

**Shine Lawyers, Roger Singh**

**Prohibition on the use of engineered stone consultation submission**

**Introduction**

Shine Lawyers brought to light the national silicosis crisis in mid-2018. This entailed writing to and meeting with numerous state and territory ministers to alert them to a surge in workers with silica induced injuries who were engaging Shine Lawyers' dust diseases practice.<sup>1</sup> These injuries amongst stonemasons comprised of severe lung damage in the form of silicosis and progressive massive fibrosis and/or crippling autoimmune disease.

The need for change was massive and immediately apparent, leading to Shine producing a detailed submission in September of that year entitled "*A Need For Laws Protecting Stone Masons Against Engineered Stone- Silica Dust*".<sup>2</sup>

The submission was duly circulated to government at state, territory and federal level, propagating an initiative for robust regulation of the stone mason industry with a licensing scheme. It was our submission the scheme would serve to restrict the supply and handling of high silica content engineered stone to only those businesses which qualified for a license by adhering to stringent workplace safety practices. Furthermore, the scheme's regulatory framework would be designed to prohibit engineered stone manufacturers from supplying their product to businesses other than those holding a current license.

Shine Lawyers continued to stress and push for urgent regulation of the engineered stone industry and stone mason businesses at a national level. This extended to oral and written submission to the *National Dust Diseases Task Force (NDDT)* - 8 November 2019, 10 November 2020 and 27 April 2021.<sup>3</sup> Each submission flagged the desirability of an engineered stone ban but reinforced the need for a national licensing scheme in the absence of the will for a product ban or pending the occurrence of such.

In June 2021, the *NDDT* handed down its final report which, inter alia, recommended a licensing scheme for engineered stone and in November 2021 WorkSafe Victoria announced the country's first licensing scheme to protect engineered stone workers<sup>4</sup>.

The *All of Government's Response To The Final Report Of The NDDT March 2002*<sup>5</sup> confirmed its continuing work with state and territory governments and other stakeholders to address the concerning increase in silicosis cases amongst engineered stone workers. It further confirmed its support for the highest level of protection to workers from risks associated with respirable crystalline silica (RCS) generating activities in the engineered stone industry and the need for consideration of a licensing scheme or equivalent to restrict access to engineered stone

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<sup>1</sup> Letter to Hon.Dominic Perrottet 12 July 2018 (similar letters dispatched to all other state and territory ministers)

<sup>2</sup> A Need for Laws Protecting Stone Masons Against Engineered Stone Silica Dust – 19 September 2018 to QLD Minister of education / Industrial relations and email exchange 19<sup>th</sup> September and 31 October 2018 (similar duly adapted submission dispatched to all other states and territories).

<sup>3</sup> NDDT submission of Roger Singh 8 November 2019, 10 November 2020, 27 April 2021.

<sup>4</sup> License Scheme to protect engineered stone workers (Victoria WorkSafe) 22 November 2021

product. Additionally, the Government's response recognised that different approaches are likely to be required for the broader range of industries working with silica containing materials beyond engineered stone.

In August 2022 in its responsive submission to Safe Work Australia's Compensation Regulation Impact Statement (CRIS), Shine Lawyers confirmed its support for a total ban of engineered stone by 2024. In the run up to this submission and in more recent years, following Shine's lobbying and advocacy as of 2018, the call for robust action extending to abolition of engineered stone has culminated in a crescendo of support. In calling for a prohibition many stakeholders, including the unions, have been key.

Shine Lawyers' work in raising awareness of silica induced injuries amongst Australian workers, and the necessity to eliminate hazardous silica exposure, has largely targeted the engineered stone industry but of course the prevalence of silica dust extends to other workplaces and occupations including tunnelling, quarrying, mining, milling and bricklaying.

To this end the Decision Regulatory Impact Statement (DRIS), informed by stakeholder feedback via Safe Work Australia's CRIS, acknowledged that the risk of hazardous occupational silica exposure impacts a broad range of industries. Consequently, it has been accepted, and rightly so, that the focus on measures to eradicate Respirable Crystalline Silica (RCS) exposure must also embrace those industries in addition to the engineered stone sector.

Stakeholder feedback on options presented as part and parcel of the DRIS to manage RCS exposure, included a Consultation Regulation Impact Statement (Consultation RIS). Following stakeholder feedback on the options presented in the Consultation RIS, an additional (Option 6) on a prohibition on the use of engineered stone (with specific exemption for removal, repair, and modification) was included in the DRIS.

Shine Lawyers commends the efforts of state/territory ministers and the federal government, including Tony Burke MP, in coming together to act to eradicate RCS related diseases from Australian workplaces. In particular, the parties' focus on the prohibition of engineered stone to safeguard workers in the stonemason sector.

### **Options for the Prohibition of Engineered Stone.**

#### ***Q1 Do You Support a prohibition on the use of engineered stone?***

Yes.

A product ban can be the only potential guarantee to extinguish occupational exposure associated with high silica content engineered stone. The product is not manufactured in Australia thus abolition of stone importation is a viable solution. In the recently published Curtin University research, it is estimated that the banning of engineered stone will prevent 100 lung cancers and 1,000 cases of silicosis. These statistics alone, and when considering the same in conjunction with silica induced autoimmune diseases, underpins very good reason for a move towards a product ban.

Shine Lawyers' dust diseases practice has now acted on behalf of an abundance of workers with silica induced injuries associated with engineered stone and continues to see ongoing diagnoses. This is indicative of the surge of silicosis diagnoses in Australia at a national level

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with page 23 of the DRIS report noting that “many accepted [silicosis] cases have been in the engineered stone sector “

With reference to the foregoing a product prohibition is the best possible safeguard against high silica content engineered stone.

**Q2** *If yes, do you support a prohibition on the use of all engineered stone irrespective of its crystalline silica content ?*

**Q3** *If no, do you support a prohibition of engineered stone that contains more than a certain percentage of crystalline silica? If yes what percentage of crystalline silica should a prohibition be set?*

In all of Shine Lawyers’ cases for workers, past and present, it has been understood that the engineered stone product has contained >90% silica content which of course is lethal in the event of associated occupational exposure. It follows that on the basis that the product contains such a high silica content then prohibition of all engineered stone is the only solution.

The silica composition of common materials handled in a broad range of industries is helpfully tabulated at page 19 of the DRIS report. The data ranging from 2% up to 97% with the latter reflecting engineered stone, in keeping with Shine Lawyers’ knowledge of the extremely high silica levels comprising this product.

It is noted that silica levels far less than the 90% plus composition of engineered stone can cause permanent damage to the health and wellbeing of workers. In this context the question as to what level a prohibition should be set is one for science and medicine to determine.

In the event science and medicine is able to determine a level of exposure at which workers’ health might not be put at risk, with appropriate WPHS measures insitu, then support might be garnered for option three, with some variation, as follows.

- Prohibition on the use of engineered stone containing 40% or more crystalline silica and licensing of PCBU’s working with engineered stone containing less than 40% crystalline silica content.
- The 40% measure to be scrutinised by the scientific and medical frontline with a lesser percentage threshold ascribed if deemed appropriate.
- Engineered stone manufacturers must at the time of importation to Australia be put to strict proof that their product does not exceed the ascribed percentage threshold.
- The percentage measure to be subject to ongoing monitoring whereby should a pattern of ongoing disease diagnosis emerge, despite licensing scheme regulation, then steps to be taken to further reduce the percentage threshold or prohibit the use of all engineered stone irrespective its crystalline silica content.

## **Conclusion**

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Shine Lawyers commends government at all levels for bringing this important WPHS issue into focus in order that robust action is considered and implemented without further delay.

The positive reform we await to see is also testament to the many workers who have suffered injury and those who have shared their stories to raise awareness and the need for action. Such stories including that of stonemasons Anthony White- who died from silicosis at just 38 years of age- and Frank Scott who currently awaits a double lung transplant subject to donor availability. In the absence of transplantation within the 6-12 months, at 51 years of age Frank's time will be up.