

INQUIRY INTO 2021 REVIEW OF THE DUST DISEASES SCHEME

Organisation: Smart Stone
Date Received: 4 February 2022

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The Hon Wes Fang MLC
Chair NSW Legislative Council Standing Committee on Law and Justice
Parliament House
Macquarie Street
Sydney, NSW 2000

Lodgement by email: law@parliament.nsw.gov.au

Dear Mr Fang

Smartstone is pleased to make a submission to the NSW Legislative Council Standing Committee on Law and Justice's (**Committee**) review of the Dust Diseases scheme, including our views on progress in recommendations made on the management of silicosis in the manufactured stone industry.

At the outset Smartstone wishes to state that we strongly support the submission made in December 2021 by Caesarstone¹, with which we have collaborated on addressing occupational risks associated with engineered stone alongside other members of the Australian Engineered Stone Advisory Group (AESAG).

Our submission follows.

1. Background on Smartstone

Established in 2002 as a subsidiary of building products supplier Halifax Vogel Group, Smartstone is now a leading distributor of engineered quartz surfaces, with operations in Australia, New Zealand, Singapore and the United States.

Smartstone works closely with architects, interior designers, renovators, builders and developers and brings a detailed understanding of the supply chain for engineered stone products and how occupational risks can best be addressed. Smartstone is also founding member of AESAG, which was established to respond to the occupational risk of silicosis for stonemasons who fabricate engineered stone without appropriate safety measures in place. Along with introducing other safety improvement initiatives, AESAG developed Australia's first national product handling safety guide.

Based on our experience, we believe strongly that engineered stone is a safe product when correct safety measures are employed. Further, clusters of silicosis cases where they have occurred, appear to be the result of a small number of stonemason businesses that have demonstrated little regard for the health and safety of their employees.

¹ <https://www.parliament.nsw.gov.au/lcdocs/submissions/76664/0016%20Caesarstone.pdf>

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Many hundreds of professionally managed stonemason businesses exist in Australia, and their track record of safe working environments and no cases of silicosis amongst their staff show that the product can be safely fabricated and processed.

2. Need for a nationally coordinated approach

Smartstone has long argued that state governments should implement a licensing scheme for stonemasons and their workers, to improve industry practices, workplace health and safety, and allow for better monitoring of the industry.

We support the work of the Commonwealth and various States and Territories, including statutory safety bodies and the National Dust Diseases Taskforce (NDDT), in developing a regulatory framework to reduce, and indeed eliminate, the risk of silicosis associated with the fabrication and installation of engineered stone.

While regulation of the industry will necessarily be developed and implemented at the State and territory level, our strong preference is for a nationally coordinated approach to such regulation. We see this as the best way to ensure that robust safety rules are applied consistently and that there is no “regulatory arbitrage”, that is, weaker standards in one or more jurisdictions leading to a concentration of bad-faith industry participants based in those jurisdictions.

In considering a national framework, we note SafeWork Australia’s recently published “*Model Code of Practice – Managing the risks of respirable Crystalline Silica from engineered stone in the workplace*”² as a reference point. This document is Australia’s first national code of practice for the industry, providing industry participants with guidance on how to comply with OH&S laws and protect workers.

We also note the Victorian Government’s introduction in November 2021 of regulatory measures that include a licensing regime for engineered stone (Australia’s first), a permanent prohibition on uncontrolled dry-cutting, and additional oversight of high-risk crystalline silica work outside of engineered stone across all industries.

Smartstone supports the regulatory developments in Victoria and suggest that they provide a strong starting point for the NSW Government if it chooses to implement its own regulatory model for the engineered stone industry. Smartstone’s suggested improvements to enhance the Victorian model are discussed in [5] below.

There is a degree of urgency in adopting a nationally consistent regulatory framework and we would urge the Committee to express its support for such a national approach.

² <https://www.safeworkaustralia.gov.au/doc/model-code-practice-managing-risks-respirable-crystalline-silica-engineered-stone-workplace>

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3. Mandating of fabrication licenses

An important recommendation (1.c) of the NDDT Report was that the government should “urgently... consider... a licensing scheme or equivalent to restrict access to the product to those businesses that can demonstrate the ability to effectively manage the risks”.

We agree with the view expressed by our industry counterpart Caesarstone in its submission to this Committee that mandatory fabrication licenses are a key pillar of a nationally consistent regime. Many other trades are licensed and regulated and there is no reason why stonemasons should not also fall under a universally recognised licensing system. In a properly structured, monitored and enforced licensing scheme unlicensed stonemasons will find it difficult to obtain work from builders or slabs from suppliers, going some way to weeding out – or at the very least reducing space in the market - for operators that are not committed to safe practices.

We acknowledge that while a nationally accredited scheme is preferred, state-based licensing schemes can likely be established more easily and quickly.

As noted, Victoria has recently introduced such a scheme as part of its package of regulatory reforms announced last November. We urge the Committee and the NSW Government to support adoption of a national mandatory licensing scheme as a matter of urgent priority.

The licensing system described will need to be accompanied by a robust compliance and enforcement regime. To this end we would refer the Committee to the proposed compliance and enforcement measures contained in the Policy Paper prepared by Caesarstone, “*Tackling occupational lung disease – the pathway forward*”, which accompanies its submission.

4. Possible ban on importation of engineered stone

The Committee would be aware that the NDDT has recommended a ban on the importation of engineered stone if, by July 2024, industry compliance with safety regulation has not improved such that the incidence of silicosis and related diseases has not reduced dramatically.

Smartstone does not believe that a ban on the importation is a proportionate or practical response to the issue under consideration.

Silica is found in 80% of building products and state and territory regulators must increase their enforcement of safe working environments in stonemason factories. Many stonemasons have for a long time worked safely, without workers acquiring dust diseases, due to their professional and safe business practices. Clearly, safe operations can be achieved; it would be an overreaction for an entire industry to close due to a small number of rogue operators who are able to flourish due to poor regulatory oversight of the industry.

We appreciate, however, that pressure to consider a ban on certain engineered stone products considered risky will remain if industry practices do not improve.

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Given the complexity of the required reforms outlined in this and other submissions, July 2024 is too short a timeframe for considering any ban. Smartstone believes any review period should commence after a national licensing scheme has been established and span a five-year period (underscoring the urgency of the Commonwealth, States and Territories moving toward a national scheme.)

5. Possible regulatory model for NSW Government

As noted, while Smartstone would prefer a national regulatory framework for the engineered stone industry we understand some States may move more quickly than others, as has occurred in Victoria.

We have stated that if NSW was to take the step of developing and implementing its own regulations, the Victorian reform package, including the licensing system, would be a good starting point. However, we would suggest the following enhancements to the Victorian reforms:

- Widening the definition of engineered stone subject to regulations to include all materials containing silica (not just engineered stone that contains 40% or more silica), on the basis that workplace risk is attached to fabrication of all silica-based products.
- Requiring the independent audit of control plans prior to the granting of a license.
- Establishing a publicly available database of licence-holders so that parties selling or buying controlled products can ensure they are dealing with valid licence-holders.
- Prohibiting the purchase of controlled products *from* unlicensed fabricators, not just the sale of these products to unlicensed fabricators.

I hope the submission outlined above sets out clearly Smartstone's view on how best to regulate silica-based products to eliminate the risk of dust-related diseases arising from the fabrication and installation of engineered stone products.

We are very keen to see the NSW Government take a constructive role in driving the nationally coordinated regulatory framework that provides the best path to dealing with this issue.

I would be very pleased to expand further on the points included in this submission.

Yours sincerely,

Managing Director, Smartstone

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