Australian Industry Group

Australian Engineered Stone Advisory Group (ASEAG)

Industry Accreditation Standards for Engineered Stone Fabricators

Submission to
Australian Competition and Consumer Commission (ACCC)

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AESAG INDUSTRY ACCREDITATION STANDARDS FOR ENGINEERED STONE FABRICATORS

SUBMISSION TO AUSTRALIAN COMPETITION AND CONSUMER COMMISSION (ACCC)

INTRODUCTION

The Australian Industry Group (Ai Group) is a peak industry association and has been acting for business for more than 140 years. Along with our affiliates, we represent the interests of more than 60,000 businesses employing more than 1 million staff. Our longstanding involvement with diverse industry sectors including manufacturing, construction, transport, labour hire, mining services, defence, airlines and ICT means we are genuinely representative of Australian industry.

Ai Group is a member of Safe Work Australia and its sub-group Strategic Issues Group – Work Health and Safety (SIG-WHS), which had oversight of the development of the Model Work Health and Safety (WHS) Laws. We are also actively involved in consultative forums with state and territory regulators in relation to the application of safety and workers' compensation legislation.

We have ongoing contact and engagement with employers in all Australian jurisdictions on workplace safety issues, including informing them of regulatory changes, discussing proposed regulatory change, discussing industry practices as well as providing consulting and training services. We promote the importance of providing high standards of health and safety at work, and we hear from them about their success, issues and concerns related to workplace health and safety.

In recent times, the issue of silica exposure (especially in relation to work undertaken with engineered stone) has received much focus due to the increasing incidence of accelerated silicosis amongst those working with engineered stone.

Jurisdictional WHS Ministers have recently agreed to reduce the workplace exposure standard (WES)[1] for respirable crystalline silica (RCS) from 0.10 mg/m3 to 0.05 mg/m3, measured as an 8-hour time weighted average (TWA).

Jurisdictional WHS/OHS regulators have a range of compliance programs in place and have developed guidance material related to engineered stone; Safe Work Australia also has national guidance on risk associated with the use of silica.

Queensland has released a Code of Practice for working with engineered stone.

Victoria has introduced interim regulations banning the dry cutting of engineered stone (except under specific controlled circumstances) and will soon release a Compliance Code focussing on engineered stone. In addition, WorkSafe Victoria is consulting with stakeholders in relation to introduce a licensing scheme for organisations that are working with engineered stone.

It is clear from this activity that the issues of exposure and compliance are a key area of focus for regulators and the engineered stone industry generally.

AESAG APPLICATION TO ACCC

It is Ai Group's understanding that AESAG is seeking authorisation to adopt industry accreditation standards for fabricators which will require those they supply with engineered stone to comply with health and safety practices under the "model" work health and safety laws when working with engineered stone. If the application is approved, suppliers of engineered stone will be able to collectively refuse supply to fabricators that do not meet the accreditation standards.

Within other supply chains it is common practice to expect specific levels of OHS/WHS compliance in order to obtain work, e.g. contracting within major construction projects where compliance with laws and proven history of good OHS/WHS performance need to be proven.

[1] A WES is the maximum level of a substance that can be present in the breathing zone of a worker; in this case averaged over 8 hours. More information about WES can be found at https://www.safeworkaustralia.gov.au/doc/guidance-interpretation-workplace-exposure-standards-airborne-contaminants

The difference between this approach and the classic approach is that approval of this application will allow the organisations to make a collective decision about compliance, rather than undertaking individual assessments.

In principle Ai Group does not object to this application which is designed to increase compliance with required OHS/WHS standards in relation to a recently recognised serious hazard.

However, we do raise some process and practical implications that need to be considered.

Consultation with stakeholders before implementation

Together with other employer/industry representatives Ai Group is regularly involved in consultation processes with state and territory regulators and/or Safe Work Australia about the development and implementation of WHS laws, including accreditation and licensing schemes. As a standing principle, we would not support any changes to legislation that did not go through a process of consulting with impacted stakeholders or their representative bodies.

We are unable to identify any information within the application to indicate that such consultation has occurred between ASEAG and their customers and potential customers, or the bodies that represent the people that work within the industry.

We would generally be reluctant to support a system which has not been through this level of transparency and engagement.

If the application is approved a consultative mechanism should be established to review the efficacy, transparency and robustness of the scheme to deliver the expected outcomes without undue compliance cost to businesses seeking and maintaining accreditation.

Compliance with OHS/WHS Laws

It would not be appropriate to establish accreditation standards "in line with the Model WHS laws", for the reasons outlined below:

- Victoria has not adopted the Model WHS laws and will not do so in the foreseeable future;
- Western Australia is progressing adoption of the WHS laws, but implementation is still some time away; and
- Within the jurisdictions that have adopted the WHS laws, varying approaches to the regulation of silica in engineered stone are emerging.

Subsequently, any accreditation process must:

- Relate to the relevant legislation in each jurisdiction; and
- Reflect the specific requirements of each jurisdiction, e.g. state/territory regulations and/or requirements outlined in approved Codes released by regulators.

We note that the detailed application lodged by AESAG states, at page 23:

> "Where the requirements do materially differ between the states/territories, this will be incorporated into the Guidelines for those particular jurisdictions … will also be updated from time to time to reflect substantive changes to the Model WHS Laws."

It is crucial that any authorisation specifically refers to these commitments.

Potential conflict with legislative amendments

As outlined in our introduction, Victoria is currently considering implementation of a scheme which would license organisations that work with engineered stone.

If this does occur, it would not be appropriate for the AESAG members to run separate requirements for accreditation.

Any authorisation to implement an accreditation system should include a provision that states that an organisation that is granted a license under a relevant jurisdictional licensing scheme should be deemed to meet accreditation requirements for that jurisdiction.

In addition, the accreditation scheme would need to be very responsive to any change in expectations or legislation that arise after an organisation is accredited.

The process and cost of accreditation

It is not clear how the accreditation system would be applied. It may be that members of the AESAG accredit their primary customer, who could outsource the fabrication work to other organisations without the knowledge of their supplier.

It is our understanding that many organisations that undertake fabrication work with engineered stone are small to medium sized businesses. It is important that the processes and costs of accreditation do not result in those businesses being squeezed out of the market, with only large organisations being able to obtain this popular product.

If the application is granted, there should be a requirement to report on the costs incurred by fabricators specifically to seek accreditation, i.e. not including implementing control measures to meet legislative requirements.

Requirements of the accreditation system

We have undertaken a quick review of the guidelines attached to the application. It is noted that some of the requirements included in the guidelines are not required by legislation and will not directly impact on the control of risk associated with engineered stone. For example:

- Appendix A1.1 requires the establishment of an overarching Health and Safety Policy. Whilst this may be a good practice, it is not required by any Australian OHS/WHS legislation and will not directly impact on compliance with legislation relevant to the fabrication of engineered stone.

- Section 6.1 of the guidelines state that all organisations “shall demonstrate that they have assessed the risk of exposure (usually as high, medium or low)” and document the risk assessments in writing”.

  There is no requirement in OHS/WHS laws to undertake documented risk assessments. In fact the Model Code of Practice on How to manage WHS Risks specifically states: “Assess risks, if necessary—understand the nature of the harm that could be caused by the hazard, how serious the harm could be and the likelihood of it happening. This step may not be necessary if you are dealing with a known risk with known controls”. Given the level of prescription currently being applied to this particular risk, the majority of controls are known and risk assessments will not add to the effectiveness of controls (page 7).

If the application is to be approved, the guidelines should be revised to ensure that they only specify compliance with legal requirements and not create administrative burdens that were specifically excluded from the Model WHS laws (such as risk assessments).