HIA Submission

Consultation on the ban of engineered stone

Safe Work Australia

31 March 2025

Contents page

Introduction

The Housing Industry Association (HIA) takes this opportunity to provide a submission to Safe Work Australia (SWA) in response to the consultation on the review of the ban of engineered stone in Australia implemented by the *Model WHS Amendment (Engineered Stone) Regulation 2024* (Engineered Stone Regulation).

HIA continues to remain committed to working with governments to improve industry understanding of the risks of working with all crystalline silica products. Undertaking further awareness initiatives and considering and implementing meaningful and practical reforms to improve work practices to safeguard workers is considered a priority.

HIA understands that Work Health and Safety (WHS) ministers have tasked SWA to:

- review the operation of the engineered stone ban to ensure it is operating effectively, and
- consider health risks posed to workers from processing benchtops, panels and slabs made from alternative products.

HIA's submission responds to these matters and provides recommendations for improvement.

Key issues raised in this submission include:

- uncertainty about finished engineered stone products,
- performance issues of alternatives to engineered stone,
- issues relating to the reinstallation of legacy engineered stone at the same location,
- notification of legacy work, and
- uncertainty about the assessment of high risk in relation to processing of legacy engineered stone.

HIA considers that although the ban on engineered stone is largely operating as intended, there are some areas of confusion making it difficult for PCBUs to be certain of compliance.

It is essential that meaningful and pragmatic solutions are implemented to address the issues identified. To that end HIA sets at a number of recommendations which are summarised at **Attachment A**.

Additional Regulation | Working with Respirable Crystalline Silica

Since 1 September 2024 the processing of products containing at least 1 percent respirable crystalline silica (RCS), including engineered stone, has been subject to additional regulations.

The *Model Work Health and Safety Regulations (Crystalline Silica Substances) Amendment 2024* (CSS Amendment Regulation) requires that all processing of crystalline silica substances (CSS) that cannot be eliminated must now be controlled so far as reasonably practicable by using at least one prescribed isolation or engineering control measure, such as wet dust suppression, on-tool dust extraction, local exhaust ventilation. Any person that is still at risk of exposure to RCS after applying prescribed control measures must be provided with respiratory protective equipment.

In addition, there are requirements for processing of CSS that is high risk to be identified. High risk processing of a CSS requires a written silica risk control plan to be implemented, workers to be trained, and air and health monitoring to be applied.

Further, work involving the permitted processing of legacy engineered stone must be notified to the WHS regulator.

These requirements provide strong safeguards to supplement the prohibition and any work involving the processing of CSS.

Operation of the Engineered Stone Ban

The prohibition on engineered stone is an issue that HIA has taken seriously. HIA is fully committed to the need to minimise the potential exposure of workers to harmful levels of RCS when working with CSS.

Since the commencement of the prohibition on the manufacture, supply, processing, and installation of engineered stone benchtops, panels, and slabs with 1 percent or more crystalline silica content, suppliers of engineered stone benchtops, panels and slabs and HIA members have made any significant changes to comply with the prohibition and to reduce exposure to RCS.

Changes include:

- a switch to low silica benchtops, panels and slabs that do not meet the definition of engineered stone,
- a switch to silica free benchtops, panels and slabs, and
- implementation of additional safety requirements for processing of CSS, including CSS that are high-risk. For example, requirements to control the processing of a CSS by specified means, such as isolation, wet dust suppression, on-tool dust extraction and local exhaust ventilation.

Even long before the full ban was implemented, HIA undertook a broad range of activities that related to working safely with products containing silica and continue to do so. These included information, industry awareness and training initiatives regarding:

- Applicable silica regulations, including bans on uncontrolled dry cutting of engineered stone.
- Engineered stone codes of practice.
- Lowering of workplace exposure standards.
- Development of information resources.

Since the commencement of the ban on 1 July 2024, HIA has worked to develop additional supporting resources about the ban, about working with legacy engineered stone, information on working safely with silica free stone materials and CSS Amendment Regulation.

HIA also developed a course that satisfies the training requirements for working with high-risk CSS. This course will shortly be offered to members.

Also supporting the ban, SWA and WHS authorities have developed and made available a range of information, guidance and FAQs, to help duty holders understand the ban and the new requirements for work with CSS.

This information, along with HIA's is readily accessible to industry and, except as noted in this submission, is easily understood.

These activities and industry compliance have since made significant inroads in relation to understanding the need to minimise exposure to RCS and to adopt safer work practices, both in workshop settings and on-site. It is HIA's experience that those businesses working with alternative stone products, CSS and

legacy engineered stone, now implement adequate and proper control measures to minimise exposure to RCS.

Supporting the ban is the prohibition on importation of engineered stone benchtops, panels and slabs from 1 January 2025.

However, there are problems with the interpretation of some of the exempt engineered stone products and with legacy work provisions. There are also challenges with some of the alternative products currently in use. As such there is room for improvement.

In summary, although HIA does not consider the ban on engineered stone to have been necessary, and there are some ongoing challenges, the ban appears to have met its intended effect to prevent the use of engineered stone in Australia.

Finished engineered stone products

There is insufficient information about finished engineered stone products which do not require processing that are not captured by the ban.

In the 22 March 2024 Communique WHS ministers agreed to the key implementation matters for the ban. One of the key matters agreed by the WHS ministers was to:

> *"clarify that finished engineered stone products (such as jewellery, garden ornaments, sculptures, kitchen sinks) which do not require processing or modification, and pose minimal risk to the health and safety of workers, are not prohibited."*

The WHS ministers only provided a few examples in the above statement, but since then neither SWA or the State and Territory WHS authorities have not provided any further information about the products subject to this exclusion, despite requests to do so.

It is currently not possible for PCBUs to be certain whether some common types of finished engineered stone products that do not need to be processed or modified are excluded. For example, some finished sinks and vanity basins that may incorporate a small benchtop and finished 'slab-like' shower bases.

These are products that do not require processing and would not pose a risk of exposure to RCS from their installation. Additionally, there is no clear evidence that such products have been a problem in relation to health and safety and WHS ministers specifically intended to exclude such products from the ban if processing is not required.

In HIA's view these products are exempt from the ban, should remain exempt and SWA and WHS regulators need to provide clear guidance to that effect in relation to finished sinks, vanity basins and shower bases.

Recommendation

Guidance material must:

- clearly state that finished engineered stone products that may incorporate a benchtop and finished 'slab-like' shower base are not prohibited if no processing is carried out on these products at any stage of their installation as this does not pose a risk to the health and safety of workers, and
- address future removal, making it clear that WHS provisions for legacy engineered stone would apply.

Use of Alternative Products

HIA acknowledges that WHS ministers tasked SWA to further consider the health risks associated with the dust produced when processing benchtops, panels and slabs composed of alternative materials that are not banned.

We understand that since the ban, there has been a preference in residential construction for silica free replacement products. HIA is not aware of any issues arising from the processing of silica free alternative products, other than that of potentially generating nuisance dust. HIA understands that this type of nuisance dust does not pose significant health risks and PCBUs have existing duties to manage the risks to workers and others in the workplace from exposure to this dust.

There are some alternative products in the market that contain RCS but that do not meet the definition of engineered stone. This includes natural stone, concrete and porcelain.

HIA is not aware of any health and safety issues arising from the processing of these alternatives that were not known prior to the ban. HIA notes that processing any of the alternative products that contain CSS are subject to the CSS Amendment Regulation which places strict requirements on processing and a prohibition on uncontrolled processing – measures that were not in place prior to the ban.

Furthermore, since the commencement of the ban, industry and the WHS regulators have continued to make PCBUs aware of the ban and new regulations by providing guidance and advice to residential and commercial builders and by conducting workplace inspections of stonemasons, suppliers, and installers, issuing enforcement notices where necessary.

In particular, HIA made a suite of guidance available to HIA members in relation to the ban and the requirements for processing a CSS. HIA also developed silica awareness training courses and training for high risk processing of CSS.

HIA considers that the processing of alternative products, when controlled in accordance with the mandatory provisions of the CSS Amendment Regulation for controlled processing of a CSS provides appropriate health and safety safeguards and would not warrant any further regulatory control or prohibition.

Recommendation

- Noting the implementation of the CSS Amendment Regulation, no further action needs to be taken regarding the use and processing of alternative products to engineered stone.

Rebranding of products

At the time of announcing the ban there was some concern by WHS ministers around the use of alternative products and ‘rebranding’ of engineered stone as another product to intentionally avoid the prohibition.

We understand that WHS regulators have taken strong compliance and enforcement action in relation to the ban, including an intention to address ‘rebranding’ of engineered stone if detected.

Recommendation

- Given there is no clear evidence to date to indicate that ‘rebranding’ with the purpose of intentionally avoiding the prohibition, has or is occurring, no further action is necessary.

Performance issues with alternative products

The ban of engineered stone has brought about a shift towards alternative types of benchtops, panels and slabs.

Since the commencement of the ban, several alternative materials have been developed as replacements for engineered stone in various applications. These alternatives have varying degrees of functional and performance characteristics depending on the product.

HIA members, such as kitchen and bathroom suppliers and installers, have reported some issues with the alternative benchtops, for example that some glass-based bench tops can mark easily and scratch, dent, or stain with use when compared to engineered stone.

Other types of benchtops, such as porcelain benchtops, have tendencies to crack far more easily than engineered stone. The fragile nature of the product means that workability is challenging.

Such issues with alternative materials are of concern to HIA members due to builder warranty issues. In all jurisdictions, builders owe their homeowner clients a range of warranties in relation to the work they carry out, for example in NSW these warranties apply for 6 years post completion while in Victoria they apply for 10.

With concerns about durability of alternative products it is foreseeable that builders will be more exposed to claims under these warranties. This will result in a requirement to carry out remediation works or could unfortunately lead to disputes. This simply adds time, cost and risk for those in the residential building industry.

HIA is and will continue to support the industry in managing these circumstances should they arise.

Recommendation

- To monitor the performance of alternative products, however HIA expects that industry will adapt to the new materials and manage any risks with them accordingly.

Issues relating to Legacy Engineered Stone

Re-installation of existing engineering stone

An issue that has surfaced since the ban is the need to remove an existing engineered stone benchtop, panel or slab and then reinstall it at the same location. This may be necessary, for example, to make permitted repair or modifications to the benchtop, panel or slab itself, or to make repairs to associated structures, such as cabinetry underneath.

However, under the Engineered Stone Regulation, the engineered stone prohibition applies to installation. According to SWA this includes re-installation. Therefore, you cannot re-install an engineered stone benchtop, panel or slab that has been removed for the purpose of cabinet repair or refurbishment, even if no processing is required. [1]

[1] https://www.safeworkaustralia.gov.au/esban/faq#headingstoneBan7 (accessed 17 March 2025)

According to SWA, SWA members have agreed that this is an unintended consequence of the engineered stone prohibition. This matter has been referred to the Heads of Workplace Safety Authorities in each State and Territory.[2]

As an interim solution, exemptions to permit re-installation in specific circumstances has been granted in Queensland, South Australia, Victoria, NT and Western Australia. Other jurisdictions do not appear to have granted an appropriate exemption.

HIA considers that this technical prohibition on re-installation may be preventing PCBUs from undertaking repair work on a previously installed engineered stone benchtops, panel and slabs to work on associated structures in the safest way possible. For example, the prohibition on re-installation forces duty holders to undertake legacy work with the engineered stone installed, increasing risk to workers.

The prohibition on re-installation at the same location is unnecessarily restrictive, preventing repairs to associated structures even if no processing of the engineered stone is carried out.

As such, there appears to be no clear rationale for prohibiting the re-installation of legacy engineered stone at the same location from which it was removed when the required work is completed.

Recommendation

- A specific model exemption for the jurisdictions to adopt would be appropriate for addressing this matter, subject to the benchtop being reinstalled at the same location and subject to safety requirements for legacy work. Such a model exemption will result in a level of health and safety equivalent to the level which would be achieved by compliance with the requirements for legacy work.
- The Victorian approach is recommended on the basis that it provides the most practical and realistic exemption.
- The exemption should become a permanent feature of the regulatory arrangements, noting that some jurisdictions have placed an automatic expiry date on it.

Notification of legacy work

Notification to the WHS regulator is required if a PCBU carries out, or directs or allows a worker to carry out, work that involves processing legacy engineered stone to repair, make minor modification, remove and/or dispose of the legacy engineered stone.

Regardless of the requirement to notify, PCBUs must ensure any processing of the engineered stone is controlled as prescribed in the Engineered Stone Regulation.

HIA questions the value of this notification. This type of notification was not identified in the Consultation Regulatory Impact Statement for the prohibition of engineered stone so the value to WHS regulators was not examined in consultation with stakeholders.

Unlike the notification required for asbestos removal, it is a once-off notification that is valid for up to 12 months. Notification is not required for every new job with legacy engineered stone therefore in terms of opportunities for compliance and enforcement, is of limited value.

[2] ibid

Furthermore, one major jurisdiction, Victoria, did not adopt the notification requirement to undertake exempt work with legacy engineered stone.

The updated engineered stone provisions of the Victorian silica regulations have been in place since the commencement of the ban and no significant issues or problems have surfaced as a result of not requiring notification of legacy work. This begs the question: If one jurisdiction did not see it fit to adopt a notification requirement and can do without it, why should it be mandatory in other jurisdictions?

Recommendation

- HIA considers that the notification requirement is unnecessary red tape and should be removed.

Identification issues

There are challenges in determining whether a benchtop, panel or slab is, or is not engineered stone. This is an issue regarding the proper identification of legacy stone.

Many existing products are not labelled, and in many instances, it is not known when the product was installed.

It is hoped that if the exemption in relation to the reinstallation of engineered stone recommended above is implemented, along with the implementation of safe work methods on legacy engineered stone, the need to identify the composition of materials insitu will not be frequently required.

However, with a wide range of natural stone benchtops, panels and slabs installed before engineered stone became widely available, there are circumstances when there may be confusion as to the regulatory requirements that apply.

Unfortunately, both natural stone and engineered stone benchtops, panels or slabs did not require a Safety Data Sheet (SDS), so there may be no easily assessable information on their composition.

While laboratory testing may be an option this can be difficult and expensive and is not practical or feasible.

Recommendation

- Monitor any difficulties in identifying engineered stone to determine if the establishment of a technical working group would be useful in providing further guidance for industry in relation to the matter.

Disposal of legacy engineered stone

The exemption that applies to working with legacy engineered stone also applies to the disposal of engineered stone benchtops, panels or slabs. HIA understands that this means that despite the prohibition on engineered stone the processing of installed and uninstalled engineered stone benchtops, panels and slabs for the purposes of disposal is permitted provided the processing is controlled.

HIA understands that disposal is occurring in one of two ways. Firstly, through the usual course of the disposal of trade waste and secondly through the exporting of engineered stone to countries where there is no ban in place.

Waste disposal

It appears the requirement for the processing to be controlled in relation to disposal may be unclear to waste disposal facilities. As a result, HIA have heard that some disposal facilities are treating engineered stone

as hazardous waste and imposing disposal costs that are higher than normal trade waste. This is acting as a strong disincentive to actively dispose of the product and is causing unnecessary cost and confusion.

Recommendation

- SWA, including State and Territory WHS regulators to provide information and guidance to waste disposal facilities about the safe disposal of engineered stone panels, slabs and benchtops.
- SWA to investigate options to implement free waste disposal for a period of 12 months to encourage the safe and complaint disposal of engineered stone panels, slabs and benchtops.

Export of engineered stone panels, slabs and benchtops

It is HIA's understanding that the prohibition does not apply to the export of engineered stone panels, slabs and benchtops. It would seem a reasonable, practical and sensible way for businesses to try and recoup some of the costs associated with complying with the ban.

Recommendation

- SWA, including State and Territory WHS regulators also provide information on the exemption as it applies to export for disposal of engineered stone benchtops, panels and slabs.

Assessment of high risk processing

Carrying out permitted work with legacy engineered stone is subject to the CSS Amendment Regulation.

This includes the requirement for PCBUs to carry out an assessment to determine whether the processing of legacy engineered stone is high risk before commencing the work, and to document this in writing.

Confusion remains regarding this assessment, which triggers additional requirements for a silica risk control plan, additional training of workers and air and health monitoring obligations.

The CSS Amendment Regulation define high risk, in relation to the processing of a CSS, as the processing of a CSS that is reasonably likely to result in a risk to the health of a person at the workplace.

The CSS Amendment Regulation also provide a framework that includes the matters to be taken into account for the assessment of high risk due to processing of a CSS.

When assessing the risk of processing of a CSS, the CSS Amendment Regulation state that PCBUs must not rely on having implemented control measures in accordance with the requirements for controlled processing of a CSS. The CSS Amendment Regulation also state that PCBUs **must not** have regard to the use of personal protective equipment and administrative controls used to control the risks associated with RCS.

However, the SWA guide: *Working with crystalline silica substances. Guidance for PCBUs* states that PCBUs **may** take into account any isolation or engineering controls used to control the processing as part of their consideration of the matters set out in the CSS Amendment Regulation but not take into account any protection provided by administrative controls or respiratory protective equipment.

The difference in terminology between the CSS Amendment Regulation and the SWA guide within which the former uses terms such as "must not rely", "take into account" and "have regard to" creates confusion and ambiguity.

Even if, as the SWA guide states, PCBUs can take into account any isolation or engineering controls used, confusion remains regarding the weighting of each of the factors to be taken into account and their relative value, or effect, in regard to the assessment.

This is particularly relevant to work with legacy stone, which may be intermittent and of short duration. For example, it is unclear how the frequency and duration of the processing and the implementation of isolation and engineering control measures affect the assessment.

Recommendation

- The Model WHS Regulations be updated to reflect the guidance material issued by SWA, that being that isolation or engineering controls can be factored in when carrying out a risk assessment for working with CSS.

Attachment A

Issue	Recommendation
Finished engineered stone products	Guidance material must: • clearly state that finished engineered stone products that may incorporate a benchtop and finished 'slab-like' shower base are not prohibited if no processing is carried out on these products at any stage of their installation as this does not pose a risk to the health and safety of workers, and • address future removal, making it clear that WHS provisions for legacy engineered stone would apply.
Use of alternative products	• Noting the implementation of the CSS Amendment Regulation, no further action needs to be taken regarding the use and processing of alternative products to engineered stone.
Rebranding of products	• Given there is no clear evidence to date to indicate that 'rebranding' with the purpose of intentionally avoiding the prohibition, has or is occurring, no further action is necessary.
Performance issues with alternative products	• To monitor the performance of alternative products, however HIA expects that industry will adapt to the new materials and manage any risks with them accordingly.
Reinstallation of existing engineered stone	• A specific model exemption for the jurisdictions to adopt would be appropriate for addressing this matter, subject to the benchtop being reinstalled at the same location and subject to safety requirements for legacy work. Such a model exemption will result in a level of health and safety equivalent to the level which would be achieved by compliance with the requirements for legacy work. • The Victorian approach is recommended on the basis that it provides the most practical and realistic exemption. • The exemption should become a permanent feature of the regulatory arrangements, noting that some jurisdictions have placed an automatic expiry date on it.
Notification of legacy work	• HIA considers that the notification requirement is unnecessary red tape and should be removed.
Identification issues	• Monitor any difficulties in identifying engineered stone to determine if the establishment of a technical working group would be useful in providing further guidance for industry in relation to the matter.
Disposal of legacy engineered stone	• SWA, including State and Territory WHS regulators to provide information and guidance to waste disposal facilities about the safe disposal of engineered stone panels, slabs and benchtops. • SWA to investigate options to implement free waste disposal for a period of 12 months to encourage the safe and complaint disposal of engineered stone panels, slabs and benchtops. • SWA, including State and Territory WHS regulators also provide information on the exemption as it applies to export for disposal of engineered stone benchtops, panels and slabs.
Assessment of high risk processing	• The Model WHS Regulations be updated to reflect the guidance material issued by SWA, that being that isolation or engineering controls can be factored in when carrying out a risk assessment for working with CSS.