



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDD2020/246
Your ref: AA1000461

Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Via email: adjudication@acc.gov.au

Dear Sir/Madam

RE: Australian Engineered Stone Advisory Group - AA1000461

Thank you for the invitation to comment on the recent application for an interim and ongoing authorisation under the *Competition and Consumer Act 2010* (Cth) (the Act) made by the Australian Engineered Stone Advisory Group (AESAG).

It is understood from the application that AESAG is seeking the ACCC's authorisation of conduct that may otherwise be considered anti-competitive and contravene the Act. Specifically, they are applying to:

- adopt industry accreditation standards for fabricators and stonemasons (Fabricators) working with engineered stone (Accreditation Standards);
- require Fabricators, to whom Members supply engineered stone, to comply with health and safety practices under the "model" work health and safety (WHS) laws when working with the engineered stone in order to achieve accreditation; and
- to refuse to supply engineered stone where Fabricators do not meet the Accreditation Standards (Proposed Conduct).

Significantly, the application seeks authorisation of the above conduct for current and *future* members of AESAG, and other suppliers more generally, who are not members of AESAG.

The impact of exposure to respirable crystalline silica dust in the workplace has been clearly demonstrated with high incident rates of silicosis across Australia in the last year. This is an important health and safety issue, particularly for the engineered stone industry, given their products that may contain over 93% crystalline quartz silica.

In relation to the application by AESAG currently being considered by the ACCC, the ACT has a number of concerns should the ACCC approve the application for authorisation. The proposed conduct would potentially cause confusion in the industry in relation to WHS obligations and impose unnecessary financial burden on businesses. Businesses that use engineered stone products, and or are exposed to silica dust hazards in the workplace, must comply with their WHS duties and obligations. Non-compliance is a regulatory matter to be determined by the regulator (WorkSafe ACT) as part of its legislative function. This function would not change as a result of the Proposed Conduct.

Specifically, the ACT's concerns relate to:


- issues arising should the proposed accreditation standards not meet the WHS duties and obligations applying under the Territory's *Work Health and Safety Act 2011*, of particular concern would be any inconsistencies between WHS laws and the accreditation standards; and
- a duplication of administrative and regulatory burden on fabricators due to the fact that the AESAG application is akin to a regulatory approach, noting that fabricators will still be required to demonstrate their compliance with WHS laws in each jurisdiction which is determined by the relevant regulator.

Additional industry guidelines as proposed by AESAG may contribute to confusion in the industry about WHS duties, obligations and approved practices to meet those obligations where they do not align with the guidance material published by WHS regulators, relevant codes of practice and national guidance material published by Safe Work Australia.

Contrary to the application, the ACT has not endorsed the accreditation standards or proposed conduct that is the subject of AESAG application.

While the efforts of industry to address the important health and safety risks and hazards of exposure to silica dust in the workplace are welcomed, the role of assessing industry's compliance with WHS laws in the Territory rests with the regulator (WorkSafe ACT). Recent regulatory activities of WorkSafe ACT have included:

- the publication of guidance material on crystalline silica dust in March 2019, including information on risk management, effective controls and health monitoring;
- a silica dust compliance project was commenced in 2019 to help business identify and control risks in relation to silica dust, the initial focus of the project has been on high risk manufacturing and construction industries (stone and engineered stone benchtop manufacturing, finishing and installation industries).

Should you require further information on the above, please contact Ellen Lukins, Senior Director, Workplace Safety and Industrial Relations on 

Yours faithfully



Michael Young
Executive Group Manager
Workplace Safety and Industrial Relations

24 January 2020