

Work Health and Safety Amendment Regulation 2024 (No 1)

Subordinate law SL2024–8

made under the

Work Health and Safety Act 2011, section 276 (Regulation-making powers)

EXPLANATORY STATEMENT

OVERVIEW OF THE REGULATION

The *Work Health and Safety Amendment Regulation 2024 (No 1)* (Amendment Regulation) makes a number of amendments to the *Work Health and Safety Regulation 2011* (WHS Regulation) to give effect to the national prohibition of the manufacturing, processing, installing or supply of engineered stone benchtops, panels or slabs agreed by Work Health and Safety (WHS) Ministers in December 2023.

These amendments include:

- prohibiting the manufacturing, processing, installing or supply of engineered stone benchtops, panels or slabs
- providing a framework for the controlled removal, disposal, repair or minor modification work with ‘legacy’ engineered stone benchtops, panels and slabs (permitted works)
- a notification requirement to the regulator, WorkSafe ACT, before carrying out permitted works; and
- the recognition of engineered stone product exemptions to the ban that may be granted in other jurisdictions.

Background

Engineered stone contains crystalline silica, and when it is processed, such as by crushing, cutting, grinding, trimming, sanding, polishing or drilling, dust containing respirable crystalline silica (RCS) is released. When inhaled into the lungs RCS can cause the disease silicosis (as well as other serious diseases). Silicosis can cause permanent disability and death, and has no cure except for lung transplantation.

Prohibition on the use of engineered stone

Work Health and Safety (WHS) Ministers' decision to prohibit the use of certain engineered stone products was informed by two regulatory impact analyses finalised by Safe Work Australia.

On 28 February 2023, WHS ministers considered the recommendations of the Decision Regulation Impact Statement: Managing the risks of respirable crystalline silica at work ([Silica DRIS](#)). This resulted in further analysis of options in the [Prohibition DRIS](#), which was provided to WHS ministers in August 2023.

The Prohibition DRIS built on the findings and recommendations of the Silica DRIS and was informed by stakeholder consultation, independent economic impact analysis, and an expert review of available evidence on the risks of working with engineered stone.

The Prohibition DRIS recommended a prohibition on the use of all engineered stone, irrespective of crystalline silica content, to protect the health and safety of workers. The prohibition was recommended on the basis that:

- Engineered stone workers exposed to RCS are significantly over-represented in silicosis cases and are being diagnosed with silicosis at a much younger age than workers from other industries.
- Engineered stone is physically and chemically different to natural stone. The high levels of RCS generated by working with engineered stone, as well as the differing properties of this RCS, are likely to contribute to more rapid and severe disease.
- There is no toxicological evidence of a 'safe' threshold of crystalline silica content in engineered stone, or that other chemicals found in engineered stone do not pose a health risk to workers.
- Silicosis and silica-related diseases are preventable. However, a persistent lack of compliance with, and enforcement of, the obligations imposed under WHS laws across the engineered stone industry at all levels has resulted in a lack of protection from the health risks associated with RCS for workers.

WHS Ministers met on 13 December 2023, 22 March 2024 and 10 May 2024 and agreed to implement a range of robust measures to protect workers from the risks of exposure to RCS from engineered stone. The model law regulations were amended to implement WHS Ministers' decision to prohibit the manufacture, supply, processing and installation of engineered stone benchtops, panels and slabs and related provisions.

Amendments to the model law regulations do not have effect until adopted locally under the ACT's work health and safety laws.

Local ACT adoption of the prohibition on the use of engineered stone

In 2022 the ACT introduced amendments to the WHS Regulation to strengthen obligations for work involving crystalline silica material, the ACT's silica safety rules. These safety rules applied to crystalline silica material more broadly and were not limited to engineered stone. The 2022 ACT changes created a dedicated new chapter in the WHS Regulation (Chapter 7A) for crystalline silica processes.

This chapter established specific obligations for crystalline silica work in the Territory, including:

- requirements to use an effective combination of specified control measures that:
 - ensures uncontrolled mechanical cutting (processing) of crystalline silica materials, other than engineered stone, is not permitted; and
 - ensures dry-cutting (processing) of engineered stone is not permitted;
- mandatory silica awareness level training requirements for at risk workers; and
- safe work method statement requirements when undertaking high-risk construction work activities involving mechanically cutting or processing of crystalline silica materials.

This Amendment Regulation builds on the ACT's silica safety rules and implements the nationally agreed model law regulation amendments by giving legal effect to the prohibition on manufacturing, processing, installing or supply of engineered stone benchtops, panels or slabs.

When implementing the nationally agreed engineered stone ban under this Amendment Regulation will exclude certain porcelain and sintered stone products from the definition of engineered stone in the Amendment Regulation, the ACT has retained its existing safety standards for carrying out mechanically processing work with engineered stone, including for porcelain and sintered stone products.

In adopting the model law amendments, existing terminology has been amended in chapter 7A of the WHS Regulation under the Amendment Regulation in order to implement the nationally agreed engineered stone ban in the context of the ACT's broader crystalline silica safety rules. These technical terminology changes include:

- adjusting 'cutting' to 'processing', noting the meaning of both terms is the same with both meaning to *crush, cut, drill, grind, polish, sand and trim*;
- as a consequence, 'mechanical process' in relation to the use of a power tool or other mechanical plant has been adjusted to 'mechanical method' to avoid any confusion;

- introducing the term ‘stone-substitute’ material to ensure that existing engineered stone processing controls continue to apply after 1 July 2024, including to processing work with porcelain and sintered stone products.

CONSULTATION ON THE PROPOSED APPROACH

ACT Government directorates and agencies, including WorkSafe ACT, the Justice and Community Safety Directorate and the ACT Environment Protection Authority have been consulted in the development of this Amendment Regulation.

The ACT Government has also consulted with ACT stakeholders, including the ACT’s Work Health and Safety (WHS) Council in the development of the ACT’s implementation approach to the nationally agreed engineered stone ban.

The WHS Council is a Ministerially appointed advisory body established under the *Work Health and Safety Act 2011* comprising stakeholders representing employer and employee interests in relation to work health and safety, injury management, and bullying and harassment matters.

The national Prohibition DRIS for the prohibition of engineered stone was also subject to national public consultation through Safe Work Australia.

CONSISTENCY WITH HUMAN RIGHTS

All amendment regulations must be compatible with the *Human Rights Act 2004* (HRA). The compatibility of this amendment regulation with the HRA was considered during its development.

Section 28(1) of the HRA provides that human rights may be subject to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Section 28(2) of the HRA contains a framework that is used to determine the acceptable limitations that may be placed on human rights.

The limitations in this amendment regulation on rights protected in the HRA are considered demonstrably justifiable pursuant to section 28 of the HRA.

An assessment of the amendment regulation against the rights protected by the HRA is provided below.

Rights engaged

The amendment regulation engages and promotes the right to life under section 9 of the HRA.

The amendment regulation engages and promotes the right to work under section 27B of the HRA.

The amendment regulation also engages and may limit rights in criminal proceedings under section 22 of the HRA.

Rights Promoted – right to life – right to work

The amendment regulation engages and promotes the right to life (section 9) and the right to work (section 27B). The rights to life, liberty and security impose duties on the ACT Government to protect life and take reasonable measures to prevent injury in workplaces, while the right to work guarantees just and favourable conditions of work, including safe and healthy working conditions.

Through the Amendment Regulation, the ACT Government is taking positive steps to ensure our legislative and regulatory frameworks prevent injury and ensure healthy working conditions by prohibiting the use, supply and manufacture of engineered stone as continuing work with these products is considered an unacceptable safety risk for workers.

The new offences provide a deterrent to poor work safety practices and encourage PCBU's to dedicate resources and attention to workplace safety.

Rights Limited – rights in criminal proceedings – strict liability and the presumption of innocence

1. Nature of the right and the limitation (s28(a) and (c))

Everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. Although through the amendment regulation the ACT Government is taking positive steps to protect the health and safety of workers and prevent workplace injuries, the Amendment Regulation potentially engages and limits the right to the presumption of innocence through the application of strict liability provisions as per section 12A of the *Work Health and Safety Act 2011* (WHS Act) which apply to elements of the offence provisions in Chapter 7A Crystalline silica of the WHS Regulation at clauses 31, 32 of the regulation, specifically sections 418F, 418I and 418J.

Strict liability provisions generally engage and limit the right to be presumed innocent as they remove the need for prosecution to prove an accused person's fault (i.e. the mental element of intent or recklessness) in relation to an offence generally or for particular elements of an offence. As a result, this reverses the onus in criminal proceedings and requires an accused to prove a defence for those elements to which strict liability applies, such as a mistake of fact under the *Criminal Code 2002*.

2. Legitimate purpose (s28(b))

The legitimate purpose of the strict liability provision(s) is to support enforcement of the measures in the Amendment Regulation prohibiting engineered stone benchtops, panels

and slabs which aim to protect the health and safety of workers. The penalty that may be imposed on commission of the offence will act as a deterrent against PCBU's providing unsafe workplaces and work cultures. The WHS Act imposes health and safety duties on all PCBU's in the Territory, as well as duties to their officers and workers. All PCBU's are required to be aware of their health and safety duties under the WHS Act and it is reasonable for the law to assume this is the case in the context of a workplace exposure to respirable crystalline silica.

3. *Rational connection between the limitation and the purpose (s28(d))*

The offence elements applying strict liability have been considered during the development of the Amendment Regulation. The strict liability offences arise in a regulatory context where, for reasons such as public safety, the public interest in ensuring that regulatory schemes are observed, requires the sanction of criminal penalties. The rationale for its use in the Amendment Regulation is that people who owe work safety duties such as PCBU's, persons in control of aspects of work and designers and manufacturers of work structures and products, as opposed to members of the general public, can be expected to be aware of their duties and obligations to workers and the wider public. In particular, where an accused can reasonably be expected, because of their professional involvement, to know the requirements of the law, the mental (or fault) element can justifiably be excluded. Accordingly, strict liability offences are applied so that every relevant person complies with their obligations at all times and acts appropriately to secure the health and safety of workers and others at the workplace.

4. *Proportionality (s28 (e))*

Given the serious health implications exposure to silica dust generated from crystalline silica materials may have on workers, and in particular engineered stone materials, the application of strict liability is necessary and proportionate to ensure a culture of safe work practices. It is not considered that there are any less restrictive means reasonably available to achieve the purpose of addressing the risks that arise from cutting engineered stone, and encouraging proactive work health and safety compliance is far more difficult to achieve without the use of strict liability offences. Strict liability clearly identifies the essential elements forming part of the regulatory framework that encourage PCBU's to maintain a workplace that is free from harm or injury.

The application of strict liability is reasonable to protect the health and safety of workers. Strict liability is only applied to particular elements of the engineered stone prohibition offence under clause 31 of the Amendment Regulation. It ensures those who hold responsibility for a health or safety duty uphold that responsibility and cannot escape liability by claiming ignorance of the duty or ignorance of the effect of their conduct. The defence of mistake of fact as provided by the *Criminal Code 2002* remains available to any accused for any strict liability provisions. The requirement to which the offences apply are not burdensome or out of alignment with the WHS framework; they relate to ensuring the safety of workers as well as the broader ACT community.

The application of strict liability and the penalties imposed are in line with those applied to asbestos duties under the WHS Regulation. The penalty amount applied is also consistent with penalties applied for breach of duty relating to asbestos under Chapter 8 of the WHS regulation. The strict liability offence applied in the silica chapter of the regulation acts as an incentive for duty holders and officers to observe their duties under the regulation.

The amendment regulation places the least restrictive limitation on the right to presumption of innocence, as it does not apply strict liability to information that is known by an accused, and that may be revealed to prove or disprove the defence.

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of regulation

Clause 1 establishes the name of the *Work Health and Safety Amendment Regulation 2024 (No 1)*.

Clause 2 Commencement

Clause 2 is the commencement provision, which provides for the commencement of Regulation on 1 July 2024 other than section 32 and schedule 1. Section 32 (notification requirements) commences on 1 November 2024 and Schedule 1 commences on 19 August 2024.

Clause 3 Legislation amended

Clause 3 sets out the legislation amended.

Clause 4 Section 9A Meaning of corresponding WHS laws – Act, dict

Clause 4 establishes corresponding WHS laws for the purposes of the Regulation, reflecting amendments and newly established WHS laws in corresponding WHS jurisdictions.

The Note to this clause specifies that a reference to an Act includes a reference to any regulation or statutory instrument made or in force under the Act (see Legislation Act s104).

Clause 5 Section 291(1), definition of high risk construction work, paragraph (s)

Clause 5 makes minor adjustment to the meaning of high risk construction work for work that involves the processing of crystalline silica material, reflecting the term ‘processing’ used in the model WHS laws in the place of ‘cutting’.

Clause 6 Section 291(2)

Clause 6 updates referral signposts to definitions for the purposes of the section.

Clause 7 New part 7A.1 heading

Clause 7 inserts the new heading for the new Part.

Clause 8 Section 418A(1), new definition of crystalline silica

Clause 8 inserts the model law definition of crystalline silica for the purposes of the new Part 7A.1.

Clause 9 Section 418A(1), definitions of crystalline silica control measure and crystalline silica material

Clause 9 establishes definitions and terms for the purposes of the nationally agreed prohibition of engineered stone benchtops, panels and slabs, to maintain the existing silica safety standards in the Territory and to make provisions relevant to permitted work including notification requirements.

To this effect, adjustment has been made to the definitions of *crystalline silica control measure* and *crystalline silica material* to capture engineered stone, stone-substitute material or other crystalline silica materials. This clause should be read in conjunction with the following clause which makes further adjustments to terms used for the purposes of crystalline silica control measures in the Territory.

In the ACT, crystalline silica control measures are required for processing *crystalline silica material*. Amendments have been made to adjust the definition of crystalline silica material to ensure that any express exclusions inserted under clause 11 to the definition of engineered stone do not unintentionally result in these products falling outside the ACT's silica safety rules.

Clause 10 Section 418A(1), definition of cut

Clause 10 omits the definition of cut, noting that the Territory has, in line with the model WHS law regulations, adopted the term *processing* for this purpose.

Clause 11 Section 418A(1), definition of engineered stone

Consistent with the decision of WHS Ministers and the model WHS laws regulation amendments published by Safe Work Australia, adjustment has been made to align with the model definition of *engineered stone* for the purposes of implementing the national engineered stone ban.

The definition changes clarify that the prohibition of engineered stone benchtops, panels and slabs applies to the use, supply and manufacture of engineered stone products with a crystalline silica content of one per cent or more.

Consistent with the decision of WHS Ministers and the model WHS law regulations, porcelain and sintered stone products (provided they do not contain resin) as well as some other products that contain crystalline silica have been expressly excluded from the definition of engineered stone. While this clarifies that the ban will not apply to products that are expressly excluded from the definition of engineered stone, consequential on the changes under clause 9 these products continue to be subject to established control measures for processing work under chapter 7A of the WHS Regulation.

While not previously listed as an example of materials that may be combined with natural stone to form engineered stone, 'water' has now been added to mirror the model WHS law regulations as a further illustrative example in addition to the existing examples of resin or pigment.

Clause 12 Section 418A(1), new definition of mechanical method

Clause 12 inserts a new definition consequential on clause 13 which omits the definition of 'mechanical process'. The new term of 'mechanical method' replaces the existing definition of mechanical process to remove any potential for confusion with 'process' as defined by clause 14.

The new definition retains the same meaning as for mechanical in the existing WHS Regulation.

Clause 13 Section 418A(1), definition of mechanical process

As a consequence of clause 12, clause 13 omits the definition of mechanical process.

Clause 14 Section 418A(1), new definitions

Clause 14 establishes new definitions of 'porcelain product' and 'process':

- for the purposes of its exclusion from the definition of engineered stone a 'porcelain product' is defined as one that does not contain resin, these products however will expressly be captured as a crystalline silica material under clause 9; and
- 'process' includes crush, cut, drill, grind, polish, sand or trim.

The term porcelain product otherwise takes on its ordinary meaning. For this purpose, the ordinary meaning of porcelain may include a vitreous (of or relating to glass), more or less translucent, ceramic material.

Clause 15 Section 418A(1), definition of respiratory protective equipment, paragraph (b) and note

Clause 15 amends the definition of respiratory protective equipment consistent with the model WHS law regulations. Under the existing WHS Regulation, RPE that was designed to protect the wearer from inhaling airborne crystalline silica and complied with AS/NZS 1716:2012 (Respiratory protective devices) was required.

For the purpose of this regulation personal protective equipment (PPE) that is designed to prevent a person wearing the equipment from inhaling airborne contaminants, and complies with the following Australian Standards:

- AS/NZS 1716:2012 (Respiratory protective devices), and
- AS/NZS 1715:2009 (Selection, use and maintenance of respiratory protective equipment).

Clause 16 Section 418A(1), new definitions

Clause 16 inserts new definitions for the purposes ‘sintered stone’ and ‘stone-substitute material’.

For the purposes of its exclusion from the definition of engineered stone, ‘sintered stone’ is defined as a product that does not contain resin. These products however will expressly be captured as a crystalline silica material under clause 9. The term sintered stone otherwise has its ordinary meaning.

The existing definition of engineered stone applied broadly as a stone that is artificially produced by combining natural stone that contains crystalline silica with other materials such as resin and pigment. The use of terms like ‘such as’ admit an example, as an illustrative expression not a limiting expression.

An umbrella term of ‘stone-substitute material’ has been inserted to ensure that porcelain and sintered stone products continue to follow the level of silica safety controls required for processing work with engineered stone. This maintains the ACT’s safety standards that applied to work with these materials/products in the Territory immediately prior to the Amendment Regulation commencing.

**Clause 17 Section 418A(3), definition of crystalline silica process,
paragraph (a)**

Clause 17 makes minor amendment consequential on changes in clauses 12 and 13.

Clause 18 New Part 7A.2 heading

Clause 18 inserts the heading for new Part 7A.2 *General controls on work involving crystalline silica material*.

Clause 19 Section 418B heading

Clause 19 amends the heading for section 418B to *Dry processing of stone-substitute material – prohibition* consequential on changes to definitions in clause 16.

Clause 20 Section 418B

Clause 20 makes minor and consequential amendments to section 418B of the WHS Regulation to update relevant terms including ‘process’, ‘stone-substitute’ and ‘mechanical method’.

Clause 21 Section 418B(a)

Clause 21 makes minor and consequential amendments to section 418B(a) of the WHS Regulation to update relevant terms by replacing ‘cutting’ with ‘processing’.

Clause 22 Section 418BAA heading

Clause 22 makes minor and consequential amendments to the heading of section 418BAA of the WHS Regulation to replace ‘uncontrolled dry cutting’ with ‘uncontrolled processing’.

Clause 23 Section 418BAA

Clause 23 makes minor and consequential amendments to section 418BAA of the WHS Regulation to update relevant terms including ‘process’, ‘stone-substitute’ and ‘mechanical method’.

Clause 24 Section 418C heading

Clause 24 makes minor and consequential amendments to the heading of section 418C of the WHS Regulation to update relevant terms including ‘processing’ and ‘stone-substitute material’.

Clause 25 Section 418C

Clause 25 makes minor and consequential amendments to section 418C of the WHS Regulation to update relevant terms including ‘processing’, ‘process’, ‘stone-substitute’ and ‘mechanical method’.

Clause 26 Section 418C(b)(i)

Clause 26 makes minor and consequential amendments to section 418C(b)(i) of the WHS Regulation to replace ‘cutting’ with ‘processing’.

Clause 27 Section 418C(b)(iii)

Clause 27 amends the duty on PCBUs when processing stone-substitute materials to ensure that workers are provided with and wear respiratory protective equipment where the risk of exposure to airborne crystalline silica produced by the processing cannot be eliminated so far as is reasonably practicable.

Clause 28 Section 418CAA heading

Clause 28 makes minor and consequential amendments to the heading of section 418CAA of the WHS Regulation replacing ‘cutting’ with ‘processing’.

Clause 29 Section 418CAA(1)

Clause 29 makes minor and consequential amendments to update relevant terms including ‘processing’, ‘process’, ‘stone-substitute’ and ‘mechanical method’.

Clause 30 Section 418CAA(1)(b)

Clause 30 makes minor and consequential amendments replacing ‘cutting’ with ‘processing’.

Clause 31 New Part 7A.3

Clause 31 establishes Part 7A.3 to give effect to the prohibition of engineered stone benchtops, panels or slabs, including definitions and terms for the purposes of this Part. This includes:

- Establishing the defined term ‘processing’ in relation to engineered stone for the purposes of work involving engineered stone benchtops, panels or slabs – to mean using a power tool or other mechanical method to process the stone and includes crushing, cutting, drilling, grinding, polishing, sanding or trimming the stone (new section 418E).

- Establishing the prohibition for work involving engineered stone benchtops, panels or slabs (new section 418F).
- Establishing that certain work is allowed with engineered stone benchtops, panels or slabs (permitted works with legacy engineered stone) (new sections 418G and 418H).
- Establishing the defined term ‘controlled’ in relation to permitted works with legacy engineered stone under sections 418G and 418H) to mean this work is controlled if is:
 - eliminated so far as is reasonably practicable; or
 - if not reasonably practicable to eliminate the risk – the risk is minimised so far as is reasonably practicable by:
 - using a water delivery system supplying a continuous feed of water over the processing area to suppress airborne crystalline silica produced by the processing; and
 - using at least one other crystalline silica control measure; and
 - ensuring each worker at the workplace who may be exposed to airborne crystalline silica produced by the processing is provided and wears respiratory protective equipment as defined by the WHS Regulation for this purpose.

Engineered stone workers exposed to respirable crystalline silica are significantly over-represented in silicosis cases. Engineered stone workers are being diagnosed with silicosis at a much younger age than workers from other industries.

Engineered stone is physically and chemically different to natural stone. The high levels of respirable crystalline silica generated by working with engineered stone, as well as the differing properties of this respirable crystalline silica, are likely to contribute to more rapid and severe disease.

New section 418F prohibits a PCBU from carrying out, directing or allowing a worker to carry out, work that involves manufacturing, supplying, processing or installing engineered stone benchtops, panels or slabs.

The terms ‘benchtop’, ‘panel’ and ‘slab’ are not defined and carry their ordinary meaning. For example, the prohibition on work with engineered stone in this regulation applies to engineered stone:

- benchtops, such as those installed in kitchens and bathrooms and outdoor surfaces
- panels, such as kitchen splashbacks; and
- slabs, that might need to be cut to fit a variety of different installation settings.

The effect of the definition at clause 11 and the prohibition in new section 418F also means that finished engineered stone products that are not in benchtop, panel or slab form (such

as jewellery, garden ornaments, sculptures and kitchen sinks) are not prohibited. These products do not generally require processing or modification for installation or use, and, as such, pose less risk to the health and safety of workers. However, in the unlikely event that processing of these products is carried out, it must still be controlled as established in the Territory under section 418C of the WHS Regulation.

The prohibition does not apply to natural stone products that have not been combined with other constituents. For example, natural granite that has been quarried, cut, and polished, without being combined with other materials, is not prohibited. However, a PCBU that is using natural stone is required to ensure the health and safety of its workers so far as is reasonably practicable and must manage the risks from generating respirable crystalline silica in processing the natural stone in accordance with section 418CAA of the WHS Regulation.

The prohibition also does not apply to benchtops, panels and slabs that are porcelain products or which are manufactured by sintering (sintered stone), provided the product does not contain resin. Consistent with existing silica safety standards in the ACT, the processing of these products must still be controlled under section 418C of the WHS Regulation.

Additionally, the prohibition does not apply to other artificial products which are excluded from the definition of engineered stone including:

- concrete and cement products
- bricks, pavers and other similar blocks
- ceramic wall and floor tiles
- roof tiles
- grout, mortar and render
- plasterboard.

However, consistent with existing silica safety standards applying in the ACT, the processing of these products must still be controlled under section 418CAA of the WHS Regulation.

The maximum penalty for contravening regulation 418F is a \$8,400 for an individual or \$42,000 for a body corporate monetary penalty (or, from 19 August 2024, a tier E monetary penalty – under schedule 1 of this Amendment Regulation) and strict liability applies to each physical element of each offence under this regulation.

The application of strict liability is reasonable and proportionate to protect the health and safety of workers. It ensures that those who hold responsibility for a health or safety duty do uphold that responsibility and cannot escape liability by claiming ignorance of the duty, or ignorance of the effect of their conduct.

The WHS Regulation imposes health and safety duties on all PCBUs in the Territory, as well as duties to their officers and workers. All PCBUs are required to be aware of their health and safety duties under the WHS Act and it is reasonable for the law to assume this is the case in the context of a serious breach of duties, such as a workplace death or serious workplace injury or illness.

New section 418G establishes an exception to the general prohibition of work involving engineered stone benchtops, panels or slabs for work that involves supplying or installing engineered stone benchtops, panels or slabs if the work is for genuine research and analysis, or to sample and identify engineered stone (permitted work with legacy engineered stone).

New section 418H establishes an exception to the general prohibition of processing work with engineered stone benchtops, panels or slabs (permitted work with legacy engineered stone) if the work is controlled and is carried out for:

- genuine research and analysis, or
- to sample and identify engineered stone
- to remove, repair or make minor modifications to engineered stone installed before 1 July 2024 or in circumstances at 418G; or
- to dispose of engineered stone, whether it is installed or not.

Before undertaking processing of engineered stone benchtops, panels or slabs, PCBUs must consider their obligations under section 291 of the WHS Regulations for high risk construction work involving the processing of crystalline silica material using a power tool or another mechanical method. This includes ensuring that a Safe Work Method Statement is prepared that identifies the hazards, describes the measures implemented to control the risks and takes into account all relevant matters as set out in Division 6.3.2. This duty remains for the purposes of the new section 418H and in circumstances that processing involves work carried out to remove, repair or make minor modifications.

Clause 32 New division 7A.3.3

Clause 32 establishes notification requirements for certain permitted works with legacy engineered stone under the new division 7A.3.3.

The new section 418I requires PCBUs to notify the WHS Regulator of work involving the processing of engineered stone benchtops, panels or slabs to remove, repair or make minor modifications to installed engineered stone, or to dispose of engineered stone, whether it is installed or not, before the work is carried out.

The PCBU must give the WHS Regulator written notice:

- stating the work being carried out
- describing the type of work being carried out

- the frequency and duration of the work; and
- any other information in relation to the work as required by the regulator.

This maximum penalty for contravening this provision is a \$5,000 for an individual or \$25,000 for a body corporate monetary penalty (or, from 19 August 2024, a tier G monetary penalty – under schedule 1 of this Amendment Regulation).

The penalty does not apply if the PCBU does not know and could not reasonably be expected to know, before the work is carried out, that the work involves processing engineered stone, providing that as soon as practicable after the PCBU becomes aware that the work involves processing engineered stone benchtops, panels or slabs, they give the regulator written notice as established by 418I(2).

The WHS Regulator must give the PCBU acknowledgment of receipt of the notice.

The new section 418J establishes that PCBUs must retain records relating to the notice given to the WHS Regulator for a period of 5 years. The maximum penalty for contravening this provision is a tier G monetary penalty.

Clause 33 New division 11.2.5

Clause 33 establishes new sections 698AA and 698AB under division 11.2.5 for the purposes of recognising engineered stone product exemptions from the ban granted by a regulator in another jurisdiction.

The new section 698AA makes consequential amendments to insert relevant dictionary signposts for terms used.

The new section 698AB provides that a PCBU is exempt from compliance with section 418F (prohibition) if the work involves a type of engineered stone that is the subject of an exemption:

- granted in relation to the type of engineered stone under a corresponding WHS law; and
- notified to the WHS Regulator by a corresponding regulator.

The model WHS laws provide that jurisdictions may allow for certain types of engineered stone to be granted an exemption from the prohibition following an application process.

While exemption applications will not be able to be made in the ACT, the ACT will recognise any exemptions that may be granted in other jurisdictions, consistent with the implementation of the nationally agreed prohibition.

Clause 34 Dictionary, new definition of crystalline silica

Clause 34 makes technical amendments to insert dictionary signposts for terms used.

Clause 35 Dictionary, definition of cut

Clause 35 makes technical amendments to remove dictionary signposts for terms no longer used.

Clause 36 Dictionary, new definition of mechanical method

Clause 36 makes technical amendments to insert dictionary signposts for terms used.

Clause 37 Dictionary, definition of mechanical process

Clause 37 makes technical amendments to remove dictionary signposts for terms no longer used.

Clause 38 Dictionary, new definitions

Clause 38 makes technical amendments to insert dictionary signposts for terms used.

Clause 39 Further amendments, dictionary, definitions

Clause 39 makes technical amendments to insert dictionary signposts for terms used.

Schedule 1 Other amendments

[1.1] Section 418F, penalty

This item makes a technical amendment to convert the monetary penalty amount to the tier penalty framework.

[1.2] Section 418I(2), penalty

This item makes a technical amendment to convert the monetary penalty amount to the tier penalty framework.

[1.3] Section 418J, penalty

This item makes a technical amendment to convert the monetary penalty amount to the tier penalty framework.