CFMEU
CONSTRUCTION

**CFMEU CONSTRUCTION &**
**GENERAL DIVISION NATIONAL OFFICE**
Level 1, 1 Miller Lane
Pyrmont NSW 2009
**Ph** 02 8524 5800
**Fax** 02 8524 5801
ABN: 46 243 168 565

**Submission to Australian Competition & Consumer Commission re Australian Engineered Stone Advisory Group's application for authorisation (AA1000461 – interested party consultation)**

Introduction

1. The Construction & General Division of the Construction, Forestry, Maritime, Mining and Energy Union (**CFMMEU**) represents workers in the building and construction industry nationally. The CFMMEU has a long history of advocating for safe workplaces that are free from dust contamination, and in supporting workers who have acquired dust diseases as a consequence of occupational exposure.

2. Workers in the building and constructions industries are at increased risk of exposure to respiriable crystalline silica (**RCS**) as a consequence of engaging in demolition work, excavation work, abrasive blasting, brick making, road building, stonework, foundry and casting work, and explosives blasting work.

3. The dangers posed by exposure to RCS have been known for years, with workers in construction, mining, quarrying and foundries developing lung damage typically after 10 or more years of occupational exposure. However, since about 2015 onwards, medical practitioners have reported a dramatic increase in the number of young patients presenting symptoms of accelerated silicosis, with significant lung damage being observed in patients exposed to RCS for less than 5 years.

4. This outbreak of cases can be largely attributed to the increase in popularity of engineered stone benchtops in kitchens and bathrooms, with the product offering consumers a modern clean look whilst being cost-effective when compared to natural stone. This product can contain up to 95% RCS.

5. It is against this backdrop that the Australian Engineered Stone Advisory Group (**the Applicant**) has applied to the Australian, Competition and Consumer Commission (**ACCC**) for authorisation to engage in conduct that would otherwise attract a penalty under Part IV of the *Competition and Consumer Act 2010* (Cth) (**the Act**). The conduct that the AESAG has proposed would allow its members, including future members, to agree to:

> *1. Adopt accreditation standards for fabricators and stonemasons (Fabricators) working with engineered stone (Accreditation Standards) that are aligned with the "model" work*

*health and safety laws (Model WHS Laws);*

*2. Seek to require Fabricators, to whom Members supply engineered stone, to comply with health and safety practices under Model WHS Laws when working with engineered stone in order to achieve accreditation; and*

*3. Consider whether to refuse to supply engineered stone where Fabricators do not meet the Accreditation Standards*

**(the Proposed Conduct)**

6. According to the ACCC's public register the application was lodged on 29 November 2019, with the public consultation period commencing on 5 December 2019. Despite this, the CFMMEU and a number of other interested parties were not contacted regarding the application until on or around 20 December 2019. Given that this notification was sent during a period in which most workplaces are shut-down for the Christmas and New Year break, this significantly impeded the CFMMEU's ability to prepare submissions by the deadline of 24 January 2020. This is of particular concern given that the CFMMEU is not aware of any attempt by the Applicant to consult with unions, workers or work, health and safety regulators prior to submitting the application. The fact that this would have the effect of greatly limiting consultation regarding the merits of the application should have been foreseeable to the Applicant.

7. The CFMMEU communicated these concerns to the ACCC on 22 January 2020 and stressed the importance of being provided the opportunity to make submissions, particularly given its role as the primary union responsible for representing the industrial interests of stonemasons. In response, the ACCC confirmed that submissions received in the week commencing 27 January 2020 would be accepted.

8. It is in this context that we make the following submissions, which will focussed on the assertion that the public benefits of the proposed conduct outweigh any potential detriment.

## Recommendation

9. The application for Authorisation to the ACCC by members of the Applicant, including the granting of an interim application, should be rejected in the interests of public and worker health and safety.

## Matters to be taken into account in determining the application

10. Section 88 of the Act confers a discretion on the ACCC to grant, on application, an authorisation to engage in conduct which may otherwise attract a penalty under one or more provisions of Part IV of the Act.

11. Broadly stated, section 90(1) allows the ACCC to invite submissions regarding the application from what it considers to be interested parties, request further information from an applicant and consult with persons it considers appropriate to assist in making its determination.

12. Relevantly for the purposes of these submissions is section 90(7)(b), which provides that the ACCC *must not* make a determination granting an authorisation under section 88 unless it is satisfied that:

> *(i) the conduct would result, or be likely to result, in a benefit to the public; and*
> *(ii) the benefit would outweigh the detriment to the public that would result, or be likely to result, from the conduct.*

13. By reference to the above provisions, the CFMMEU submits that the claimed benefits to the public *do not* outweigh the detriment that would be caused to workers and the broader public should the application for authorisation be determined in the Applicant's favour.

Public detriment

*Health and safety obligations in different jurisdictions*

14. The Applicant makes the following claim at page 20 of its application:

    a. *"It is the Members' understanding that the substantive requirements for safe fabrication practices under the Model WHS Laws are essentially consistent across all states and territories, including those states which operate different regimes. For the purposes of this application, "Model WHS Laws" refers to the key obligations that all Fabricators are required to comply with."*

15. At best, the above statement constitutes an unintended error as a consequence of the Applicant attempting to simplify what is in reality, a complex web of obligations that currently apply to PCBUs under different WHS laws, regulations, and codes of practice. At worst, it could be viewed as a deliberate attempt by the Applicant to mislead the ACCC.

16. With the exception of Victoria and Western Australia, the remaining states and territories throughout Australia have adopted the Model WHS Laws, noting that there are still some (albeit minor) variations in the wording and operation of some provisions between the jurisdictions.

17. The obligations on PCBUs in different jurisdictions often become more pronounced when one considers a state or territories WHS regulations and any applicable codes of practices, with the latter being legally binding on PCBU's in the event that they are referred to in the relevant legislation or regulations. The purpose of these regulations and codes of practice is to set out more detailed requirements that a person (including a PCBU) must adopt in order to satisfy their obligations as duty holders under the relevant WHS legislation. This is particularly important given that the duties on PCBUs in the Model WHS Laws and other WHS legislation largely lack

prescription. For instance, section 19 of the Model WHS Laws relates to a PCBU's duty of care, and provides the following:

> *(1) A person conducting a business or undertaking must ensure, so far as reasonably practicable, the health and safety of:*
>
> > *(a) Workers engaged, or caused to be engaged by the person; and*
> > *(b) Workers whose activities in carrying out work are influenced or directed by the person;*
> >
> > *While the workers are at work in the business or undertaking.*
>
> *(2) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of other persons is not put at risk from work carried out as a part of the conduct of the business or undertaking.*

18. Turning specifically to the issue of occupational RCS exposure, regulations 49 and 50 of the model WHS regulations imposes requirements on PCBUs to ensure that the workplace exposure standard (**WES**) of an airborne contaminant is not exceeded, and that monitoring of airborne containment levels is undertaken by PCBUs for this purpose.

19. The WES for RCS set by Safe Work Australia for the purpose of regulations 49 and 50 is 0.1mg/m3, weighted over an 8 hour period. Contrary to the Applicant's comments at page 20 of its application, Safe Work Australia members agreed to recommend to Ministers that the WES be reduced to 0.05 mg/m3 over 8 hours (with a three year transition period) in July 2019.

20. Whilst the Construction & General Division of the CFMMEU strongly maintains that a reduction to 0.05mg/m3 is grossly insufficient,[1] it is aware that Victoria is currently moving to the adoption of a WES of 0.02mg/m3 over an 8 hour period.[2] This significant departure from the obligations that otherwise apply to a PCBU operating in different jurisdictions (with regards to the WES) serves to illustrate the problematic nature of the application. For instance, a fabricator in Victoria may achieve accreditation by adopting practices consistent with the Model WHS Laws and regulations, however, they would not be compliant with their WHS obligations in Victoria. This would not only create confusion for fabricators but create significant public detriment by potentially undermining important work that is being done in different jurisdictions to tackle the emerging health crisis caused by occupational exposure to RCS.

21. Further, and again using Victoria as an example, the *Occupational, Health and Safety Regulations 2017* (Vic) were amended to prohibit the practice of cutting engineered stone in the absence of a an integrated water delivery system, dust extraction vacuum or local exhaust ventilation system being used. This use of an integrated water delivery system for the purposes of dust-suppression has been shown to significantly reduce the concentration of airborne RCS. Queensland has also

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[1] See submission of CFMMEU Construction & General Division to the National Dust Disease Taskforce attached to this submission and marked '**CFMMEU – 1**'

[2] See media release from the office of Premier, Daniel Andrews < https://www.premier.vic.gov.au/protecting-victorian-workers-from-deadly-silica-dust/>

introduced a prohibition on uncontrolled dry cutting/processing in its relatively new code of practice, *Managing respiriable crystalline silica dust exposure in the stone benchtop industry: Code of Practice 2009* (**Queensland Code**)[3]

22. The Queensland Code was introduced on 31 October 2019 and is Australia's first code of practice for the engineered stone benchtop industry, which sets minimum and enforceable health and safety standards. The code is legally enforceable by virtue of a recent amendment to the *Work Health and Safety Act 2011* (Qld) which provides, at section 26A, that all codes of practice are legally enforceable in the state.

23. The above examples of measures being taken in Victorian and Queensland (largely through amendments to WHS regulations and the introduction of industry-specific codes of practice) serve to illustrate the problematic nature of the accreditation scheme proposed by the Applicant. Achieving accreditation will simply require a fabricator to demonstrate compliance with Model WHS Laws, whereas individual jurisdictions have adopted, or are in the process of adopting, measures that go far beyond what is required of PCBUs under the Model WHS Laws. Accordingly, not only will the accreditation scheme likely lead to fabricators wrongly assuming that accreditation is sufficient for regulatory compliance, but also undercut the important work being done at a state and territory level.

24. Further, there are serious doubts as to whether the accreditation scheme could keep up with the rapid pace of change in this space, which is particularly concerning in the context of the Applicant seeking to have the authorisation operate for a period of 10 years.

*Supplier's duties*

25. The AESAG's application focuses on the risks posed to workers at the post-supply stage of the supply chain, at the time of fabrication. Whilst the CFMMEU agrees that cutting, grinding and polishing of engineered stone at the fabrication and installation stages of the supply chain generates unacceptable concentrations of RCS, the application fails to acknowledge the duties incumbent on suppliers under the Model WHS laws. Accordingly, the application gives the appearance of attempting to shift the onus or blame exclusively onto fabricators, whereas suppliers have existing and distinct non-transferable duties under the Model WHS Laws.

26. For instance, section 25 of the Model WHS Laws provides the following:

> *(2) The supplier must ensure, so far as is reasonably practicable, that the plant, substance or structure is without risks to the health and safety of persons:*
>
> *(a) who, at a workplace, use the plant or substance or structure for a purpose for which it was designed or manufactured; or*

[3] The Queensland Code is available at <https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0005/181940/Managing-respirable-crystalline-silica-dust-exposure-in-the-stone-benchtop-industry-Code-of-Practice-2019.pdf>

*(b) who handle the substance at a workplace; or*

*(c) who store the plant or substance at a workplace; or*

*(d) who construct the structure at a workplace; or*

*(e) who carry out any reasonably foreseeable activity at a workplace in relation to:*

*(i) the assembly or use of the plant for a purpose for which it was designed or manufactured or the proper storage, decommissioning, dismantling or disposal of the plant; or*

*(ii) the use of the substance for a purpose for which it was designed or manufactured or the proper handling, storage or disposal of the substance; or*

*(iii) (iii) the assembly or use of the structure for a purpose for which it was designed or manufactured or the proper demolition or disposal of the structure; or*

*(f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).*

27. The focus of the application is exclusively on the health and safety practices adopted at the level of a fabrication site (which the CFMMEU agrees are in most cases, vastly inadequate and require dramatic overhaul) and not the measures being taken by the suppliers (or importers) of engineered stone to guarantee that their product is safe for use. This is significant given that engineered stone has a vastly higher silica content than other products and therefore, the risks of supplying the product are well-known.

28. Should the applicant argue that the Proposed Conduct would enable its members to also ensure compliance with its obligations under s.25, this can be swiftly rejected on the basis that the application expressly states that should the authorisation be granted, members reserve the right to supply fabricators in circumstances where the accreditation standards have not been met.

*Other relevant matters*

29. By way of final comment, the CFMMEU finds the proposal to effectively outsource what should be a function of a regulator, being ensuring compliance with WHS legislation, to private enterprise to be a deeply problematic proposition. As per the comments of the ACTU in its submission, *"third parties obviously can provide support, guidance and assistance to enterprises to meet compliance, but third parties cannot determine compliance."*

30. Whilst the Applicant appears to focus its application on the purported benefits that the Proposed Conduct will have on improved compliance with Model WHS Laws by fabricators, the fact that the dangers of RCS exposure have been known for many years serves to illustrate the limited effectiveness of industry self-regulation.

31. Finally, the inclusion of a provision in the application that allows for members to reserve the right to supply non-compliant fabricators appears to support an argument that commercial interests remain the primary focus of the Applicant and its members.

For these reasons, we submit that the application must be rejected.

For any questions regarding this submission, please contact Nigel Davies – National Assistant Secretary of the Construction & General Division of the CFMMEU at [redacted]

Sincerely,

Nigel Davies

National Assistant Secretary – CFMMEU (Construction & General Division)

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ABN: 46 243 168 565

# Submission to the National Dust Disease Taskforce

## Introduction

1. On 30 April 2019, the Government announced plans to invest $5 million towards the establishment of a National Dust Disease Taskforce (**NDDT**) with its objective being the development of a national approach to the prevention, identification, control and management of dust diseases in Australia.[1]

2. The establishment of the NDDT has been in response to the recent resurgence of silicosis as an occupational disease, predominantly amongst workers employed in the artificial stone benchtop industry.[2] Indeed, the media release regarding the Government's investment in the NDDT made specific reference to reports that have surfaced from Queensland that at least 100 stonemasons have been diagnosed with preventable lung disease, and there had been at least one reported death caused by silicosis, in the 6 months' preceding the announcement.[3]

3. Presumably in response to the growing community concerns regarding the resurgence of silicosis, the NTTD has narrowed the scope of its enquiry to the prevention, identification, control and management of lung diseases linked to exposure to respirable crystalline silica (**RCS**), with a particular focus on accelerated silicosis.

4. Whilst the Construction & General Division of the Construction, Forestry, Maritime, Mining and Energy Union (**CFMMEU**) strongly supports calls for urgent action to stem the alarming spike in cases of accelerated silicosis (which has primarily affected workers in the artificial stone benchtop industry) regard must also be had to a range of other industries where workers are routinely

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[1] *'Media Release: $5 Million for National Dust Disease Taskforce'* <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F6651492%22>

[2] Where the term 'artificial stone benchtop industry' has been used in this submission, it is a reference to the manufacturing, finishing and installing natural and manufactured stone countertop products, both in fabrication shops and during in-home finishing/installation.

[3] *'Media Release: $5 Million for National Dust Disease Taskforce'* <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F6651492%22>

exposed to varying concentrations of RCS. Further, we are concerned that the arbitrary narrowing of the NDDT's enquiries to accelerated silicosis risks stymying discussion and progress on the prevention, identification and management of other occupational lung diseases, such as pneumoconiosis ('black lung').

5. These submissions will endeavour to provide an insight into RCS exposure in building and construction and will draw of the CFMMEU's industry knowledge to recommend the adoption of measures to address the current deficiencies in preventing and responding to RCS-related diseases. In the absence of the adopting of such measures, workers within the building and construction industry - an industry where workers are particularly vulnerable to exposure to RCS - will continue to be victims of the inaction by workplace regulators and Federal and State Governments.

## RCS in the building and construction industry

6. The Construction & General Division of the CFMMEU is the primary union representing workers in the building and construction industry nationally and has a long history of advocating for safe workplaces that are free from dust contamination, and in supporting workers who have acquired dust diseases as a consequence of occupational exposure.

7. In the building and construction industries, workers are at increased risk of exposure to RCS where they engage in work including demolition work, excavation work, abrasive blasting, brick making, road building, stonework, foundry and casting work, and explosives blasting work. The following activities are known to generate high quantities of RCS and therefore, create a heightened risk of primary and secondary exposure:

    a. Brick cutting and chasing;
    b. Angle grinding on concrete and masonry;
    c. Concrete cutting, jack hammering, scabbling and chiselling of concrete;
    d. Cutting and working with engineered stone;
    e. Cutting and processing flat glass;
    f. Cleaning up of dust and debris created by the above activities.

8. Tunnelling also poses significant risks to workers with regards to high level RCS exposure, as RCS is a *"common component of the earth's crust and...can be found in quartz, granite, sandstone, slate and sand"*[4] This is of particular concern given the recent investment by State Governments, particularly in Victoria and NSW, in high profile transport infrastructure projects.

9. Whilst tunnelling is known to generate alarming levels of RCS, these projects are well-resourced and therefore occupational hygienists are typically engaged to perform air monitoring and to advise on appropriate control measures. More importantly, these projects are characterised by a highly unionised workforces that, in addition to having elected health and safety representative and regular contact with union officials, are generally well-informed as to the safety risks posed by airborne contaminants such as RCS.

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[4] Lesco, V; Fontana, L; Romano, R; Gervetti, P & Iaviocoli, I, *Artificial Stone Associated Silicosis: A Systematic Review,* International Journall of Environmental Research and Public Health 2019, 16, 568, pg 1

10. This can be contrasted with the artificial stone benchtop industry, with the CFMMEU's observations being that the industry is often comprised of small business employers that are geographically dispersed. Further, a recent review into accelerated silicosis in the artificial stone benchtop industry reported that smaller companies, particularly those involved in the installation/finishing of artificial stone benchtops, were less likely to adopt even basic preventative measures for controlling occupational exposure, and this could be partly attributed to a lack of occupational health and safety awareness.[5] These factors contribute to this group of workers being particularly vulnerable to RCS exposure and the debilitating lung diseases it causes.

## What has contributed to the recent spike in accelerated silicosis cases?

11. The dangers posed by exposure to RCS have been known for years, with workers in construction, mining, quarrying and foundries developing lung damage typically after 10 or more years of occupational exposure. However, since about 2015 onwards, medical practitioners have reported a dramatic increase in the number of young patients presenting symptoms of accelerated silicosis, with significant lung damage being observed in patients exposed to RCS for less than 5 years.

12. This outbreak of cases can be largely attributed to the increase in popularity of artificial stone benchtops in kitchens and bathrooms, with the product offering consumers a modern clean look whilst being cost-effective when compared to natural stone. The commercial appeal of artificial stone benchtop is not limited to contemporary Australian homes, but has also been widely embraced in Europe.

13. The nexus being consumer demand for artificial stone benchtops and the explosion of accelerated silicosis cases attracted community attention in July 2018 as a consequence of Channel 10 reporting on the case of Anthony White, a 36-year-old Gold Coast stonemason.[6] Mr White died in March 2019 of accelerated silicosis. This was followed by a report on the case of Joel Goldby in May 2019, who was diagnosed at the age of 28.[7] The reporting of such cases increased community awareness regarding the dangers of silica and whether workers in the artificial stone benchtop industry were being exposed to a "new asbestos".

## Measures to prevent and address the health crisis

14. The phrasing of the discussion paper regarding the "gaps" in the current protections implies that there is a largely adequate system in place, with there being only some minor shortcomings in our current occupational health and safety framework that require addressing. This grossly underestimates the emerging health crisis amongst workers exposed to RCS and the urgent measures that must be implemented to avoid many more workers falling victim to this devastating disease. This following section of these submissions will canvas what the CFMMEU believes are the

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[5] *Ibid*, pg 12

[6] <https://twitter.com/theprojecttv/status/1016158673645682689?lang=en>

[7] https://www.smh.com.aulnational/at-28-iason-struegles-to-breathe-and-doesn-t-know-what-s-next20190530-p51sva.html

steps that should be taken, *at an absolute minimum,* if governments and regulators are genuine in their concern regarding the dangers posed by RCS.

15. Workplace Exposure Standard

a. On 31 July 2019, SafeWork Australia (**SWA**) members agreed to recommend to Ministers that the workplace exposure standard (**WES**) for RCS be lowered from the current 0.1mg/m3 to 0.05mg/m3 over an 8-hour period, with this change being subject to a 3-year transition period. Notwithstanding this disappointing development, the CFMMEU will continue advocating for a lowering of the WES to 0.02mg/m3 over an 8-hour period.

b. Regulation 49 of the *Work Health and Safety Regulations 2011* (**WHS Regs**) states that, *"a person conducting a business or undertaking* [**PCBU**] *at a workplace must ensure that no person at the workplace is exposed to a substance or mixture in an airborne concentration that exceeds the exposure standard for the substance or mixture."* Regulation 50 complements regulation 49 by requiring a PCBU to undertaking air monitoring to ensure that the relevant WES is not exceeded.

c. Australia's current WES for RCS and indeed, the proposed standard to be implemented over a period of 3 years, exceeds the standard adopted by many other countries. For instance:

   i. The WES for silica in British Columbia, in Canada, is 0.025 mg/m3;
   ii. The WES in Mexico is 0.025 mg/m3; and
   iii. The WES in Ireland, Italy, Finland and Portugal is 0.05 mg/m3

d. We are aware that aware that a primary consideration that SWA members took into account when rejecting calls to lower the WES to 0.02mg/m3 was the debate concerning the ability to measure exposure levels at 0.02mg/m3 and below. We supported the Cancer Council's submission to the SWA review of WES in regard to this issue. Further, it is the CFMMEU's own experience and understanding that testing at the 0.02 mg/m3 level is achievable via the appropriate adjustment of sample time, and by increasing the flow rate for sample volumes using larger sampler heads on measuring devices.

e. Given that workers exposed to high concentrations of RCS can present symptoms of accelerated silicosis after less than 5 years exposure, the CFMMEU is of the view that the move to 0.05mg/m3, with a 3 year implementation period, exposes workers to an unacceptable risk of developing the disease in the interim. A move to 0.2mg/m3 must be implemented as a matter of urgency.

16. Responses

Whilst a lowering of the WES to 0.02mg/m3 would be a welcome development, the WES does not represent a strict acceptable level of exposure to workers or act as a dividing line between a healthy or unhealthy workplace. Mere compliance with the WES – including at a lower 0.02mg/m3 standard – *does not*, of itself, adequately mitigate health risks to workers. Accordingly, in order to address the risks posed by occupational RCS exposure, there must be a multi-prong approach that encompasses regulatory and health responses, in addition to improving awareness through education.

**a. Develop clearer requirements for when air monitoring is required in the WHS regulations.**

i. As previously noted in these submissions, regulation 50 of the WHS Regs require that air monitoring be undertaken to ensure that the WES for a particular contaminant is not exceeded, however it is known that air monitoring does not occur at many workplaces where manufactured stone is being cut and installed. [8]

ii. The wording adopted in regulation 49, in conjunction with regulation 50, enables PCBUs to be wilfully blind in circumstances whereby WES may be exceeded in their workplace. Regulation 49 of the WHS Regs mandates that the PCBU must ensure "that no person at the workplace is exposed to a substance or mixture in an airborne concentration that exceeds the exposure standard for the substance or mixture." Regulation 50 provides that air monitoring must be carried out where the PBCU "is not certain on reasonable grounds whether or not the airborne concentration of the substance or mixture at the workplace exceeds the relevant exposure standard". As the CFMMEU reported to the *2018 Review of the Dust Diseases Scheme* this creates a situation where, should the PCBU fail to implement monitoring, the PBCU remains conveniently unaware whether the WES (however inadequate it may be) may have been exceeded.[9] In the absence of such data the PCBU concludes that air monitoring is not required. Whilst the relevant regulations should not be applied in this manner, this is how they are in fact applied (or disregarded) in many workplaces. Consequently, monitoring is not carried out in many environments where artificial stone is cut and installed.

iii. The regulation should simply provide that health monitoring must occur in dusty environments, however this is opposed by many employers on the basis of cost. Notably, the guidance currently provided by SafeWork continues to focus on PCBUs having to be "not certain" about a WES breach "on reasonable grounds" for monitoring to be required.

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[8] Lesco, V; Fontana, L; Romano, R; Gervetti, P & Iaviocoli, I, *Artificial Stone Associated Silicosis: A Systematic Review*, International Journall of Environmental Research and Public Health 2019, 16, 568

[9] CFMEU's submission can be found at <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2512#tab-submissions>

iv. Ensuring that PCBUs conduct regular air monitoring is vital to identifying the risk (in this case, RCS exposure) and implementing appropriate control measures to limit the degree of exposure as far as reasonably practicable.

v. In connection to the development of clearer requirements regarding when an employer is required to undertake air monitoring, the CFMMEU supports the adoption of a requirement for employers to notify the relevant WHS regulator in their jurisdiction of when the workplace exposure standard has been exceeded.

**b. Ban on the cutting of engineered stone on site, with consideration being given to a ban on importation, manufacture and use of the product**

i. Regulation 36 of the WHS Regs requires a PCBU to, once identifying a hazard, consider the hierarchy of work health safety management (**Hierarchy of Controls**). The first order principle in the Hierarchy of Controls is the elimination of hazards and the substitution of unsafe materials and products for safe materials and products. Accordingly, the onus should be on the manufacturer and importers of engineered stone to guarantee that the product is safe for use, otherwise consideration must be given feasibility of substituting engineered stone (which generally contains a RCS concentration in excess of 80%) with materials that contain lower concentrations of RCS such as marble, timber, laminates and even engineered stone containing amorphous, rather that RCS.

ii. Whilst consideration and discussion occurs regarding a ban on the importation, manufacture and use of engineering stone, the CFMMEU supports the adoption of an urgent prohibition on the cutting of engineered stone on-site in order to limit RCS exposure at the installation/finishing stage.

**c. Develop national consistent regulations, and a code of practice, prescribing the minimum standards for controlling RCS**

**i.** Regardless of the outcome of any discussion surrounding a potential ban on the import, manufacture and use of engineered stone, the exposure of workers to RCS in other occupational contexts means that it is vital that nationally consistent regulations and codes of practice be introduced for controlling RCS exposure.

**ii.** *Firstly,* a regulation needs to be adopted that requires the application of the hierarchy of control for RCS and other inorganic dusts where banning of the work is not feasible. This should be actioned as a matter of priority.

iii. *Secondly,* a further regulation should be introduced in all jurisdictions that bans the practice of dry-cutting engineered stone, as has already been introduced in Victoria and Queensland.

iv. The journal article, *Artificial Stone Associated Silicosis: A Systematic Reviews*[10], reviewed the relationship between artificial stone derived RCS and silicosis development. The report contained an overview of the main characteristics of artificial stone associated silicosis cases based on studies conducted in Israel, Australia and Spain. The Australian and Israel studies identified a positive correlation between the activity of dry cutting and the development of silicosis[11]

v. Accordingly, the CFMMEU recommends that all jurisdictions adopt a regulation consistent with the *Victorian Occupational Health and Safety Amendment (Crystalline Silica) Regulations 2019*, which places into regulation the current administrative directives in jurisdictions to control dry cutting of engineered stone product – *'employer of self-employed person must ensure that a power tool is not used for cutting, grinding or abrasive polishing of engineered stone at a workplace unless the use is controlled'.*

vi. *Thirdly,* the adoption of the regulation discussed at paragraph 17(c)(ii) must be supported by nationally consistent codes of practices that align with the principles espoused in the hierarchy of control. The CFMMEU has observed that once the risk of exposure to airborne contaminants has been identified in a workplace, it is not uncommon for PCBUs to consider lower-order controls, such as the use of personal protective equipment (**PPE**), over engineering controls. The practice of bypassing higher-order controls is not limited to Australia, with studies undertaken in Israel and Spain revealing a widespread absence of proper engineering controls being in place.[12] Accordingly, the CFMMEU recommends that a code of practice incorporate the following control measures *at a minimum*:

1. Isolation – as far as reasonably practicable, PCBUs are to designate areas that will be used strictly for the performance of occupational tasks that generate dust containing RCS to avoid secondary exposure.

2. Engineering controls – to complement the introduction of a regulation banning dry-cutting, a requirement that all relevant cutting and grinding tools have local exhaust ventilation (a H class dust collector or vacuum) fitted. Additionally, a requirement that whole of workplace dust extraction mechanisms be installed.

3. Administrative controls – a requirement that proper housekeeping be undertaken to ensure that cleaning and maintenance of tools, and personal protective equipment, does not expose workers to RCS. PCBUs to ensure that workplaces have a dedicated and regular cleaning regime in place which uses low pressure water, wet wiping or H class vacuums. In

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[10] Lesco, V; Fontana, L; Romano, R; Gervetti, P & Iaviocoli, I, *Artificial Stone Associated Silicosis: A Systematic Review,* International Journall of Environmental Research and Public Health 2019, 16, 568

[11] Lesco, V; Fontana, L; Romano, R; Gervetti, P & Iaviocoli, I, *Artificial Stone Associated Silicosis: A Systematic Review,* International Journall of Environmental Research and Public Health 2019, 16, 568, pg 6

[12] Lesco, V; Fontana, L; Romano, R; Gervetti, P & Iaviocoli, I, *Artificial Stone Associated Silicosis: A Systematic Review,* International Journall of Environmental Research and Public Health 2019, 16, 568

establishing a cleaning regime, controls to be put in place to manage wet waste, contaminated surfaces and garments (including footwear) which can be transferred out of the workplace. Importantly dry sweeping and/or the use of compressed air should be prohibited. Further, a roster rotation system should be implemented to ensure that no single worker is exposed to RCS for a specified period,

4. Respiratory protective equipment (**RPE**) – should the risk of exposure remain after the abovementioned controls are exhausted, appropriate respiratory equipment must be worn by workers. A minimum P2 respirator be required that is fit-tested and comfortable, with consideration given to how facial hair may compromise effectiveness.

d. **Health responses**

i. *Establishment of a national dust diseases register and mandatory reporting*

1. An important response to the emerging health crisis caused by occupational exposure to silica dust is the establishment of a national dust diseases register, coupled with mandatory reporting requirements for PCBUs when workers are diagnosed with a disease arising from workplace exposure to RCS. Further, the CFMMEU supports the introduction of a requirement that medical professionals notify WHS regulators of adverse health reports linked to occupational RCS exposure, which will assist in identifying workplaces with inadequate protections in place.

ii. *Health screening by medical professional suitably trained*

1. The CFMMEU strongly supports calls for mandatory and comprehensive health screening be introduced for workers exposed to RCS, with health screening extending to post-exposure and retired workers. Medical professionals performing the screening should be suitably trained to detect silicosis and other lung diseases caused by RCS exposure.

2. It is our understanding that the detection of silicosis is a specialised field within radiology, which requires training in B reading techniques. The significance of medical practitioners being appropriately trained cannot be overstated, particularly when regard to the detection of 'black lung' in Queensland. For many years 'black lung' was detectable but remained largely undiagnosed due to a lack of training and expertise in appropriate reading techniques. Having become aware of this gap in medical knowledge, training in this area has become central to how Queensland have responded to 'black lung'. A similar approach should be adopted in relation to silicosis by increasing funding for the training of health

professional, including general practitioners, to assist in early detection and prevention.

iii. *Compensation funds*

1. The CFMMEU supports the establishment of compensation funds, with industry (such as the engineered stone benchtop industry) bearing the cost. This will be consistent with the principle that you *'pay for the damage you do'*, with there being precedent for the establishment of such funds in areas of asbestos-related illness.

iv. *Safe Work Australia Deemed Diseases List*

1. We support calls for every workers compensation jurisdiction to adopt the 2015 Safe Work Australia Deemed Diseases list with amendment to cover **all silica related diseases** by 2020.

e. **Education, research and training**

i. *Industry and community awareness*

1. Whilst community awareness of the dangers posed by exposure to RCS is increasing as a consequence of the reporting of cases such as Mr White and Mr Goldby's, funding still needs to be injected into community awareness campaigns. The aesthetic appeal of engineered stone benchtop has resulted in a high consumer demand for the product, however this is not accompanied by knowledge of the dangers that fabrication and installation poses to workers.

2. Further, there is a need for greater awareness throughout the engineered stone benchtop industry itself, particularly for employers and workers responsible for the installation and finishing of the product. As previously discussed, installation of engineered stone benchtops is often performed in private homes by small business employers and individual ABN holders, who are often not aware of the risks posed by RCS and control measures that can assist in the mitigation of such risks.

ii. *Requirement for silica awareness training*

1. The CFMMEU supports the proposal for units of competency addressing silica awareness to be included in all trade related courses, including white card induction courses.

f. **Compliance and enforcement**

i. The adoption of any regulatory or like changes will be of little value in the absence of active enforcement by WHS regulators, which has proven to be particularly challenging in relation to operations that install, rather than fabricate, engineered stone benchtops.

ii. The CFMMEU submission to the Manufactured Stone Industry Task Force in NSW commented on a statistical summary of inspection notices produced by SafeWork during the operation of the taskforce. Significantly, the following was observed:

> *It is important to note that the SafeWork inspections focussed exclusively on factory-based fabrication sites - with inspections yet to commence on that subsector of the industry presenting the greatest challenge, namely manufactured stone installation and joinery operations. This subsector of the industry is extremely mobile (constantly moving from site to site in the domestic and commercial construction industry) and largely consists of small businesses. The installation and joinery subsector is by far the largest participant in terms of numbers of workers exposed to silica dust. This group of workers also make up a significant cohort of those persons injured through manufactured stone dust exposure.*

iii. Notably, the fabrication sites that were subject of inspections were found to be largely non-compliant with existing regulations, particularly regarding the requirement for air monitoring, and the training and provision of personal protective equipment.

iv. Accordingly, if the epidemic of silicosis and other RCS-related diseases is going to be stemmed, WHS regulators must have sufficient resources to monitor and enforce compliance at not only fabrication sites, but also at the stage of installation.

g. **Recommendations**

i. Based on the foregoing submission, the CFMMEU makes the following recommendations:

1. That the workplace exposure standard in relation to RCS be lowered to 0.02mg/m3 weighted over an 8-hour period;

2. Development of clearer requirements in regulation in relation to when a PCBU is required to undertake air-monitoring;

3. That cutting of engineered stone on-site be banned (limiting the generation of RCS at the installation stage)

4. Urgent consideration and discussion with stakeholders regarding the feasibility of banning the import, manufacture and use of engineered stone

with a RCS concentration in excess of 80%;

5. Adoption of a specific regulation that requires the application of the hierarchy of controls for RCS and other inorganic dusts where banning of the work is not feasible;

6. Adopting of regulations banning dry-cutting on engineered stone in all jurisdictions;

7. Adoption of nationally consistent codes of practices that align with the hierarchy of controls, with a focus on addressing the source through engineering controls rather than bypassing such controls in reliance on personal protective equipment;

8. The establishment of a National Dust Diseases Register;

9. Mandatory reporting of RCS-related diseases by PCBUs and health practitioners to WHS regulators;

10. Introduction of mandatory health screening for current at-risk workers, in addition to screening for workers post-exposure (including in retirement). This screening should be performed by competent and appropriately trained medical practitioners who have had training in B reading techniques;

11. Establishment of compensation funds paid for by industry responsible for exposure;

12. Every workers compensation jurisdiction to adopt the 2015 Safe Work Australia Deemed Diseases list, with the list being amended to cover all silica-related diseases;

13. Funds dedicated to improving community and industry awareness (inclusive of employees, employee representatives and employers); and

14. Silica awareness training to be a mandatory component of white card induction courses.