Supplementary Submission No 15a

INQUIRY INTO 2021 REVIEW OF THE DUST DISEASES SCHEME

Organisation: Caesarstone

Date Received: 7 April 2022

8 April 2022

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

Dear Mr Fang,

Re: Caesarstone Australia (Caesarstone) Supplementary Submission to NSW Legislative Council Standing Committee on Law and Justice – 2021 review of the Dust Diseases scheme.

Thank you for the opportunity to provide this Supplementary Submission to the NSW Legislative Council Standing Committee on Law and Justice's (Committee) review of the Dust Diseases scheme.

This Supplementary Submission will clarify remarks made by Caesarstone Asia Pacific Managing Director David Cullen at the Committee's public hearings on 16 February 2022, in particular related to Caesarstone's insurance coverage, and will address some of the matters raised during the public hearings that directly go to the role of engineered stone manufacturers.

Clarification of remarks

Caesarstone Inc., the parent company of Caesarstone Asia Pacific, has always met all of its incurred liabilities and will continue to do so.

It is important to clarify that insurance coverage is not a measure of industry safety.

Insurers are commercial enterprises that frequently make decisions to avoid or exit industries or sectors because they cannot generate an adequate return. Insurers do not like conditions of uncertainty and change. One recent example is the decision by many insurers to withdraw from the directors' and officers' liability insurance (D&O) market. That does not mean that directors and officers are uninsurable. Other examples are cybersecurity insurance and home insurance in flood- and storm-prone areas.

We believe that as compliance and safety improve and evidence regarding a decline in incidences and risks becomes available, insurers will come back to this market.

Other matters raised in the hearings

Caesarstone reiterates its support for the introduction of a federally led and state-supported national reform package to address the re-emergence of silicosis. Along with a number of other witnesses at the public hearing held on 16 February 2022, we continue to believe the regulatory regime introduced in Victoria in 2021, which includes a mandatory licensing scheme, provides an appropriate model for national reform.

A proposed ban on engineered stone is illogical and will not eliminate silicosis

- The risk of silicosis is not unique to engineered stone and a ban on only one silica-containing product would not eliminate the risk of silicosis for workers handling any type of stone.
- In addition, existing safety measures enable engineered stone – and other silica-containing products – to be handled safely, virtually eliminating the risk of silicosis.

- These facts were acknowledged in the hearings. In her responses to the Committee, Ms Kate Cole, President, Australian Institute of Occupational Hygienists, stated:
  > *'We support a ban of manufactured stone, absolutely. It is a high-risk product. We have seen that the level of compliance in the engineered stone sector is incredibly low. Yes, we support a ban of it. But please understand that banning manufactured or engineered stone does not solve the problem of silicosis in this State.'*
- Dr Graeme Edwards, Senior Consulting Physician, Occupational and Environmental Medicine, acknowledged *'that the product can be fabricated safely'*.
- The reality is that the same safety measures should be applied regardless of the percentage of silica in a product on the basis that workers should not be exposed to dust containing any level of silica, as recognised by work safety bodies.[1]
- As such, then there is no rationale in banning one product that must be handled in exactly the same manner as all other similar products.
- In addition, there is currently no medical or scientific consensus that silica from engineered stone is more dangerous than silica contained in other materials or that it causes different conditions or severity of illness.
  - In a study by Hall et al. (2021)[2], it was concluded that 'the mass of dust generated was similar whether the stone was artificial or natural ... For each process, normalised particle size distributions were similar whether the stone was artificial or natural … silica particles released during processing of the resin-artificial stones are not bonded to the resin material'. While the study did conclude that the higher the level of silica in the bulk material, the higher the level of silica in any dust emissions produced when processing the stone, a separate study by Carrieri et al (2020)[3] contradicts this.
  - In the study by Carrieri et al. (2020), the authors investigated the crystalline silica content of bulk dust and particle morphology of bulk and respirable particles. Resin-artificial stones were found to have much higher bulk dust silica percentages – 91% compared with <10% for sintered stone and 31% for granite. However, they found that the percentages of crystalline silica in the respirable fraction of dust were much lower than in the bulk material. They also found that granite produced around four times higher respirable dust concentrations than artificial stones.
  - In a study by Leso et al. (2019)[4], the authors attributed the accelerated silicosis associated with artificial stone to a lack of adequate control measures. Reductions in exposure to respirable dust and respirable crystalline silica from artificial stone processing, provided by exposure control methods, were found to compare well with the reductions obtained using similar control measures for natural stone processing (Cooper et al (2015)[5]). This suggests that exposure control measures in use for natural stone processing could be suitable for controlling exposure when processing artificial stones.
- As we said in our original submission to the Committee, the definition of engineered stone in the Victorian scheme (and in any nationwide scheme) should be widened so the regulations apply to all materials containing silica (and not just engineered stone that contains 40% or more silica). This is because the workplace risk arises when fabricating any silica-based

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[1] Managing the risks of respirable crystalline silica from engineered stone in the workplace, Safe Work Australia Code of Practice, October 2021

[2] Hall S, Stacey P, Pengelly I, Stagg S, Saunders J, Hambling S (2021), Characterising and Comparing Emissions of Dust, Respirable Crystalline Silica, and Volatile Organic Compounds from Natural and Artificial Stones. *Annals of Work Exposures and Health*

[3] Carrieri M, Guzzardo C, Farcas D *et al.* (2020) Characterisation of silica exposure during manufacturing of artificial stone countertops. *International Journal of Environmental Research and Public Health*

[4] Leso V, Fontana L, Romano R, Gervetti P, Iavicoli I. (2019) Artificial stone associated silicosis: a systematic review. *International Journal of Environmental Research and Public Health*

[5] Cooper JH, Johnson DL, Phillips ML. (2015) Respirable silica dust suppression during artificial stone countertop cutting. *Annals of Occupational Hygeine*

product (and not just those with 40% or more silica) and regulations should operate to protect those exposed to such risks.

Low compliance in the fabrication and stonemasonry industries can be addressed

- Caesarstone acknowledges that compliance is a significant issue in the sector but addressing this issue is not as difficult as has been portrayed by some witnesses.
- There are a number of professional bodies dealing in occupational hygiene that can assist fabricators in implementing and enforcing appropriate safety measures and the focus should be on creating the right motivation.
- In the past, Caesarstone explored the implementation of a self-regulatory accreditation program – and had a clear path to its execution. The only reason this was not actioned was due to legal issues raised by the Australian Competition and Consumer Commission.
- This is why Caesarstone supports a mandatory nationwide licensing scheme for stonemasons and fabricators, with a built-in enforcement and auditing structure to support it. If an accreditation scheme was something that we believed was possible for Caesarstone to undertake, it is certainly within work safety regulators' capabilities.
- We believe that any regime should require a prospective licence-holder to obtain an independent audit (from a list of approved hygienists), followed by the preparation and approval of a control plan to demonstrate they are fully compliant with regulatory requirements. This would be followed by regular inspections and audits.
- Enforcement can be handled by work safety regulators and/or it can also be partially 'outsourced' to the industry with the inclusion of a prohibition to trade with unlicensed businesses. In addition to the prohibition on selling controlled products to unlicensed fabricators, there should also be a prohibition on purchasing controlled products from unlicensed fabricators as fabricators may purchase these products abroad.
- There are innumerable high-risk occupations and activities that are not prohibited but where safety standards have been greatly improved over the years through the introduction of appropriate regulation. Examples include addressing the risk of silicosis in mining, working at heights in all industries and grain handling and storage, where fires caused by grain dust were once considered an acceptable occupational hazard but have since been eliminated through standards and regulation.[6] Stonemasonry, which can be conducted safely with the right standards and enforcement, should be no exception.

Engineered stone can be handled safely at the point of installation

- Again, Caesarstone acknowledges that compliance is a significant issue, including at the point of installation. However, this can be addressed through regulation and there are tools and procedures that enable the safe handling of engineered stone should it be necessary at the point of installation.
- Meagan McCool, Director, Construction Services Group Metropolitan, at SafeWork NSW, told the Committee that 85 per cent of workers engaged in installation were connected to a fabricator, either as direct employees or contractors. This made monitoring and enforcement of these workplaces easier.
- Ms McCool said SafeWork actively carried out inspections at the point of installation:

  'Our strategy covers all industries, whether it is tunnelling, construction or cutting bricks, concrete and manufactured stone. When we are checking the fabrication workshops, we look at what we call SOPs – standard operating procedures – or their safe work method statements, including right through to the installation. Wherever we issue notices or compliance, it applies to the whole end-to-end chain.'
- In terms of Caesarstone's efforts, we have been putting clear warnings on its products about safe handling practices for more than a decade.
- Caesarstone's guidance and training includes the Good Practice Guide and a safety DVD for the industry, as well as an innovative online learning platform called the 'Master of Stone

[6] https://www.osha.gov/sites/default/files/grainhandling_final2003.pdf

Training Centre', which makes information and working guidelines accessible to fabricators and others who handle our products, with a focus on health and safety issues.

- The guideline for installation of engineered stone products has always been that all slabs must be fabricated in workshop – where there are typically better safety controls – not at the installation site. If significant cutting is required upon installation, the slabs should be returned return the slabs to the plant for re-cutting.
- However, if on-site cutting or adjustments are required, there are safe handling tools and procedures, including water-integrated tools for wet-cutting and equipment with integrated dust collectors connected to vacuum with a high-efficiency HEPA particulate air filter.[7]
- In addition, PPE such as pressurised masks, which may be impractical for long periods of wear at a workshop, can be worn for short periods of on-site work.
- Work safety regulators have the capability to enforce these standards if they are included in any state-based on nationwide regulatory regime.

Workplace exposure standards can be measured – but compliance is more important

- The setting of standards is a matter for regulators/work safety bodies, based on the best medical evidence. Caesarstone supported the reduction of the WES of 0.05mg/m3 and would support any further reduction if it was proven to be effective in further reducing the risk of silicosis.
- However, it is important to note that current cases are most likely caused by poor compliance with current standards rather than the actual WES level.
- As Dr Edwards told the Committee hearing:
    - *'The reality is that I have not been able to find a case anywhere in the literature or in my discussions with people around the world where people have contracted silicosis because their exposure was at or below the workplace exposure standard of the day. All the cases have been where there have been breaches of and non-compliance with the exposure standards. Exposure standards do not save lives; they drive a process to improve the systems and procedures and practices that save lives.'*
- Air monitoring should be part of any licensing regime. It is up to the industry – manufacturers, fabricators, builders, government and work safety regulators – to determine the right safety standards and then enforce those rigorously.
- Despite some suggestions otherwise, some experts believe it is 0.02mg/m3 is measurable. For example, Professor Timothy Robert Driscoll, the University of Sydney, the Cancer Council's Chair of the Occupational and Environmental Cancer Committee, told the Committee there as "pretty good evidence" that levels of 0.02mg can be measured.

    'The understanding we have from talking to occupational hygienists is that, yes, we definitely can test at that level, but it has been questioned. If that is the thing that is stopping getting a standard of 0.02, which is a health-based standard, the appropriate standard, we feel, then work should be done to ensure that we can measure down to that level, but we think you can now.'
- Regardless of the set standard, current tools such as pressurised masks, can be used to prevent any RCS exposure.

Silicosis is not comparable with asbestos-related illness

- Silicosis is nothing like asbestosis.
- With asbestos, the final product continues to be very dangerous, even to end users. Silicosis, on the other hand, is an occupational disease; prolonged exposure to silica in an unsafe working environment is necessary to contract silicosis.
- With asbestos even one fibre can cause damage and diseases such as mesothelioma, which is why exposure limits are measured in individual fibres and not milligrams as in silica.

[7] Several examples of water-integrated cutting tools and tools with integrated dust collectors can be found here https://www.youtube.com/watch?v=-tGItlpwxrM, https://www.youtube.com/watch?v=HJXajc9LthM, https://www.youtube.com/watch?v=Ry3-lnIcj7o, https://www.youtube.com/watch?v=dSGgvTIyiZo, https://www.youtube.com/watch?v=Rn2hZVD0-Xw https://www.youtube.com/watch?v=xXWIOGxkWyA

- This is why, in contrast to silica-containing products, there are no safe asbestos products and the number of affected individuals in connection with asbestos exposure is expected to be higher than in connection with exposure to silica.

A ban on engineered stone would not just hurt foreign manufacturers

- Global companies invest in the Australian market with the expectation they will receive consistent and fair treatment from the Government.
- Engineered stone manufacturers are major investors in Australia. Together, the industry directly employs hundreds of Australians, supports thousands of Australian fabrication and stonemasonry jobs and generates significant taxes for state and federal governments.
- Engineered stone manufacturers have been supplying Australians since the early 2000s and are an established part of the homebuilding and construction industry.
- Australia (+ New Zealand) is Caesarstone's second biggest market. It is fair to say that a ban or other restrictions on our trade would have a material impact on our business and the people we employ in Australia.
- It is highly likely that this would result in homeowners/the construction industry substituting engineered stone for other foreign-manufactured and imported products, such as marble and granite (which also contain silica), as there are few other locally produced substitutes.

Most substitutes for engineered stone contain silica

- Over the past decade, Australian homeowners, renovators and the construction industry have demonstrated their preference for engineered stone over other materials. This is due to its aesthetic appeal and properties, such as durability, permeability, ease of maintenance and the aesthetics of the product.
- It is illogical to ban a product that is perfectly safe for consumers and is safe for workers provided proper handling techniques are followed.
- Imposing a percentage limit on silica in a product is also an illogical response. All the safety measures used to cut and polish 90% silica engineered stone would, for example, apply to cutting and polishing a much lower percentage silica stone, such as granite, marble & porcelain.
- Substitutes that would be considered by consumers include granite, marble and porcelain. Almost all substitutes, with the exception of wood, would contain some level of silica, necessitating exactly the same safety standards for workers handling it.

Banning engineered stone will not resolve the shortfall in the Dust Diseases Scheme

- A ban on engineered stone will not end silicosis and will not solve the identified shortfall in the Dust Diseases Scheme (DDS).
- In fact, Richard Harding, CEO and Managing Director of icare, told the Committee that silica-related claims "are not expected to increase significantly in the near future as many cases have now been identified and brought forward". He said:

  'Improved awareness should lead to more effective preventative measures in workplaces. As a result, we are not anticipating an impact to premiums in the short and medium term because of silica disease.'
- Even if there is no more engineered stone, the presence of silica in almost all substitute materials and in industries like tunnelling and construction means workers will continue to face the risk of silicosis and the DDS will continue to receive claims.
- Not addressing the issue of health compliance across an entire industry by instead banning a single product and allowing a continuation of unsafe conditions elsewhere will worsen the DDS position in the long-term.
- As Ms Cole noted in the Committee hearing, 'high quartz', for example is 'ubiquitous in construction, demolition, tunnelling'.
  - *'This is not just an issue in engineered stone but, indeed, across other industries, highlighted most recently with 42 per cent—or almost half—of cases of silicosis reported to 30 June 2021 being from industries outside of engineered stone.'*

- The best response to ensuring the DDS can meet its future liabilities is to reduce the incidence of silicosis – and the best way to do that through comprehensive worker safety standards and enforcement.
- We have argued that should include the mandatory nationwide licensing scheme for all workplaces handling all silica-containing materials.

Thank you again for the opportunity to provide this supplementary submission. We would be happy to answer any further questions the Committee may have.

Yours sincerely

David Cullen
Managing Director – Caesarstone Asia Pacific