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Australian Competition and Consumer Commission
Email: adjudication@accc.gov.au
Ref: Australian Engineered Stone Advisory Group – AA1000461

Dear Sir/Madam,

ACCI response to AESAG application for authorisation AA1000461

The Australian Chamber of Commerce and Industry (ACCI) and our member network welcome the opportunity to provide comment on the authorisation application from the Australian Engineered Stone Advisory Group (AESAG).

ACCI is Australia's largest and most representative business advocacy network. We represent over 300,000 businesses in every state and territory and across all industries. Our network employs millions of Australians, predominantly in small and medium businesses.

Whilst acknowledging the increased incidence of preventable lung disease caused by dust exposure, particularly silicosis, we have been encouraged to see increased government support and action through Safe Work Australia, WHS regulatory authorities and the National Dust Disease Taskforce. These and other bodies, including ACCI's member organisations, are doing a significant amount of work.

The regulatory and industry response to date

Safe Work Australia (SWA) is a national policy setting body for Work Health and Safety (WHS) to which ACCI is a Member. SWA has an agreed occupational lung diseases work plan that has been progressing since 2018. Outputs to-date include: a *National Guide for working with silica and silica containing products* and the review of the workplace exposure standard (WES) for silica dust. A national *Code of Practice for the management of exposure to respirable crystalline silica dust from engineered stone* is currently under development.

In addition to the work of SWA, since December 2018, a number of jurisdictions have made amendments to their WHS laws and initiated proactive campaigns in relation to the management of silica dust from engineered stone. This includes:

- Queensland published a *Managing respirable crystalline silica dust exposure in the stone benchtop industry Code of Practice* and Western Australia has a *Code of Practice for concrete and masonry cutting and drilling*.
- SafeWork NSW launched a five-year strategy to increase awareness of silica-related risks and standardised exposure prevention practices. Two years in, SafeWork had visited every stone manufacturing business in the State.
- The South Australian regulator has run a two-stage proactive compliance campaign – first targeting fabricators and installers of engineered stone products, and then construction businesses at high risk of exposure to respirable crystalline silica (RCS).
- Victoria: launched an action plan along with a compliance and enforcement campaign focusing on stonemasonry workshops, introduced a State-wide ban on uncontrolled dry cutting, a new Compliance Code and an awareness campaign to highlight the risks of working with engineered stone.

Industry has also engaged by producing materials to increase awareness and provide guidance to employers within their sectors. Since 2018 a number of industry associations including Think Brick Australia, Australian Roofing Tile Association, Concrete Masonry Association of Australia,

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Housing Industry Australia and Master Builders Australia have provided employers in their sectors with tailored fact sheets, checklists, toolbox talks and run information seminars.

ACCI Position

Having regard to the above context, ACCI has reviewed the proposed application and is unable to support the application in the terms as sought. The bases for this position are that, in its current form, the application would result in significant overall public detriment in that it would:

- Substantially lessen competition in the market;
- Unnecessarily increase compliance burdens for workplaces, particularly small businesses;
- Create unnecessary and counter-productive confusion for industry, duty holders and workers; and
- Fail to deliver improved safety outcomes or reduce the risks of silicosis.

ACCI acknowledges the work of the Applicant organisation and shares its desire to improve safety outcomes in workplaces. However, we consider that there are more appropriate, tangible and effective ways to achieve the intended policy outcome sought.

We consider the Application in its current form is deficient in several key areas as detailed below and does not meet the relevant tests required for authorisation. These concerns, considered conjunctively with the range of potential adverse and new risks that would arise were the Application to be granted, are significant factors that should weigh against the granting of the exemption sought.

Concerns and deficiencies

We wish to note the following specific concerns with the Application:

- *Additional burden and confusion for industry*
 - As discussed above, significant and varying responses have been taken by WHS jurisdictions with accompanying variances in their compliance requirements. ACCI notes that the proposed Accreditation Standards may conflict with compliance requirements of individual state WHS regulators. Further adding to possible confusion is the use of the term “Accreditation Standards” which a number of small businesses equate with regulatory authority. Businesses are likely to operate under the assumption that compliance with the Accreditation Standard equals compliance with WHS laws as well as recognition of compliance by WHS regulators, based on the feedback we have received from small businesses in relation to other accreditation schemes and Australian Standards.
 - The Application in its current form will create a series of discrete but key inconsistencies with the existing obligations set by various WHS laws and not merely replicate existing legal obligations. For example, existing regulations require duty holders to manage risks to health and safety in accordance with the hierarchy of controls measures. This may include a combination of controls, rather than by primarily using engineering controls as prescribed within the proposed Accreditation Standards.
 - The Application will create additional obligations that are above and beyond those which currently exist and for which there is no evidence or grounds that they will result in improved safety outcomes. For example, there are obligations within the proposed Accreditation Standards which oblige participants to provide



a level of health monitoring which is not elsewhere required at law. For example, notwithstanding crystalline silica is a hazardous chemical designated under Schedule 14 of the regulations, a person conducting a business or undertaking is only required to provide health monitoring in circumstances where the relevant work is ongoing and there is a significant risk to the worker's health.

- *Additional burden for industry*
 - Significant awareness and compliance activities have been underway since 2018 or earlier with state and sector variations accordingly accounted for. The AESAG proposal would result in further duplication for a number of businesses, incurring additional costs without any guarantee of improvements to regulatory compliance levels.
 - The Application does not adequately acknowledge that there are a range of existing safety obligations and duties applicable to workplaces. These existing obligations are minimums set by WHS law and must be discharged by a workplace in order for it to achieve relevant compliance to ensure the workplace is safe. If a workplace is not compliant, it is the role of existing WHS regulators to educate, inform and assist workplaces to achieve requisite compliance and prosecute those who are not.

- *Proposed Conduct concerns*
 - Our members note concerns from fabricators about being “locked-out” from supply if they do not seek accreditation. In a number of instances, accessing a different supplier will be near impossible noting that the applicants hold a 77% market share and a number of fabricators are in regional areas.
 - Given Greencap’s fee structure (including associated travel fees) and the location of their offices (being in capital cities), engaging Greencap is costly for regional fabricating businesses. The Application Guidelines note that fabricators can “engage other qualified WHS assessors, such as certified occupational hygienists” – however, experience suggests that only Greencap audits are acceptable.
 - The additional cost of compliance with these Accreditation Standards to the Fabricator is likely to make some fabricators uncompetitive.

- *Accreditation Standards and Guidelines concerns*
 - Fabricators “**must participate in an on-site audit for compliance with a “third party WHS Assessor”**”: The guidelines note “At this time, Fabricators may choose to utilise a third-party Occupational Hygienist instead of Greencap. In doing so, the Fabricator is to inform AESAG of the Occupational Hygienist details, and ensure that the Occupational Hygienist is familiar with the Accreditation process and requirements of this document.” ACCI notes the use of “at this time” and is concerned that at a later date the guidelines can be changed to limit accepted auditing to Greencap. In ensuring Occupational Hygienists are familiar with the Accreditation process, small businesses are likely to incur additional fees due to additional hours of work.
 - **Reaccreditation is required annually**: Participating in the Accreditation process once can result in significant cost. To require annual Reaccreditation is



a significant ongoing cost burden for predominately small businesses. Most Accreditation schemes relating to safety and health do not require annual reaccreditation, rather three or five yearly reviews.

- **ISO Standard recognition:** The application notes “it expects that a Fabricator compliant with ISO standards will be compliant with Accreditation Standards”. ACCI does not believe this is accurate even if they are referring to ISO 45001 which is the safety management standard. We further note that it doesn’t state that accreditation with the ISO standard is accepted and recognised for granting accreditation with this Accreditation Standard which would again be duplicative and costly to business.
- **Auditor variance can increase costs:** Although there are audit guidelines for consistency (Annexure E), each auditor can vary in their acceptance of controls which may vary cost considerations for businesses.
- **Liability of Auditor/AESAG:** There are a range of significant questions that arise insofar as liability for both an auditor and AESAG were the application is to be granted. For example, what liability would arise for an auditor or AESAG should an affected company which has been deemed ‘compliant’ with the proposed Accreditation Standards be subsequently found to be in breach of the law by a regulator or Court? What appeal mechanism would an affected company have if the auditor declines accreditation in circumstances that are then found to be incorrect or misguided? What recourse would an affected company have insofar as the financial, commercial and business impacts suffered as a result of an incorrect Audit which causes AESAG to decline supply?

If you require further information or assistance, please contact Jennifer Low, Director, WHS and Workers’ Compensation Policy, ACCI on [REDACTED] or by email:

[REDACTED]

Yours sincerely,



James Pearson
Chief Executive Officer