monitoring.

As for Option 1, exemptions would apply, subject to licensing, for: sampling and identification; removal, repair and minor modifications of engineered stone already installed; and genuine research and analysis.

A 40% crystalline silica threshold appears to be a pragmatic attempt to ban the engineered stone products of high crystalline silica content posing a higher risk.

HIA considers that a prohibition under this option is preferable to that of Option 1.

The level of risk with engineered stone of crystalline silica content to less than 40% is likely to be less of a problem than with engineered stones of higher crystalline silica content, particularly when subject to the additional regulatory safeguards agreed by WHS ministers of all silica-containing materials (Option 5a of the DRIS).

With a 40% threshold, the level of risk from exposure to RCS should be on par with that of other materials of similar crystalline silica content such as natural stone, concrete etc., for which a similar spike of accelerated silicosis has not been observed.

In recognition of the background to the health effects that have surfaced from exposure to RCS from work with engineered stone, there may be some merit in reducing the maximum allowed crystalline silica content to less than 40%.

Indeed, some manufacturers have already done so, and others have indicated that they will follow suit if such a partial ban is introduced, so the impacts are likely to be much lower under a full prohibition.

However, this option has a number of problems that are further discussed below.

3.3 OPTION 3 - PROHIBITION ON THE USE OF ENGINEERED STONE OF 40% OR MORE AND LICENSING

Option 3 involves a prohibition on the use of engineered stone containing 40% crystalline silica or higher, plus a national licensing scheme for businesses working with engineered stone containing less than 40% crystalline silica, as well as the additional regulation and exemptions as for options 1 and 2.

As for option 2, HIA considers that a prohibition under this option is preferable to that of Option 1 and that it is less likely to be problematic in terms of risks and impacts.

A licensing scheme under this option would allow WHS regulators to exercise a very high level of control over the compliance of fabricators and installers of engineered stone with work health and safety requirements.

Although we point out later in this submission some concerns about the detail of the licensing scheme, we expect that to be granted a license, a PCBU would have to meet a strict set of safety requirements. This will almost certainly include:

- developing, implementing a comprehensive risk control plan
- undertaking air monitoring and health monitoring
- Implementing highly efficient dust control measures, such as on tool water suppression, on tool dust extraction and local exhaust ventilation
- providing information, instruction and training to workers
- ensuring that workers are provided and use appropriate respiratory protective equipment

Licensing of this nature could further improve safety beyond the improvements already made. In that it would clarify the obligations of PCBUs for working with engineered stone and improve their understanding of the appropriate risk control measures.

It will also enable WHS regulators to conduct audits of licensees to check for and ensure compliance with their risk control plan.

Furthermore, it would also enable WHS regulators to enforce conditions or ultimately suspend or remove a license if they find that safety requirements and/or the conditions of the license are not complied with or a continued failure to meet their safety obligations.

A PCBU could have their livelihood compromised by being prohibited from working with engineered stone. This would be a strong incentive for licensees to ensure that safety is not compromised and that WHS requirements are met.

However, this option also has a number of problems that are further discussed.

3.4 THE OPTIONS LACK SUFFICIENT DETAIL

The options presented in the Consultation Paper do not include the full detail of the additional regulations to be implemented under the proposed licensing schemes, and under Option 5a of the DRIS. This detail is critical for an objective assessment of the options.

It is unclear what the national licensing framework will require. The Consultation Paper indicates that licensing for exempt work will be as detailed in Option 4 of the DRIS, which recommends that it be based on the Victorian scheme.

There is no similar information in relation to the licensing that will be required for work with engineered stone of less than 40% silica content under Option 3. Assuming that the licensing framework in each case will be the same, it is unclear what actual requirements will need to be satisfied in order to be granted a license.

In addition, WHS Ministers did not agree to Option 4 of the DRIS, so it is therefore unclear what the national licensing framework will require. Some of the questions requiring clarity to enable reasonable assessment of the licensing component include:

- Will all the elements of the Victorian licensing framework be taken up equally for both exempt work and for work with engineered stone of less than 40% crystalline silica?
- How frequently will air monitoring and health monitoring be required for exempt work?
- Will the same rules for air monitoring apply if the exempt work is of a minor nature or will a 'broad-brush' set of requirements be applied?
- Will an unlicensed PCBU be able to engage a licensed person to carry out the work?

3.5 OTHER POTENTIAL ALTERNATIVES

The Consultation Paper asks if there are any other options or issues that should be considered for a prohibition on the use of engineered stone.

HIA considers that there a range of other viable options available and warrant further detailed consideration including:

- Introduction of a national licencing or accreditation scheme, in lieu of a prohibition, with use of engineered stone of 40% or more crystalline silica regulated under a licensing scheme, as in Victoria plus Option 5a of the DRIS
- An engineered stone fabricator compliance accreditation scheme as initially proposed by the Australian Engineered Stone Advisory Group.
- Stronger regulation on different engineering controls for higher silica content materials
- Stronger enforcement by regulators.

Furthermore, these options would be coupled with the significant government and industry activities that have occurred over the past five years, including:

- lowering of the WES
- bans on uncontrolled dry cutting
- publishing of new codes of practice and potential national roll out of a code of practice similar to that of recently published one in Queensland; and
- other reforms that increased industry awareness of the risks and made a significant difference in minimising exposure to RCS.

3.6 LICENSING ISSUES

The three options presented in the Consultation Paper include exemptions from the prohibition on use of engineered stone for some activities, including the removal, repair and minor modifications of engineered stone already installed.

PCBUs wanting to undertake exempt work with engineered stone would require a license to do so.

PCBUs will also need to develop and maintaining a risk control plan; ensure appropriate controls are in place; train workers; and undertaking air and health monitoring.

These exemptions are welcome.

However, there is some concern that there are no exemptions from the requirement for a license to use engineered stone under Option 3. This option needs to be realistic and include exemptions similar to those currently for asbestos.

The proposed exemptions may be problematic in some instances.

The first concern is that it is unclear whether this type of license for exempt work will have the same requirements as for the license required for the use of engineered stone of less than 40% crystalline silica. It is also unclear whether an unlicensed PCBU will be able to engage a licensed PCBU to carry out the work

Identifying information for legacy products may not be available

The second concern is that the application of the proposed exemptions will require PCBUs to ascertain if the product is subject to the exemptions. This will require PCBUs to ascertain if the product is indeed engineered stone.

For the exemptions under options 2 and 3, PCBUs will also need to ascertain the crystalline silica content.

The determination of whether a product is engineered stone will be problematic in most instances. Once installed the product is unlikely to be readily identifiable as engineered stone other than by sampling and laboratory analysis. This will need to be considered in the RIS.

Aside from the problem of identifying a product as engineered stone, installed products might not have sufficient identification to enable ready reference to the product's SDS to determine its crystalline silica content in order to determine whether you would be above or below the threshold for exempt work.

PCBUs will need to ascertain whether an existing benchtop, tiles or product is in fact engineered stone, and its silica content for most products already installed. PCBUs and homeowners will need to incur sampling and analysis costs, and time delays, even though the work required might be very minor.

Requirements for exempt work are excessive for minor modification work

Once it has been determined that a product is subject to the exemptions, a PCBU would require a license to carry out the required work, as well as a risk control plan; ensure appropriate controls are in place; train workers; and undertake air and health monitoring.

As previously discussed, Option 4 of the DRIS includes information on what a licensing scheme would involve. However, this was not agreed by WHS ministers and it is unclear what the actual obligations will be.

Examples where clarity is needed include clarity about the extent of air monitoring and health monitoring for exempt work of a minor nature and whether an unlicensed PCBU will be able to engage a licensed PCBU to carry out the work.

The requirements to hold a license and to carry out air and health monitoring for exempt work are excessive and not feasible for minor tasks of limited risk of exposure to crystalline silica.

It will be highly impractical and cause problems for consumers and PCBUs that may need to carry out minor alterations such as cutting a hole for a tap or for a power point on an existing engineered stone surface.

Most small trades businesses such as plumbers and electricians are unlikely to go through the rigour and expense of obtaining an engineered stone licence just so they can occasionally cut a hole for a power point or a tap.

Assuming that PCBU's will be able to engage a licensed PCBU to carry out the work, it is more likely that tradespersons will advise the consumer that the work will cost much more than the work of the tradesperson as a result of the additional cost of hiring a licensed person.

Indeed, the added cost will in most instances be much more than it would have been if the surface had not been engineered stone.

This will mean that the consumer will incur additional costs and delays, even for relatively minor work that could be carried out safely by an unlicensed person subject to certain safety controls.

Exemptions for work with legacy products need to be proportional to the risk.

Exemptions for minor work should be allowed consistent with similar exemptions for asbestos removal work.

For example, the Victorian exemption for non-friable asbestos removal work that allows for unlicensed removal of asbestos for up to 10 minutes, with guidance similar to that in the model code of practice for asbestos removal.

Such an exemption could be based on Regulation 25 of the Victorian OHS Regulations which deals with the removal of asbestos-contaminated dust.

This would allow a PCBU to conduct minor work with an engineered stone without the need to hold a licence or to carry out air and health monitoring.

Such work could be exempt subject to a risk control plan or SWMS and the requirements for controlled cutting of engineered stone and appropriate training of workers.

This will enable minor modifications work to be carried out with minimal risk and impact.

Requirements for exempt work are not practical for removal work

A requirement for an engineered stone licence for removal of engineered stone should not be necessary if no cutting etc. using power tools is involved.

If engineered stone is removed without using power tools to cut or grind the engineered stone, there would be no risk of exposure to RCS levels that would exceed the WES.

Once again, any requirement relating to this type of exemption must be proportional to risk.

HIA recommends that an exemption be allowed for removal of engineered stone without a licence if no cutting etc. using power tools is involved and subject to a risk control plan and training of workers.

3.7 A TRANSITION PERIOD IS NEEDED FOR ANY PROHIBITION

One of the most critical elements of implementation of any prohibition option is a transition to address problems and minimise unintended consequences.

HIA believes that a suitable and proportional transition period be allowed for any prohibition on the use of engineered stone is of critical importance.

This is needed to enable PCBU's and other stakeholders to:

- Process or dispose of existing engineered stone imported and waiting to be processed
- Process or dispose of existing manufactured engineered stone products already in the market and in displays, showrooms and pre-packaged products
- Switch to alternative products and plan for with additional costs, quality concerns, and the durability of alternate products.
- Architects and designers to modify their designs
- Builders to modify their contracts, systems of work, pricing, and retraining of staff

- Planning and implementation of licensing arrangements
- Consumers to make decisions about planned building, renovations and refurbishments in relation to future availability of alternative product.
- Make arrangements for compliance and enforcement systems
- Make new legislative arrangements for disposal of banned engineered stone

HIA recommends a transition period of at least 5 years for Option 1, and 3 years for options 2 and 3 if Ministers are to proceed with a prohibition or ban on engineered stone.



4. SUMMARY

The issue of worker exposure to respirable crystalline silica (RCS) when working with engineered stone is an issue that HIA takes extremely seriously. Further to this, HIA is fully committed to the need to minimise the potential exposure of workers to harmful levels of RCS when working with engineered stone.

HIA continues to remain committed to working with governments to improve industry understanding of the risks of working with silica products and in undertaking further awareness initiatives and in consideration of meaningful and practical reforms to improve work practices to safeguard workers.

However, it is considered that a full or partial prohibition on the use of engineered stone is necessary or warranted and that the focus should instead be on a systematic and holistic approach towards better awareness, clear and appropriate regulatory requirements and supplemented by government and industry working in collaboration to support continual improvements in work practices.

We believe that the combination of current regulation appropriately enforced, planned regulation such as the 'prohibition on uncontrolled dry cutting of engineered stone' and agreed further regulation as part of 'Option 5a' of the DRIS are significant and sufficient regulatory responses to the issue.

A full prohibition on all forms of engineered stone would be a significant decision by governments and would severely disrupt the construction of over a million homes annually and impose significant impacts on businesses and consumers.

Further to this the potential precedence this sets for other products that contain various levels of silica content is extremely concerning for all industries is extremely concerning.

If any prohibition is to be implemented, HIA considers that Option 3 of the Consultation Paper would be the preferable option and give WHS regulators a high level of control over fabricators and installers of non-prohibited engineered stone.

Given the significance of this issue, the potential prohibition should be subject to a comprehensive Regulatory Impact Statement in its own right to fully assess the range of impacts of each of the proposed options.

Currently the level of detail of each of the options and full details of the licencing scheme including on its application and effect of legacy products in the market is lacking and industry requires significantly more detail on their scope and application to be able to fully assess their impacts.

There is also a range of transitional and practical issues that would need to be resolved if a prohibition or ban were to be progressed including for legacy products and projects in progress and minor works that should be subject to an exemption.

Lastly, if Ministers are to support the introduction of a prohibition on the use and supply of engineered stone, the issue of an appropriate and proportional transition period is critical.

Industry has an extensive volume of current orders in the pipeline, significant volumes of engineered stone imported and waiting to be processed for current orders, existing manufactured engineered stone products already in the market and in displays showrooms and pre-packaged products and the necessary businesses changes that would be required to meet any new regulations.

Therefore, it is imperative that industry is provided with an adequate transition period of at least 5 years for Option 1, and 3 years for options 2 and 3 and that any decision is clearly communicated to all parties.