

## Proposed OHS Amendment (Crystalline Silica) Regulations 2021 – Summary of proposed changes

### Introduction

Crystalline silica is a natural mineral found in many materials such as engineered stone, granite, sandstone, concrete, bricks, tiles, and mortar.

Engineered stone is often used in the construction of benchtops, flooring and tiles. This type of stone (also called reconstituted stone) can contain up to 95 per cent crystalline silica, which can be hazardous to health if inhaled. When engineered stone products are processed, very fine dust containing respirable crystalline silica is released into the air. People involved in the shaping and cutting of engineered stone, such as stonemasons, can be at risk of being exposed to the dust if it is not controlled.

In September 2018, the Queensland Government issued a safety alert for engineered stone benchtop workers after a spike in silicosis claims. Following this, over 300 silicosis cases emerged nationally. Victoria responded by introducing the Silica Action Plan, which committed to strengthening legislation, raising awareness, providing education and support for affected workers.

In August 2019, the Victorian Government introduced Part 4.5 – Crystalline Silica of the Occupational Health and Safety Regulations 2017 (OHS Regulations) to impose controls on cutting, grinding and abrasive cutting of engineered stone.

Part 4.5 was introduced as an interim measure to provide immediate protections in response to the health crisis associated with engineered stone. The proposed OHS Amendment (Crystalline Silica) Regulations 2021 (proposed Regulations) will expand on the interim Regulations to provide a more comprehensive regulatory regime to better protect workers from exposure to respirable crystalline silica.

### Current regulatory framework

Respirable crystalline silica meets the definition of a 'hazardous substance' under the OHS Regulations.

Provisions relating to the use of hazardous substances in a work activity are listed in Part 4.1 – Hazardous substances of the OHS Regulations.

Part 4.1 applies to a wide range of substances that are not explicitly defined or listed in the OHS Regulations. Division 3, subdivision 2 of Part 4.1 imposes duties on employers in relation to the use of certain hazardous substances, including respirable crystalline silica dust (see Regulation 154(1) (b)).

These duties include:

- reducing the risk of respirable crystalline silica exposure by implementing controls in accordance with a hierarchy of control;
- ensuring the workplace exposure standard (WES) of 0.05mg/m<sup>3</sup> TWA is not exceeded;
- undertaking atmospheric monitoring under certain circumstances; and
- conducting health monitoring of employees under certain circumstances

Under Part 4.5, employers must also ensure power tools are not used to cut, grind or abrasively polish engineered stone unless on-tool water dust suppression or dust extraction devices are in place and respiratory protection is provided.

### **Proposed regulatory framework**

The proposed Regulations are being considered in order to adequately protect the health and safety of those employed within industries which have a high risk of exposure to respirable crystalline silica (RCS).

The key objective of the proposed Regulations is to eliminate (so far as reasonably practicable) the risk of adverse health effects from work involving materials containing crystalline silica.

To achieve this, the proposed Regulations seek to implement the following changes:

- introduce a mandatory requirement for any employer or self-employed person to hold a licence if they are to work with engineered stone; and
- Introduce a package of reforms to improve risk assessment and information provision relating to the control measures for reducing exposure to silica dust, as well as maintaining the ban on dry cutting of engineered stone.

## **Summary of proposed changes to OHS Regulations**

### **Part 1.1—Introductory matters**

#### *Definitions*

It is proposed to include a number of new definitions in the OHS Regulations to provide clarity on substances, processes and controls that are subject to the proposed Regulations.

These include:

- crystalline silica
- crystalline silica hazard control statement
- Dust Class H Vacuum
- engineered stone
- engineered stone control plan
- engineered stone licence
- engineered stone process
- high risk crystalline silica work
- local exhaust ventilation
- respiratory protective equipment
- licence – proposed amendment to this definition to include 'or an engineered stone licence'.

#### *Determinations of Authority*

It is proposed to amend this section to provide WorkSafe Victoria with the power to determine a process as a 'crystalline silica processes for the purposes of the proposed Regulations.

## Part 4.5 – Crystalline Silica



The existing Part 4.5 will be substituted with the proposed Regulations.

### *Division 1 – Introductory matters*

It is proposed to set out the differences between engineered stone processes and crystalline silica processes as well as defining high risk crystalline silica work and the new crystalline silica hazard control statement.

### *Division 2 – Duties of manufacturers and suppliers*

It is proposed to provide clarity on the requirement of manufacturers and suppliers to provide information about the crystalline silica substances they manufacture and/or supply.

### *Division 3 – Duties of employers and self-employed persons*

It is proposed to include a number of subdivisions focussed on specific products and/or practices.

These include:

- Subdivision 1 – Specific measures to control risks associated with engineered stone;
- Subdivision 2 – Identifying and controlling high-risk crystalline silica work (outside of engineered stone); and
- Subdivision 3 – The provision of information to job applicants and employees on risks associated with exposure to crystalline silica dust, as well as the measures required to control those risks.

### *Division 4 – Licensing requirements*

It is proposed to establish a requirement for an employer or self-employed person to hold an engineered stone licence if an engineered stone process is undertaken at the workplace for which they are responsible.

It is also proposed to introduce a supplier duty to not supply engineered stone to a person who requires an engineered stone licence but does not have one.

It is also proposed to introduce requirements for health and atmospheric monitoring, information provision requirements and administrative controls that are specific to engineered stone licence holders.

### *Division 5 – Transitional provisions – Engineered stone licences*

It is proposed to introduce transitional provisions which will allow for a 12 month transition period that will begin from the commencement of the proposed Regulations, allowing businesses 12 months to apply for an engineered stone licence before the requirement to hold one begins.

## Part 6.1 – Licences

It is proposed to make a number of changes to Part 6.1 – Licences to give effect to an engineered stone licence being introduced, as well as recognising the transition period outlined in Part 4.5 – Division 5.

*Division 1 – Subdivision 6 – Additional provisions in relation to an engineered stone licence*



It is proposed to insert a new subdivision to establish:

- who can apply for an engineered stone licence;
- what information must be included in an engineered stone licence application;
- the additional criteria to be met to be granted an engineered stone licence; and
- grounds for suspension or cancellation of an engineered stone licence.

**Part 7.2 – Exemptions**

Administrative amendment to give WorkSafe Victoria the power to grant an exemption to complying with the new Part 4.5 (Crystalline Silica).