

Submission to Office of Industrial Relations (OIR)

RE: Safe Work Australia Decision Regulation Impact Statement (DRIS): Prohibition on the use of engineered stone

Introduction

Master Builders supports an appropriate regulatory framework to provide a safe working environment for those working with respirable crystalline silica (RCS) in building products.

We have concerns as to the lack of consideration in the DRIS of the impacts on the building industry.

If the respective Federal, State and Territory Ministers responsible for Work Health and Safety decide to follow the recommendations of the DRIS to ban the use of engineered stone containing defined quantities of RCS, we are calling for an orderly and phased transition of any such ban. Worker safety must be the priority, and we have long supported the view that RCS-related hazards must be comprehensively addressed. We have supported Queensland's two Codes of Practice along with education and awareness including our own member training.

An adequate phased transition is necessary to avoid crippling the building industry supply chain with flow-on impacts on housing supply and affordability.

Any decision on prohibiting the use of products so widely used in housing construction should take into consideration safety controls and the impacts on the building industry supply chain. We must be careful not to introduce potential new WHS considerations from products rushed into the market to replace engineered stone.

The DRIS largely ignores the current practice with respect to the use of engineered stone products in the building and construction industry. It instead argues that any exposure to dust from engineered stone is dangerous so the product must be banned, without acknowledging the work of the industry and Government in eliminating exposure to deadly dusts by following Queensland's two dedicated Codes of Practice. It also largely ignores any impact of products that would take the place of engineered stone and makes assumptions as to work practices with low-RCS content engineered stone, while not making those same assumptions to work practices with natural stone products.

The DRIS also underestimates the scale of the current use of engineered stone products. There are thousands of businesses in Queensland alone involved in the installation of engineered stone products, being the vast majority of benchtop material in all new dwelling construction in Queensland (and some commercial as well).

We dispute the figure of 55 per cent identified in the DRIS. Our members advise the proportion of new dwellings (including units) installing engineered stone products to be close to 90 per cent. Builders and trade contractors (most of whom are small or micro businesses) will incur substantial costs if all engineered stone is banned immediately and we expect many to close.

The industry is already struggling due to recent changes to the Livable Housing requirements, resulting in builders having to update plans, specifications and purchasing documents. An immediate ban would require all of this to be amended again, with the impacts borne by the building industry.

The direct costs considered in the DRIS do not also take into account the health and wellbeing implications due to businesses failing and workers being out of work. Nor does it consider costs of delays in housing supply and decreased housing affordability.

Master Builders submits that a phased and orderly transition will allow businesses to plan for the changes, and not adversely affect the construction of new homes, including driving up the costs for an industry that has seen new home building costs rise in the past 3 years by over 40 per cent.

Master Builders welcomes the opportunity to make this submission. We support all parties working together collaboratively to educate, support and advise the industry as this will lead to the best safety outcomes.

Questions raised by DRIS

We believe the DRIS has not adequately considered the following matters:

- How will a ban on engineered stone be implemented?
- How will impacts on consumers and businesses be managed, including mental health and wellbeing?
- How will impacts on the building industry and delays in delivering housing be managed?
- What is the expectation for products already purchased but not expected to be installed for 1 – 2 years?
- How will the delay in obtaining suitable alternative products be managed?
- How do governments intend to deal with the substantial costs building industry businesses will likely face?
- Has there been consideration of costs to the building industry regulator as a result of delayed housing contracts and potential terminations?
- Why has there not been better consideration of greater resources for regulators to enforce compliance with safety requirements when working with RCS products?
- Has there been adequate consideration of the risks of low-RCS engineered stone products compared with natural stone and other products?
- In order to deliver on the policy intent of improved safety outcomes, it is important to get all of the details right, including implementation – when will all of these details be considered?
- Will implementation be considered together with the policy? (which we consider essential in any policy reform)
- How will working with in situ engineered stone be managed, for example home renovations, including DIY renovations?

In the sections below we explore some of these issues in more detail.

Impact on housing affordability and supply

The building and construction industry is currently building approximately 35,000 dwellings in Queensland each year. To meet our housing targets, we need to drastically increase this to 48,000 per year.

The vast majority of homes and units built in Queensland contain engineered stone, and many commercial projects also use this product.

Construction supply chains are such that many products are purchased well in advance of installation to ensure the product is available at the right location when required. Benchtops are often purchased many months ahead of installation date.

An immediate ban will mean this pre-purchased stone cannot be used, resulting in considerable cost implications not contemplated by the DRIS. Building industry businesses, including subcontractors, will be scrambling to find alternative sources of benchtop material to suit consumer demands. It is likely that large, volume builders will be the first to obtain supply of alternative products, with small businesses waiting many months longer. Put simply, our members advise there is not a sufficient supply in Australia of alternative benchtop products, and it will be up to 2 years before adequate supply is established.

If an immediate ban on engineered stone is implemented, we expect housing construction to incur delays (in the order of months, the length of delay will depend on the availability of the alternative product selected by the consumer).

It will mean an increased cost for new home building, and the flow on effects to housing affordability due to new housing supply delays.

Delays to the construction of new homes means consumers stay longer in their existing dwellings, affecting supply and affordability for people wanting housing who currently cannot source it.

During a new home build, an owner will decide with their builder their home design, and select their choice of fittings and finishes, amongst other things. Often they will have a colour theme, and will choose not only their benches, but also cabinets, flooring, wall paint, and other products based on colours selected by them.

If their chosen bench tops are unavailable, this requires a full redesign and the issuing of new documentation, delaying an already long process.

According to the DRIS:

Direct costs to PCBU's resulting from the prohibition of engineered stone and associated changes in regulation include costs of complying with new regulations and costs to transition to alternative products.

This assumes an equal or greater supply of alternative, like-for-like products currently exists. Which is incorrect.

An average house in Queensland will require two-to-three stone slabs for kitchens and bathrooms. There is not currently adequate natural stone or other alternative products available in the required

volumes to meet the demands of already purchased engineered stone, nor is there the expertise amongst stonemasons or other businesses to immediately pivot to alternative products.

For apartment buildings, stonetops are often selected and ordered/purchased years in advance of completion, and delays in sourcing alternative products could leave developers open to consumers exercising termination clauses.

The DRIS also does not account for the additional costs associated with alternative products. For example:

- Natural stone can cost over 4 times what engineered stone does;
- Natural stone has higher rates of defects when transported;
- Natural stone cannot be selected by colour swatch, and requires a person to see the slab due to variations and imperfections in the product;
- Natural stone can easily scratch, making it unsuitable and not an adequate replacement for engineered stone;
- Natural stones typically only come in dark colours, meaning designs will need to be amended to accommodate dark benchtops including alternative tiles, cabinets, flooring, etc.;
- Porcelain manufacture is more labour intensive, meaning the delivery of porcelain products is substantially delayed compared to engineered stone;
- We already have issues with the supply of timber, meaning there is not enough timber laminate to replace engineered stone, and even if there was this would take timber away from other uses in building new homes;
- Acrylic products can also melt and burn, in addition to scratching, making it an unsuitable alternative.

There are also indirect costs, including administration in preparing contract variations, seeking new suppliers, preparing new purchase orders and specifications, potential liquidated damages due to delays completing projects to schedule due to supply issues, and, importantly, the lack of cashflow experienced by builders, subcontractors and the supply chain where contractual milestones are not reached due to lack of benchtops, affecting the viability of all businesses in the chain.

There are also the costs where the completion of one project is delayed, as this flows on to the next project, which has a delayed start, and further cost implications for builders. Some builders may find they are unable to take on another project due to licensing 'minimum financial requirements' restrictions. In addition, there is likely to be angst and potential disputes between consumers and builders over delays and increased costs, which may result in additional claims to the QBCC.

These issues can be largely overcome during an adequate transition period, with developments in technology, research of other alternatives and managing consumer expectations.

Queensland is currently not building enough dwellings to meet demand. An immediate ban on engineered stone will exacerbate this.

Impact on building and construction industry

The DRIS also underestimates the impact on businesses in our industry. It assumes there are only 1,000 PCBU's working with engineered stone nationally, however in Queensland alone there are thousands of licensees possessing a stonemasonry / builder restricted to kitchen, bathroom and laundry / cabinet making / builder – low rise all of which can be expected to work with engineered stone benchtops. We believe there has been a substantial misunderstanding of the businesses and industries impacted.

According to the DRIS:

Engineered stone PCBU's comprise businesses that fabricate (i.e. cut, shape, polish) and install new engineered stone ... For the purpose of this analysis, it has been assumed that no engineered stone PCBU's work with legacy engineered stone, and no other industry PCBU's fabricate or install new engineered stone ...

... [the industry] is comprised of mostly small businesses with few barriers to entry and a significant culturally and linguistically diverse (CALD) workforce.

As outlined above, there is literally tonnes of this product on order by contractors and home owners to have installed. There are thousands of PCBU's who are directly and indirectly impacted by this product.

It is not just a small number of small businesses who fabricate engineered stone who are affected. The impacts will be felt right throughout our industry, as well as broadly outside the industry.

Impact on mental health and wellbeing

We believe it is essential to also consider the impact a ban may have on the thousands of building industry businesses, mostly small and micro businesses, who will be hit with more delays and cost increases, coming out of the COVID-19 'profitless boom' and the substantial NCC 2022 changes. The mental health of builders and trade contractors managing more administration, more conflict with consumers, more delays in receiving payment, must be considered.

Also, the impact on homeowners must be considered - the increased costs of materials and also the increased amount of time they must rent due to delays in sourcing alternative products will cause some to no longer afford their mortgage, and have to sell their land.

This further delays new houses being built, negatively impacting housing supply and affordability.

Impact on work health and safety

To mitigate the impacts of the above in the event of a ban on engineered stone, manufacturers, suppliers, builders and subcontractors will need to source alternatives. Whilst there are known alternatives, there is not sufficient supply to meet demand. This will result in new products being introduced, whose risks may not be fully understood, exposing workers to alternative hazards.

With engineered stone we know the hazards and in Queensland especially we know how to work with this product without exposing workers to RCS.

By continuing to follow the two Codes of Practice during a period of transition, we can keep workers safe.

We are concerned a total ban will result in workers being exposed to RCS in natural stone, which can be as high as 30 per cent RCS, in the false assumption natural stone is safe. It is far better to provide an orderly, phased transition to low and very low-RCS content engineered stone together with natural stone to be used in Queensland together with education and adherence to the Codes of Practice.

We also note the DRIS states:

While the AIOH supports a complete prohibition on work with all engineered stone; their submission outlined that, if this was not agreed and a threshold was to be set, work with engineered stone should only be permitted where the product has a silica content below 10%. This was based on an analysis of reported RCS exposure data from Australian workplaces processing engineered stone and evidence in international studies. The Lung Foundation Australia, the Public Health Association of Australia, the Royal Australian College of Physicians, and Cancer Council Australia submissions were consistent with that of the AIOH – supporting a complete prohibition but if a threshold was to be set, it should be silica content below 10%.

Given the widespread use of engineered stone in housing construction, the Codes of Practice in place in Queensland, and the lack of sufficient alternative products, a phased and orderly transition is warranted.

Master Builders also supports an increase in activities by Government to inspect workplaces to ensure the controls contained in the two Codes are being followed.

Conclusion

In summary, a ban on engineered stone without an adequate transition will mean:

- Pre-purchased stone tops cannot be used and builders and kitchen suppliers will be among those incurring substantial losses;
- Substantial delays in building homes as replacement products are sought. We are advised it will be many months before sufficient supplies of natural stone could be available in Australia, and even then, volume builders will receive supplies months ahead of smaller builders and trade contractors;
- Delay in housing completions will put added pressure on the housing crisis as more people remain in rental properties longer;
- Consumers will incur additional costs as replacement products may be more expensive (particularly if a stone product is desired) as well as increased rent costs due to construction delays;
- Some builders will face consumer disputes over extension of time claims, variation claims and potentially liquidated damages;
- A lack of cashflow to building industry businesses as delays are incurred in achieving milestones for housing contracts;

- Following on from a number of turbulent years for the construction industry, this may push more to the brink and force them to close;
- An increase of non-completion claims and dispute claims before the QBCC can be expected;
- A decrease in mental health and wellbeing of the building industry and impacted consumers;
- A false sense of security of workers cutting natural stone containing up to 30 per cent RCS.

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