

EXPLANATORY STATEMENT

MODEL WORK HEALTH AND SAFETY REGULATIONS (ENGINEERED STONE) AMENDMENT 2023

Outline

The *Model Work Health and Safety Regulations (Engineered Stone) Amendment 2023* gives effect to Safe Work Australia Members' decision to amend the model WHS Regulations to expressly prohibit the uncontrolled processing of engineered stone products.

The *Model Work Health and Safety Regulations (Engineered Stone) Amendment 2023* also includes amendments to the model WHS Regulations to update references to certain Australian Standards.

Background

Engineered Stone

Engineered stone contains crystalline silica, and when it is processed, such as by cutting, grinding, trimming, sanding, polishing or drilling, small particles of silica dust, known as respirable crystalline silica, are released. When inhaled into the lungs these particles 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.

In 2019, the National Dust Diseases Taskforce (NDDT) was tasked with developing a national approach to the prevention, early identification, control and management of occupational dust diseases in Australia. In its June 2021 Final Report, the NDDT noted stakeholder concerns that existing WHS laws may not effectively protect people working with engineered stone.

Given the operation of section 19 of the model Work Health and Safety Act and regulation 49 of the WHS Regulations, it is likely that a PCBU that allowed workers to undertake dry cutting (and other uncontrolled processes) of engineered stone would be in breach of the WHS laws because of the risks to the health and safety of workers associated with workplace exposure to respirable crystalline silica.

Section 19 is the primary duty of care that requires a PCBU to ensure so far as is reasonably practicable the health and safety of workers and this duty requires the PCBU to eliminate risks to health and safety so far as is reasonably practicable or to minimise the risks so far as is reasonably practicable.

Regulation 49 requires a PCBU to ensure that no person is exposed to respirable crystalline silica at the workplace in an airborne concentration that exceeds the exposure standard for that substance.

However, in August 2021, Safe Work Australia Members agreed to amend the model WHS Regulations to expressly prohibit the uncontrolled processing of engineered stone products to ensure clarity and certainty for PCBUs and workers in relation to the use of engineered stone.

References to Australian Standards

Recommendation 31a of the *2018 Review into the model Work Health and Safety Laws* required Safe Work Australia to review the references to Standards in the WHS laws with a view to their removal and replacement with the relevant obligations being incorporated in the Regulations.

The review found that the Standards referred to are generally technically complex and frequently lengthy documents that would preclude incorporation of a Standard's substance into the Regulations. At the Safe Work Australia Members' Meeting 65 (8 December 2021), Members agreed to retain references to Standards.

However, in the course of the review, Safe Work Australia identified that several Standards referred to in the Regulations were out-of-date and that the Regulations needed to be amended to refer to the latest Standard.

Details of the Model Work Health and Safety Regulations (Engineered Stone) Amendment 2023 – Model Provisions

Regulation 1 – Name of model provisions

The model provisions are the *Model Work Health and Safety Regulations (Engineered Stone) Amendment 2023*.

Regulation 2 – Amendment of the Model Regulations

This regulation provides that these regulations amend the model WHS Regulations.

Regulation 3 – Definitions, definition of “boiler” Regulation 5(1)

The Australian Standard AS 2593:2004 (Boilers- Safety Management and supervision systems) has been superseded. This regulation updates the reference in regulation 5(1)(e)(iii) in the definition of **boiler** to the current Australian Standard AS 2593:2021.

Regulation 4 – References to Standards Regulation 15

The Australian Standard AS 2593:2004 (Boilers- Safety Management and supervision systems) has been superseded. This regulation updates the reference in regulation 15(2), note 1, to the current Australian Standard AS 2593:2021.

Regulation 5 – Conditions of licence Regulation 91A

This regulation corrects a typographical error in regulation 91A(3) by deleting “given” and inserting “give”.

Regulation 6 – Meaning of electrical equipment Regulation 144(1)(d)

The Australian Standard AS 2832.1:2004 (Cathodic protection of metals – Pipes and Cables) has been superseded. This regulation updates the reference in regulation 144(1)(d) to the current Australian Standard AS 2832.1:2015.

Regulation 7 – Electrical equipment and installations and construction work – additional duties, duty of person conducting a business or undertaking Regulation 163

The Australian Standard AS/NZS 3012:2010 (Electrical installations – Construction and demolition sites) has been superseded. This regulation updates the references in regulations 163(1), (2) and (3) to the current Australian Standard AS/NZS 3012:2019.

Regulation 8 – Processing engineered stone containing crystalline silica

New Part 4.9

This regulation inserts a new Part 4.9 that sets out regulation 184A relating to uncontrolled processing of engineered stone.

Regulation 184A(1) provides that it is an offence for a PBCU to process, direct or allow a worker to process engineered stone without specific control measures.

The maximum penalty for contravening regulation 184A(1) is \$6 000 for an individual and \$30 000 for a body corporate.

Regulation 184A(2) sets out that the processing of engineered stone will be controlled if at least one of the following systems is used:

- a water delivery system that supplies a continuous feed of water over the area being cut to suppress the generation of dust
- an on-tool extraction system - this typically includes a shroud, an on-tool hose attachment connected to a vacuum extraction system, or
- a local exhaust ventilation system. Guidance on local exhaust ventilation is available in the *model Code of Practice: Managing the risks of respirable crystalline silica from engineered stone in the workplace*.

All workers who process engineered stone must also be provided with respiratory protective equipment for the processing to be controlled.

Respiratory protective equipment is defined as personal protective equipment that:

- is designed to prevent a person wearing the equipment from inhaling airborne contaminants, and
- complies with the relevant Australian Standard.

Regulation 184A(3) defines engineered stone as an artificial product which contains crystalline silica, is created through combining natural stone materials with other chemical constituents and undergoes a process to become hardened. However, engineered stone does not include concrete and cement products, bricks, pavers and other similar blocks, ceramic and porcelain wall and floor tiles, roof tiles, grout, mortar and render or plasterboard.

Processing in relation to engineered stone is defined as cutting, grinding, trimming, sanding, abrasive polishing and drilling using power tools or another form of mechanical plant.

The note to the regulation sets out that regulations 44 and 46 apply to the use of personal protective equipment, including respiratory protective equipment. These regulations deal with the provision by a PCBU of personal protective equipment to workers (including in relation to its suitability, maintenance and use) and the duties of workers who are provided with personal protective equipment.

Regulation 9 – Plant used in connection with tree lopping Regulation 221(2)

The Australian Standard AS/NZS 1891.1:2007 (Industrial fall-arrest systems – Harnesses and ancillary equipment) has been superseded. This regulation updates the references in regulations 221(2) to the current Australian Standard AS/NZS 1891.1:2020 (Personal equipment for work at height – Manufacturing requirements for full body combination and lower body harnesses).

Regulation 10 – Log book and manuals for amusement devices Regulation 242(1A)

This regulation amends regulation 242(1A)(h)(iii) to correct a typographical error by deleting “notice: and” and inserting “notice; and”.

Regulation 11 – Placard and manifest quantities Schedule 11, Table 11.1

This regulation amends note 2 of table 11.1 in Schedule 11 to fix a typographical error by deleting “aerosols..” and inserting “aerosols.”.

Regulation 12 – Outer warning placards – requirements Schedule 13, clause 3(3)

The Australian Standard AS 2700S-1996 (Colour Standards for general purposes) has been superseded. This regulation updates the reference in Schedule 13, clause 3(3) to the current Australian Standard AS 2700S-2011.

Regulation 13 – Schedule 13, clause 5(3)

Clause 5(3) of Schedule 13 includes figure 13.3. Figure 13.3 references the Australian Standard AS 2700S-1996 (Colour Standards for general purposes), which has been superseded. This regulation updates figure 13.3 so that it refers to the current Australian Standard AS 2700S-2011.

Regulation 14 – Appendix

This regulation amends the Appendix to fix a typographical error by deleting “convictions..” and inserting “conviction.”.