

Public Consultation on the prohibition on the use of engineered stone

Submission to Safe Work Australia

MARCH 2023



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Ai Group recognises the serious nature of the risks associated with excessive exposure to respirable crystalline silica (RCS). We welcome the opportunity to provide feedback as part of the public consultation on the prohibition on the use of engineered stone.

As a member of Safe Work Australia (SWA) we will be actively involved in the subsequent discussions about engineered stone and the other accepted recommendations of the Decision Regulation Impact Statement: Managing the risks of respirable crystalline silica at work (DRIS).

Within this submission we have highlighted that solid and reliable data is needed in order to make an objective and sustainable decision about whether a ban on engineered stone is required and, if so, how such a ban should be structured and implemented. It is not intended that the need for more evidence should unnecessarily prolong the decision process, and any further data should be gathered quickly.

WHS minister's decisions in relation to engineered stone

The communique from the WHS ministers' meeting on 28 February 2023, stated the following in relation to a potential ban on the use of engineered stone.

6(c): Further analysis and consultation on the prohibition of the use of engineered stone under the model WHS laws, including consideration of silica content levels and other risk factors and including consideration of a national licensing system for products that are not subject to a ban or legacy products. Safe Work Australia is requested to finalise a report as quickly as possible and within 6 months at the latest.

7: Ministers noted that the Commonwealth will explore an import ban on engineered stone, involving consultation with states and territories, and other stakeholders, on the effects of a ban.

8: Examination of any prohibitions would consider definitions, timing, and impacts on affected workers and businesses.

Regulatory Impact Statements: Managing the risks of respirable crystalline silica at work

The Consultation Regulation Impact Statement (CRIS) included, at Option 4, implementation of a national licensing framework for a person conducting a business or undertaking (PCBU) working with engineered stone. It did not include an option that involved a prohibition on the use of engineered stone.

The DRIS ultimately recommended, at p.76:

- national awareness and behaviour change initiatives (option 2)
- additional regulation of high-risk crystalline silica processes for all silica-containing materials (option 5a)
- further analysis and consultation on the impacts of a prohibition on the use of engineered stone (new option 6)

For various reasons, licensing of PCBUs who use engineered stone was not a recommended option, (described on p.77 of the DRIS), although it was an option proposed in the CRIS.

Ai Group agrees with the statement in the DRIS that “feasibility of a short-term interim licensing program, [until a ban is introduced] along with the significant lead time associated with introducing licensing regulations means that this is not considered a feasible option” if a ban is progressed. We note that this consultation paper addresses the option of a licensing scheme for work with engineered stone that is not the subject of a ban and prohibited engineered stone that is installed prior to a ban.

In describing Option 6 on p.77, the DRIS states:

A prohibition on the use of engineered stone was developed in response to stakeholder submissions to the CRIS. Therefore, stakeholders were not able to provide feedback on this option or compare it to the other options of the CRIS. If WHS ministers want further consideration of a prohibition on use of engineered stone further analysis and stakeholder consultation should be undertaken to refine the options, and inform and test the impact analysis assumptions.

The DRIS also noted (p.77) that the Final Report of the National Dust Diseases Taskforce (NDDT) recommended that a ban on the importation of engineered stone be considered **by July 2024** [emphasis added] if:

- “there is no measurable and acceptable improvement in regulatory compliance rates for the engineered stone sector as reported by jurisdictions, and
- evidence indicates preventative measures are not effectively protecting those working with engineered stone from silicosis and silica-associated diseases.

Further it is stated (p.77) that the All of Governments' response to the NDDT included reference to a comprehensive framework to evaluate the effectiveness of measures to protect workers "... including any further measures implemented following Safe Work Australia's regulatory impact analysis processes". It also acknowledged that further time may be required to make this assessment beyond the July 2024 proposed deadline.

We include this information to highlight that a decision has not yet been made that there will be a prohibition on the use of all, or some, engineered stone. This process is about gathering further information and data to support a decision about the ongoing management of the risks associated with respirable crystalline silica (RCS) when working with engineered stone, which may include some form of prohibition.

A prohibition is being considered before the effectiveness of other controls has been assessed

Until the publication of the DRIS, there seemed to be a broad acceptance by governments, the NDDT and the authors of the National Silicosis Prevention Strategy (NSPS) that there needed to be a comprehensive evaluation of the recent work undertaken to address the risks associated with engineered stone.

It is Ai Group's view that this approach was taking into account the issues considered in section 2.4 of the DRIS (p.28) which highlights "inadequate levels of compliance and enforcement activities". In this section it is stated that:

WHS regulators indicated in the preliminary consultations that they have observed a general improvement in compliance in the engineered stone sector since 2018, which aligns with the greater focus on workplace inspections.

It is noted on page 29 of the DRIS that there continued to be a high level of notices issued by regulators. However, this information does not provide detail of the nature of the breaches to which these notices related. It is not clear whether they related to significant breaches of risk control requirements or were related to other issues. A deeper analysis of the notices would be helpful to assess the current state of the industry.

In addition, noting that the targeted compliance programs that commenced in 2018 identified broad non-compliance with controls and a lack of air monitoring, it is unclear whether the current cases of silicosis related to engineered stone are a result of prior non-compliances rather than evidence of continuing non-compliances and/or whether these recent cases could have been avoided if workplaces had complied with the relevant workplace exposure standards (WES).

Many PCBU's working with engineered stone have put in significant effort to improve their practices and comply with the lowered WES which became effective in most jurisdictions in 2020. This includes changing processes to avoid the use of uncontrolled dry cutting.

In the case of Victoria, the recent requirement to be licensed to work with engineered stone with 40% or more crystalline silica has sent a message to the industry that working with engineered stone is an acceptable activity, with licensing required for engineered stone products with high silica content.

Any costs associated with improving control measures and, in the case of Victoria, becoming licensed, has been undertaken with the expectation that work with engineered stone will continue into the future.

A decision to ban all or some engineered stone may need to be supported by financial support to compensate for the expense undertaken to date, particularly work that involved compliance with the lowered WES.

Clarity required if any form of ban is to be implemented

Any decision to prohibit the use of a product cannot be taken lightly. There are many hazardous products within Australia that can be controlled to an acceptable level with an appropriate application of the hierarchy of controls. A ban on the use of crystalline silica is being considered due to the increased prevalence of accelerated silicosis in people who work with engineered stone.

However, a decision in relation to a potential ban must be supported by information that demonstrates the reasons why this work is leading to these cases and why, in the circumstances, it is not sufficient to rely upon enforcement of appropriate controls to prevent future occurrences.

Is it due to the nature of the product (including resins), the level of silica content present in this form of product, the nature of the work undertaken (including the particular type of mechanical tools used and the length of time for which the work that creates the exposure is typically carried out), or an historical non-compliance with the hierarchy of controls?

There are many other situations where work on crystalline silica containing product, other than engineered stone, may generate high levels of RCS that need to be controlled. In relation to these, WHS ministers have agreed that stricter requirements on work (outlined in option 5a) will be sufficient to control the risks to an acceptable level.

In relation to considering a ban on the use of engineered stone the issue that needs to be clearly analysed and articulated is why it should be treated differently to other products containing crystalline silica. What makes engineered stone different to other products containing crystalline silica so different that they should be banned? And if different rules are to apply depending on a threshold silica content level, the rationale for that threshold needs to be clearly explained and justified.

This is important in supporting any ban that is agreed by WHS ministers (whether it be all engineered stone or based on the percentage of crystalline silica in the product) and the education and awareness needed for any ongoing licensed work with engineered stone.

It will also assist PCBU's, workers and the general public to understand why other products that contain crystalline silica are still being used, and can and will continue to be used, safely, in a range of settings within Australia.

If this differentiation cannot be clearly articulated, it will be difficult to implement and support any form of ban.

Mechanisms to support a ban

Implementing and enforcing a ban can be extremely difficult.

It is unlikely that Australia would be able to identify how much product is currently in the country waiting to be fabricated. Product in storage may not have information available about the level of crystalline silica in the product.

Australia's experience with the banning of asbestos, which was finalised with effect from 31 December 2003, highlights the difficulty of banning a product that is widely used in other parts of the world. In the subsequent 20 years, there have been numerous examples of product entering the country undetected and being installed in workplaces or sold in retail outlets.

If a ban on use is to be implemented, it must be supported by a ban on importation and by appropriate focus and actions by Australian Border Force (ABF) to enforce the requirements.

This would also ensure that there was a consistent approach across all Australian jurisdictions, which cannot be guaranteed if we rely on individual jurisdictions adopting the Model WHS laws in a consistent way, at the same time.

A ban would also need to be supported by a broad campaign that informed and educated all those involved in making decisions about home and interior design, including the consumer.

The nature of the campaign would be determined by the nature of the ban; a complete ban on engineered stone, or a ban on engineered stone products containing above a certain percentage of crystalline silica.

We note that the CRIS listed a range of options, in section 4.8, that were considered to be infeasible (pp.34-35). This included the reasons why a ban would be infeasible.

4.8.1 Ban on engineered stone

A ban on the use of engineered stone has not been included in this CRIS. The reasons for this include:

- *the National Dust Disease Taskforce's Final Report did not recommend a ban on manufacture or use of engineered stone. It recommended that a ban on the importation of some or all engineered stone be considered by July 2024 if:*
 - "There is no measurable and acceptable improvement in regulatory compliance rates for the engineered stone sector as reported by jurisdictions; and*
 - Evidence indicates preventative measures are not effectively protecting those working with engineered stone from silicosis and silica-associated diseases" (Department of Health 2021).*
- *the All of Australian Governments' response to the National Dust Disease Taskforce report noted this recommendation and recognised that "... a comprehensive framework [is required] 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". The response also noted that further time may be required to make this assessment beyond the July 2024 proposed deadline (Australian Government 2022).*
- *further information from research, compliance and enforcement initiatives will assist in determining whether engineered stone can be worked with safely, which will inform the decision around a ban.*
- *as is the case for asbestos, the scope of the model WHS laws could only be extended to prohibit the use of engineered stone within each jurisdiction. It could not prevent the importation of engineered stone into Australia, which would need to be considered under the Commonwealth Customs Regulations, and*
- *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, nor will it address the risks associated with the processing or removal of engineered stone that is currently in situ.*

It is not clear how an option that was infeasible in June 2022, became a feasible option by the time the DRIS was published in February 2023.

The discussion of the consultation feedback indicates that it was argued in a number of submissions that "a ban on engineered stone would be consistent with the application of the hierarchy of controls" (p.74) [by applying the elimination or substitution approach].

Whilst this is correct, there are many other products where a ban would be consistent with the hierarchy of controls but would never be considered.

Any decision to implement a ban must be based on reliable scientific evidence that the risks of working with engineered stone, or engineered stone with a high crystalline silica content, cannot be controlled to an acceptable level.

Options for a ban (questions 1 to 3 in the consultation paper)

Do you support a prohibition on the use of engineered stone?

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

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

The SWA consultation paper presents three options for prohibition on the use of engineered stone. It is important to note the statement at the top of page 3 which highlights that WHS ministers are yet to agree that a prohibition of engineered stone is necessary. The next step after this process is described as:

Following consultation, a new Decision Regulation Impact Statement will be provided to WHS Ministers for their consideration of a prohibition on engineered stone.

[note: in this submission we refer to the document mentioned above as the DRIS (prohibition)].

With this in mind, we note that a further option not presented in the consultation paper would be the regulation of engineered stone via the high-risk silica requirements that have been agreed as option 5a of the DRIS.

The following table is based on the table provided on page 4 of the consultation paper. We have added two extra columns. The column second from the right shows what the control of engineered stone would look like with no ban, after implementation of option 5a of the DRIS. We believe it is important to reflect this here, and in the final analysis of the option to prohibit the use of engineered stone, so that there is a clear picture that there would still be an increased regulatory requirement, if a ban is not adopted by WHS ministers.

The far right column illustrates the current licensing arrangements that have been in place in Victoria since 15 November 2022 (following a 12 month transition process), for the purposes of comparison.

This information taken from the Consultation Paper				Option that does not involve a ban	Current Victorian Regulations Since 15 November 2022
	Option 1	Option 2	Option 3		
Work with engineered stone with $\geq 40\%$ crystalline silica	Prohibited unless exempt work; exempt work requires PCBU to be licensed	Prohibited unless exempt work; exempt work requires PCBU to be licensed	Prohibited unless exempt work; exempt work requires PCBU to be licensed	All work with engineered stone subject to regulation as high-risk crystalline silica process, as agreed by WHS ministers	Licensed. Definition engineered stone means a manufactured composite stone material that contains— (a) resins; and (b) 40% or more crystalline silica Control plans required and specific control measures mandated.
Work with engineered stone with $< 40\%$ crystalline silica	Prohibited unless exempt work; exempt work requires PCBU to be licensed	All work with engineered stone with $< 40\%$ crystalline silica subject to regulation as high-risk crystalline silica processes, as agreed by WHS ministers	All work with engineered stone with $< 40\%$ crystalline silica subject to regulation as high-risk crystalline silica processes plus an additional requirement for PCBUs to be licensed to work with engineered stone with $< 40\%$ crystalline silica.	All work with engineered stone subject to regulation as high-risk crystalline silica process, as agreed by WHS ministers	Most likely high risk silica work, that requires a risk control plan.

As highlighted above, any decision to ban engineered stone must be based on scientific data that demonstrates the higher level of risk that comes from the product, not the lack of compliance and enforcement with current expected control measures.

We note that the Australian Institute of Occupational Hygienists (AIOH) provides summary data about the differences between high-quartz containing engineered stone and natural stone in their submission to the CRIS (p.7). It is stated that “high-quartz containing engineered stone has toxicological properties that are distinctly and qualitatively different to that found in natural stone”. It is then stated that nanosized particles are released when working with engineered stone, but there is no clear information about whether this also occurs with natural stone. Information is also provided that epoxy resins used in engineered stone “may form a protective coating ... increasing their toxicity ...”.

As part of the review of workplace exposure standards (WES) the Draft Evaluation Report for *silica, crystalline (respirable dust)* was commissioned by SWA and considered by SWA members in 2019. The document includes a statement that:

*The evolution of the manufacture and use of crystalline silica is noted. New composites contain comparatively more crystalline silica per unit weight than monolithic stone (e.g. granite, marble). The use of power tools on products consisting of crystalline silica combined with bonding composites results in the generation of fine particulates with more complex considerations than those generated from conventional monolithic stone. **There is very limited epidemiology on these composite products, and their toxicology is unknown at this time** (emphasis added). Therefore, it is recommended that the data pertaining to silica containing products be examined as priority at the next scheduled review.*

It is imperative that SWA consider all available data, in detail, to inform the DRIS (prohibition) and any decision on the prohibition of engineered stone.

Any data subsequently presented in the DRIS (prohibition) must be provided in plain English so that it can inform the decision makers in a way that is clear to understand and communicate to others.

Conclusion

It is Ai Group's view that any decision to prohibit the use of engineered stone, whether universally or determined by the percentage of crystalline silica, must be supported by clear scientific evidence that crystalline silica in engineered stone creates a higher level of risk than crystalline silica in natural stone and other products that have the same crystalline silica content. Further, there must be evidence that the risks associated with the engineered stone cannot be controlled to the level required by the implementation of practices and procedures, including the banning of uncontrolled dry cutting. If compliance with such practices and procedures can achieve the required outcome, then this would be a more appropriate approach.

Nature of a ban

On page 3 of the consultation paper, in relation to option 1, it is stated that prohibition of engineered stone would be modelled on the asbestos regulations and then goes on to say that there would be exemptions for: sampling and identification; removal, repair and minor modifications ... and "PCBUs wanting to undertake the exempt work would require a license to do so".

Model WHS Regulation 419 establishes the prohibitions and exceptions relating to work with asbestos containing materials (ACM) and Regulation 458 establishes the duty to ensure an asbestos removalist is licensed.

Regulation 458(2)(a) establishes that licensing is not required if the asbestos to be removed is "10 square metres or less of non-friable asbestos or ACD [asbestos containing dust] associated with the removal of that amount of non-friable asbestos." Regulation 458(3) highlights the requirement for specific training to undertake this work.

The ability to remove small quantities of non-friable asbestos without a license enables minor work to be undertaken to complete tasks such as installing a power point without requiring a license.

The proposal under option 1 (and repeated for work on prohibited engineered stone in subsequent options), would require licensing for all work that involved prohibited engineered stone, creating a scenario where there would be stricter requirements on working with prohibited engineered stone than there is with non-friable asbestos.

It is our understanding that, in most cases the removal of kitchen benchtops as part of a renovation would be a lower risk process than asbestos removal, involving a small number of cuts before transporting a slab of stone, compared to removing asbestos which has a high propensity of breaking up during the process. Hence, having stricter requirements for engineered stone than for asbestos does not appear to be warranted.

There are some features of the asbestos licensing process that would not be relevant to engineered stone. Therefore, any controls and licensing requirements for work on prohibited engineered stone could be informed by the asbestos regulations but would need to be appropriately modified to suit the risks associated with engineered stone.

Businesses that work with engineered stone (questions 4 to 5 in the consultation paper)

How many businesses work with engineered stone only? How many businesses work with both engineered stone and non-engineered stone?

Ai Group does not have any additional data on this issue. However, as outlined later in this submission it would also be valuable to understand the amount of work undertaken by stone masons that related to kitchen benchtops in comparison to other work with stone, such as monument headstones.

Health risks (question 6 in the consultation paper)

Do you have any data or information on the risks to workers from the other non-crystalline silica elements of engineered stone? Are these risks increased in engineered stone of less than 40% crystalline silica content?

Ai Group does not have any information to provide in relation to these questions.

We wish to highlight that this question is a little vague and may not elicit the information the Agency is seeking. It is our view that the question is trying to identify whether the presence of other non-crystalline silica elements make engineered stone with less than 40% crystalline silica content more hazardous than other products (such as natural stone) that contain less than 40% crystalline silica. However, it could be read to be a comparison to engineered stone with 40% or more crystalline silica.

We believe that the answers to this question are particularly important information that needs to be clearly articulated as part of the DRIS (prohibition) to ensure that WHS ministers and others have reliable technical data to inform decisions and communication.

Based on the ambiguity of the question, SWA may need to seek further clarification from stakeholders who respond to this question.

Licensing for use of engineered stone (question 7 in the consultation paper)

In relation to option 3 [in the consultation paper], do you have:

- a) any information on the benefit of a licensing scheme over the enhanced regulation agreed by WHS ministers (Option 5a) that would already apply to engineered stone products containing less than 40% crystalline silica content?
- b) Feedback on the implementation of concurrent licensing schemes for both prohibited engineered stone and non-prohibited engineered stone?

Licensing work on engineered stone with silica content less than 40%

Option 3 would involve the licensing of all work with engineered stone with less than 40% crystalline silica; this would be in addition to the regulation related to high-risk crystalline silica processes, which is the considered in option 2.

Ai Group believes the DRIS (prohibition) should also consider whether licensing should be included if the WHS ministers make a decision to not have any prohibition on the use of engineered stone.

We note that the DRIS (p.77) states:

While a licensing scheme offers additional benefit of increased awareness for WHS regulators of those PCBU's working with engineered stone, WHS regulators in most jurisdictions are likely to already have this information through their education and compliance activities. WHS regulators also stated in their feedback that the administrative burden of a licensing scheme would likely draw resources from other risk-based compliance activities. There would also be additional costs and significant administrative burden to industry. The benefits of a licensing framework would not outweigh the added administrative and financial burden on both business and government.

The DRIS identified that the benefits of a licensing framework would not outweigh the administrative and financial burdens, in relation to regulating the use of all engineered stone. On this basis it is difficult to see how licensing work on engineered stone with a silica content of less than 40% would achieve an outcome that was more beneficial than the high-risk crystalline silica processes agreed by WHS ministers.

Victoria introduced a licensing scheme for working with engineered stone that came into effect from 15 November 2022, after a 12 month transition period. In a recent meeting with WorkSafe Victoria (March 2023), we were advised that 162 licenses had been granted and 222 applications were in the process of being considered.

It would be helpful to gain information from WorkSafe Victoria about the costs and benefits of a licensing scheme from the perspective of a regulator, particularly as licensing will be a consideration, even if a ban of some form is progressed.

Concurrent licensing systems

Consideration is being given to a licensing system for both work on engineered stone with crystalline silica content of less than 40% and exempted work on prohibited engineered stone.

It is difficult to assess how these concurrent systems would operate until the specific requirements of the licensing scheme are drafted. However, it is Ai Group's view that the intent and practical application of the two licensing schemes would be very different, and that the licensees are likely to be different PCBUs.

Licensing related to supply

A licensing scheme to work with new products has a key feature that involves a prohibition on supply unless the client is licensed. Using the Victorian regulations as a guide, it would mostly likely be required for work with engineered stone if the work being undertaken is a process at a workplace that "generates crystalline silica dust, including cutting, grinding or abrasive polishing of engineered stone" (engineered stone process).

These licenses would apply to those making kitchen benchtops and may not apply to those installing the product if all fabrication work is undertaken by the business that obtained the engineered stone. The businesses fabricating the benchtops would be unlikely to undertake maintenance, repair and removal of engineered stone that is in-situ.

Licensing for exempt work on prohibited engineered stone

A licensing scheme associated with work on in-situ prohibited engineered stone is most likely going to be required by PCBUs that are involved in home maintenance, renovations and demolition.

These PCBUs may also be undertaking an engineered stone process during installation of new products, but the guidance and codes will continue to discourage this work from being undertaken anywhere other than in the fabrication workshops.

Identifying prohibited engineered stone

If a decision is made to ban some engineered stone on the basis of its crystalline silica content, another factor to be considered is that it will be difficult for those undertaking maintenance, repair and removal to identify the crystalline silica content of products that were installed prior to any ban being put in place.

Licensing requirements

The requirements for both types of licences need to be proportionate to the risks associated with the product and not necessarily modelled on the asbestos regulations.

Assumptions and scenarios described in Option 6 in the DRIS (question 8 in the consultation paper)

Are the assumptions and scenarios described for Option 6 in the Decision RIS accurate and appropriate? If not, why? Please provide information to support the impact analysis.

Ai Group has no further data to add to refine the number or demographic characteristics of the businesses that define the market, or the people that work within those businesses.

However, we do not believe that the information presented in the first part of section 6 of the DRIS takes into account that many of the businesses are stone masons that fabricate kitchen benchtops from both engineered stone and natural stone, and may also undertake other work with stone such as monument headstones.

In the last paragraph on page 58 of the DRIS it is stated that “a proportion of medium sized businesses would be able to purchase new equipment to switch to alternative products (e.g. wood)...”.

If a business is predominantly operating as a stone mason, it is our view that they are unlikely to turn to wood as an alternative and would be more likely to continue to operate with natural stone. It is most likely that other businesses would be pick up the additional work associated with kitchen benchtops, such as wood or laminate.

It is our view that a more nuanced analysis of the market is required in order to accurately assess the impact. Areas for consideration may be the impacts on:

- Businesses predominantly operating as stone masons that make engineered stone benchtops in addition to working with natural stone to make benchtops and other products. Is there likely to be a consumer switch to natural stone benchtops or will they move to other products such as laminates or wood?

- Businesses predominantly operating as cabinet makers who undertake work with engineered stone as part of their kitchen build. Would they easily be able to switch to products other than engineered stone by changing their processes or outsourcing the benchtop construction?
- Would a ban on the use of engineered stone create other risks that might need to be mitigated? This is a question that must always be considered when implementing a WHS risk control. What mitigation strategies would need to be implemented by workplaces, governments, and WHS regulators?

We note that, whilst a switch to wood is provided as an example on p.58 of the DRIS, the costings provided in Tables 34 and 35 (p.68) represent only two options: switching to natural stone or continue to work with engineered stone for exempt activities; or businesses cease.

There seems to be a disconnect between the commentary of impact on p. 57 to 61, which refers to purchasing of new equipment and using alternative products other than natural stone, and the costings done later in section 6.

Estimating costs to industry

We acknowledge that the information in section 6 of the DRIS has been presented as a high level assessment of costs. However, we find the estimates in Table 31 to be overly simplistic. It is unlikely that the cost of licensing for a business will only be the cost of the licensing fee. The data in the DRIS does not include key activities listed in Table 15 of the CRIS: preparation of license application; engineered stone providers retention of records; participation in compliance and enforcement activities; and provision of health monitoring and air monitoring reports to regulators.

Estimating costs to government

The costs to government considered in Tables 32, 34 and 35 of the DRIS (pp.66-68) have a very strong focus on retraining and obtaining formal qualifications for another trade. It is Ai Group's view that this does not consider whether retraining is a feasible option for those currently working with engineered stone.

This analysis and costing could be enhanced if the demographic of those working with engineered stoned could be further investigated, taking into account age, literacy, time in the industry etc.

Transition period (question 10 of the consultation paper)

Should there be a transition period for a prohibition on engineered stone? If so, should it apply to all options and how long should it be?

It is essential that there is a transition period if any of the options are adopted. The practical implications of various timings should be considered, together with the financial impacts on businesses.

A ban on [all or some] engineered stone

If there is a ban on the use of engineered stone, there would need to be a transition period which allowed sufficient time to:

- enable product that has been purchased and is on its way to Australia to be delivered (consideration would need to be given to any known delays in processing products through Australian ports, including customs considerations);
- complete and install products that have been ordered and work that is in progress;
- communicate the detail of the ban to the full supply chain from suppliers through to the consumer who is making a decision about the products to use in their new home or renovation; and
- address any concerns that householders might have about the risks associated with in-situ product and how it must be managed and maintained into the future.

A ban might need to be staged, with an importation ban commencing earlier than a ban on installation. This would enable stocks to be used, rather than leaving businesses with product they were legally able to purchase, but subsequently not permitted to use.

It would be helpful if the consultation process was able to identify the current stocks of engineered stone in Australia and the consignments that are on their way to Australia.

A licensing scheme

If a licensing scheme is to be introduced, it must take into account the lead time required for:

- businesses to determine if they want to continue undertaking the work that requires a licence and complete any work in progress if they decide not to work with engineered stone that requires a licence;
- businesses that decide to continue working with engineered stone to understand the requirements and make the necessary application; and
- regulators to assess the applications and make appropriate decisions about licensing.

The timeframe for licensing would potentially be shorter than that needed to introduce a ban.

It would need to be informed by the resources of the various regulators to process licensing applications and the ability to establish a national licensing framework that allowed for mutual recognition.

If the ban involves new installation of engineered stone that has a lower crystalline silica content, there will also need to be a central register of license holders that can be accessed by suppliers to enable them to be compliant.

Specific requirements for high-risk silica work

The adoption of a requirement for businesses to have specific controls in place and establish risk control plans (RCPs) or safe work method statements (SWMSs) for high-risk crystalline silica work must take into account the lead time required for:

- businesses to determine if they want to continue undertaking the work that is a high-risk crystalline silica process; and
- businesses that decide to continue working with engineered stone to understand the requirements and complete the necessary work, including administrative tasks, to comply.

This option is likely to have the shortest lead time. However, any regulation that had specific requirements for RCPs or SWMSs would require clear guidance for PCBU's on what is required for compliance. This would also be assisted by the provision of industry specific guidance on known controls for high-risk silica work.

The implementation of this requirement may be delayed if air monitoring is required to establish if a silica process is high risk. This would especially be the case if option 5a is adopted for all high-risk silica work at the same time, creating an excessive demand on the services of occupational hygienists and testing laboratories.

Next steps

Ai Group is cognisant of the fact that WHS ministers have set a very ambitious timeframe for SWA to provide a report on the options for a prohibition on engineered stone.

However, it was not until the DRIS was published in February 2023 that stakeholders became aware that WHS ministers would be asked to consider a ban at this time, rather than in the timeframes considered by earlier work. This is despite significant discussions about the management of silica that have been held at SWA meetings for more than 5 years.

As indicated above, the information presented in section 6 of the DRIS was necessarily high level and as noted in the DRIS (p.64) “further engagement with stakeholders would be required to gather data and understand the decisions businesses would make if a prohibition on working with engineered stone was implemented”.

This consultation paper is the start of that process. We expect that organisations that supported a ban during consideration of the CRIS will provide additional data and information to support a ban, and that other organisations may provide alternate data that does not support a ban.

It is Ai Group's view that there needs to be a further consultation process, at least with SWA members, once the data is gathered and analysed and before a DRIS (prohibition) is finalised and presented to WHS ministers for decision.

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Our purpose is to create a better Australia by empowering industry success. We offer our membership strong advocacy and an effective voice at all levels of government underpinned by our respected position of policy leadership and political non-partisanship.

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