

Model Work Health and Safety Regulations (Engineered Stone) Amendment 2024

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## **Model Work Health and Safety Regulations (Engineered Stone) Amendment 2024**

under the

Work Health and Safety Act 2011

### **1 Name of regulations**

These regulations are the *Model Work Health and Safety Regulations (Engineered Stone) Amendment 2024*.

### **2 Amendment of model regulations**

Schedule 1 amends the *Model Work Health and Safety Regulations*.

## Schedule 1 Amendment of Model Work Health and Safety Regulations

### [1] Regulation 5 Definitions

Insert in alphabetical order—

*controlled*, in relation to work involving processing engineered stone, porcelain products or sintered stone—see regulation 529B(1).

*engineered stone*—see regulation 529A(1).

*porcelain product* does not include a product that contains resin.

*processing*, in relation to work involving processing engineered stone, porcelain products or sintered stone—see regulation 529C.

*sintered stone* does not include a product that contains resin.

### [2] Part 4.9 Processing engineered stone containing crystalline silica

Omit the part.

### [3] Chapter 8A

Insert after regulation 529—

## CHAPTER 8A ENGINEERED STONE, PORCELAIN PRODUCTS AND SINTERED STONE

### Part 8A.1 Preliminary

#### 529A Meaning of engineered stone

(1) In these Regulations, *engineered stone*:

(a) is an artificial product that:

- (i) contains 1% or more crystalline silica, determined as a weight/weight (w/w) concentration; and
- (ii) is created by combining natural stone materials with other chemical constituents such as water, resins or pigments; and
- (iii) becomes hardened; but

(b) does not include the following:

- (i) concrete and cement products;
- (ii) bricks, pavers and other similar blocks;
- (iii) ceramic wall and floor tiles;
- (iv) grout, mortar and render;
- (v) plasterboard;
- (vi) porcelain products;
- (vii) sintered stone;
- (viii) roof tiles.

(2) In this regulation:

*crystalline silica*:

- (a) means crystalline polymorphs of silica; and
- (b) includes the following substances:
  - (i) cristobalite;

- (ii) quartz;
- (iii) tridymite;
- (iv) tripoli.

**529B When work involving processing engineered stone, porcelain products or sintered stone is *controlled***

- (1) In these Regulations, work involving processing engineered stone, porcelain products or sintered stone is *controlled* if:
- (a) control measures to eliminate or minimise risks arising from the processing of the stone or product are implemented so far as is reasonably practicable; and
  - (b) at least 1 of the following systems is used while the stone or product is processed:
    - (i) an effective water delivery system that supplies a continuous feed of water over the stone or product to suppress the generation of dust;
    - (ii) an effective on-tool extraction system;
    - (iii) an effective local exhaust ventilation system; and
  - (c) each person who is at risk from the processing of the stone or product:
    - (i) is provided with respiratory protective equipment; and
    - (ii) wears the respiratory protective equipment while the work is carried out.

**Note**

See also regulation 351.

- (2) In this regulation:
- respiratory protective equipment*** means personal protective equipment that:
- (a) is designed to prevent a person wearing the equipment from inhaling airborne contaminants; and
  - (b) complies with:
    - (i) AS/NZS 1716:2012 (Respiratory protective devices); and
    - (ii) AS/NZS 1715:2009 (Selection, use and maintenance of respiratory protective equipment).

**Note**

Regulations 44–46 apply to the provision and use of personal protective equipment, including the respiratory protective equipment provided under subregulation (1)(c).

**529C Meaning of *processing* in relation to engineered stone, porcelain products or sintered stone**

In these Regulations, ***processing***, in relation to engineered stone, porcelain products or sintered stone, means using a power tool or other mechanical plant to crush, cut, grind, trim, sand, abrasive polish or drill the stone or product.

## Part 8A.2 Work involving engineered stone benchtops, panels or slabs

**529D Work involving engineered stone benchtops, panels or slabs—prohibition**

A person conducting a business or undertaking must not carry out, or direct or allow a worker to carry out, work that involves manufacturing, supplying, processing or installing engineered stone benchtops, panels or slabs.

Maximum penalty: tier E monetary penalty.

**Note**

Under Division 3A of Part 11.2, work involving a type of engineered stone may be the subject of an exemption from this regulation.

**529E Work involving engineered stone benchtops, panels or slabs—exception for particular supply and installation**

Regulation 529D does not apply to work that involves supplying or installing engineered stone benchtops, panels or slabs if the work is:

- (a) for genuine research and analysis; or
- (b) to sample and identify engineered stone.

**529F Work involving engineered stone benchtops, panels or slabs—exception for particular processing**

Regulation 529D does not apply to work that involves processing engineered stone benchtops, panels or slabs if the work:

- (a) is carried out:
  - (i) for genuine research and analysis; or
  - (ii) to sample and identify engineered stone; or
  - (iii) to remove, repair or make minor modifications to installed engineered stone; or
  - (iv) to dispose of the engineered stone, whether it is installed or not; and
- (b) is controlled.

## **Part 8A.3 Regulator to be notified of particular processing of engineered stone**

**529G Notification of particular processing of engineered stone**

- (1) This regulation applies if work that involves processing engineered stone benchtops, panels or slabs is carried out:
  - (a) to remove, repair or make minor modifications to installed engineered stone; or
  - (b) to dispose of the engineered stone, whether it is installed or not.
- (2) Before the work is carried out, a person conducting a business or undertaking carrying out, or directing or allowing a worker to carry out, the work must give the regulator a written notice in the form approved by the regulator:
  - (a) stating the work being carried out; and
  - (b) describing the type of work being carried out; and
  - (c) stating the frequency and duration of the work; and
  - (d) stating the other information in relation to the work required by the approved form, if any.

Maximum penalty: tier G monetary penalty.

- (3) Subregulation (2) does not apply to a person conducting a business or undertaking if:
  - (a) the person conducting a business or undertaking does not know, and could not reasonably be expected to know, before the work is carried

out that the work involves processing engineered stone benchtops, panels or slabs; and

- (b) as soon as practicable after the person conducting the business or undertaking becomes aware that the work involves processing engineered stone benchtops, panels or slabs, the person gives the regulator a written notice under subregulation (2) in relation to the work.
- (4) If the regulator receives a notice under subregulation (2) or (3), the regulator must give the person conducting the business or undertaking an acknowledgement of receipt of the notice.

**529H Notification of change in information given under Part 8A.3**

- (1) If the information given to the regulator in a written notice under this Part in relation to work changes (other than because the work is no longer being carried out), a person conducting a business or undertaking carrying out, or directing or allowing a worker to carry out, the work must, within the period ending 30 days after the day the change occurs, give the regulator a written notice:
  - (a) stating the information has changed; and
  - (b) describing the change to the information.Maximum penalty: tier G monetary penalty.
- (2) If the regulator receives a notice under subregulation (1), the regulator must give the person conducting the business or undertaking an acknowledgement of receipt of the notice.

**529I Notification that work continues 12 months after last notice given under Part 8A.3**

- (1) This regulation applies if—
  - (a) a person conducting a business or undertaking gives a notice under this Part in relation to work; and
  - (b) a period of 12 months beginning on the day the last notice is given about the work ends; and
  - (c) the work is still being carried out.
- (2) A person conducting a business or undertaking carrying out, or directing or allowing a worker to carry out, the work must, within the period of 30 days ending after the day the 12-month period ends, give the regulator a written notice stating:
  - (a) the work is still being carried out; and
  - (b) any information given to the regulator that has changed.Maximum penalty: tier G monetary penalty.
- (3) If the regulator receives a notice under subregulation (2), the regulator must give the person conducting the business or undertaking an acknowledgement of receipt of the notice.

**529J Duty to keep notice given under Part 8A.3**

A person conducting a business or undertaking who gives the regulator a notice under this Part must, for a period of 5 years beginning on the day the notice is given to the regulator:

- (a) keep a copy of the notice; and

- (b) ensure that a copy of the notice is readily accessible; and
  - (c) allow a person to access a copy of the notice upon request.
- Maximum penalty: tier G monetary penalty.

## **Part 8A.4 Processing engineered stone other than benchtops, panels or slabs**

### **529K Duty to prevent uncontrolled processing of engineered stone other than benchtops, panels or slabs**

- (1) This regulation does not apply to engineered stone benchtops, panels and slabs.
- (2) A person conducting a business or undertaking must not process, or direct or allow a worker to process, engineered stone unless the processing of the stone is controlled.

Maximum penalty: tier E monetary penalty.

## **Part 8A.5 Processing porcelain products and sintered stone**

### **529L Duty to prevent uncontrolled processing of porcelain products and sintered stone**

A person conducting a business or undertaking must not process, or direct or allow a worker to process, porcelain products and sintered stone unless the processing is controlled.

Maximum penalty: tier E monetary penalty.

### **[4] Regulation 676 Which decisions under these Regulations are reviewable**

Insert in appropriate order in regulation 676(1), table—

65A	689A(1)—Refusal to exempt Applicant a particular type of engineered stone from regulation 529D
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### **[5] Regulation 684 General power to grant exemptions**

Omit “facility.” from regulation 684(4)(b). Insert instead “facility; or”.

### **[6] Regulation 684(4)(c)**

Insert after regulation 684(4)(b)—

- (c) regulation 529D in relation to exempting a type of engineered stone from that regulation.

### **[7] Division 3A**

Insert after regulation 689—

## **Division 3A Engineered stone**

### **689A Engineered stone—exemption**

- (1) The regulator may exempt a type of engineered stone from regulation 529D.

- (2) A person conducting a business or undertaking is exempt from compliance with regulation 529D if the work involves a type of engineered stone that is the subject of an exemption granted under:
- (a) subregulation (1); or
  - (b) a corresponding WHS law that is equivalent to subregulation (1).

**Note**

A decision to refuse to grant an exemption is a reviewable decision (see regulation 676).

**689B Engineered stone—application for exemption**

- (1) A person with an interest in having an exemption granted under regulation 689A(1) may apply to the regulator for an exemption.
- (2) However, before the person can apply under subregulation (1), the person must give each social partner SWA member:
- (a) a written notice stating:
    - (i) the person intends to make the application; and
    - (ii) the social partner SWA member may give the person submissions for the regulator about the application within the reasonable period stated in the notice; and
    - (iii) the person must provide the social partner SWA member's submissions to the regulator as part of the person's application; and
  - (b) a copy of the proposed application for the exemption.
- (3) The person's application must be:
- (a) in writing; and
  - (b) accompanied by the written notice the person gives each social partner SWA member under subregulation (2); and
  - (c) accompanied by any submissions received by the person from social partner SWA members under subregulation (2).
- (4) In this regulation:
- social partner SWA members** means:
- (a) the 2 members of Safe Work Australia who represent the interests of workers in Australia; and
  - (b) the 2 members of Safe Work Australia who represent the interests of employers in Australia.

**689C Engineered stone—notifying persons of application for exemption**

- (1) The regulator must give the application documents in relation to an application for an exemption under regulation 689A(1) to each corresponding regulator.
- (2) The regulator may also give the application documents for an application for an exemption under regulation 689A(1) to:
- (a) an employer organisation that includes employers who engage in work involving engineered stone; or
  - (b) a union representing employees whose work includes work involving engineered stone; or
  - (c) a person who has qualifications, knowledge, skills and experience relating to engineered stone.
- (3) In this regulation:

*application documents*, in relation to an application for an exemption under regulation 689A(1), means:

- (a) a written notice stating:
  - (i) the regulator has received the application; and
  - (ii) the person receiving the notice may make submissions to the regulator about the application within the reasonable period set out in the notice; and
- (b) a copy of:
  - (i) the application; and
  - (ii) any submissions that the regulator receives in relation to the application under regulation 689B(3)(c).

**689D Engineered stone—regulator to be satisfied about certain matters**

- (1) The regulator must not grant an exemption under regulation 689A(1) unless satisfied that granting the exemption will result in a standard of health and safety that is at least equivalent to the standard that would have been achieved without that exemption.
- (2) For the purposes of subregulation (1), the regulator must have regard to all relevant matters, including:
  - (a) any submissions received under regulation 689B(3)(c) or 689C; and
  - (b) whether the regulator is satisfied that, if the exemption were granted, the risk associated with the type of engineered stone that is the subject of the application would not be significant; and
  - (c) if Safe Work Australia publishes a document under regulation 689E—the relevant matters contained in the document.

**689E Safe Work Australia may issue and publish documents in relation to exemptions**

- (1) Safe Work Australia may issue a document setting out the matters to be considered when granting an exemption under this Division.
- (2) Safe Work Australia must publish the document on the Safe Work Australia website.

**Note**

See the Safe Work Australia website (<https://www.safeworkaustralia.gov.au>).

**[8] Regulation 692 Form of exemption document**

Omit “apply;” from regulation 692(b). Insert instead “apply, if applicable;”.

**[9] Regulation 694**

Omit the regulation. Insert instead—

**694 Notice of decision in relation to exemption**

- (1) The regulator must give a copy of the exemption document referred to in regulation 692 within 14 days after making the decision to grant the exemption to:
  - (a) if a person applied for the exemption—the applicant; or
  - (b) if the regulator granted the exemption on the regulator’s own initiative—each person (other than persons to whom regulation 695 applies) to whom the exemption will apply.



- (2) If the regulator grants an exemption under regulation 689A(1), the regulator must notify each corresponding regulator that the exemption is granted.

**[10] Regulation 695**

Omit the regulation. Insert instead—

**695 Publication of exemption**

- (1) This regulation applies to an exemption that:
- (a) relates to a class of persons; or
  - (b) is granted under regulation 689A(1).
- (2) The regulator must publish a copy of the exemption:
- (a) on an appropriate government website; and
  - (b) in the [Government Gazette].
- (3) If the regulator grants an exemption under regulation 689A(1), the regulator must publish on an appropriate government website the reasons for the decision within 14 days after the day the exemption is granted.

**Note**

See the jurisdictional note in the Appendix. The exemptions may also be viewed on the Safe Work Australia website (<https://www.safeworkaustralia.gov.au>).

**[11] Regulation 698 Notice of amendment or cancellation**

Omit “to subregulation” from regulation 698(1)(b). Insert instead “to whom subregulation”.

**[12] Regulation 698(2)**

Omit “persons,”. Insert instead “persons or is granted under regulation 689A(1),”.

**[13] Parts 11.4 and 11.5**

Omit Part 11.4. Insert instead—

## **Part 11.4 Transitional and Saving Provisions for Model Work Health and Safety Regulations**

**Note**

See the jurisdictional notes in the Appendix.

## **Part 11.5 Transitional and Saving Provisions for Model Work Health and Safety Regulations (Engineered Stone) Amendment 2024**

**Note**

See the jurisdictional notes in the Appendix.

**703 Particular work involving engineered stone—exception if carried out before 1 July 2024**

Regulation 529D does not apply to work that involves engineered stone benchtops, panels or slabs if:

- (a) the work is carried out before 1 July 2024; and
- (b) for work that involves processing the stone—the work is controlled.

**Note**

See the jurisdictional notes in the Appendix.

**704 Particular work involving engineered stone—exception if carried out under pre-2024 contract**

- (1) Regulation 529D does not apply to work that involves installing engineered stone benchtops, panels or slabs if the work is carried out:
  - (a) under a contract originally entered into on or before 31 December 2023; and
  - (b) on or before 31 December 2024.
- (2) Regulation 529D does not apply to work if:
  - (a) the work involves supplying or processing engineered stone benchtops, panels or slabs to be installed under a contract referred to in subregulation (1)(a); and
  - (b) the work occurs on or before 31 December 2024; and
  - (c) for work that involves processing the engineered stone—the processing is controlled.

**705 Application of Part 8A.3 to processing of engineered stone carried out before 1 July 2024**

- (1) Regulation 529G(2) does not apply to a person conducting a business or undertaking carrying out, or directing or allowing a worker to carry out, work to which regulation 529G(1) applies if the work is carried out before 1 July 2024 and:
  - (a) the work is no longer being carried out on or after 1 July 2024; or
  - (b) the work is being carried out on or after 1 July 2024 and the person gives the regulator a written notice described in regulation 529G(2) in relation to the work:
    - (i) on or before 1 July 2024; or
    - (ii) as soon as practicable after 1 July 2024.
- (2) A notice given under subregulation (1)(b) is taken, for the purposes of Part 8A.3, to be a notice given under regulation 529G(2).

**[14] Appendix Jurisdictional notes**

Insert after item 702—

Part 11.4	Appropriate local provisions to be inserted.
Part 11.5	Jurisdictions may number these provisions differently depending on the number of local transitional and savings provisions inserted for the jurisdiction.
703	A majority of jurisdictions agreed to apply the prohibition from 1 July 2024; some jurisdictions may insert a date later than 1 July 2024.