



New South Wales

Work Health and Safety Amendment (Engineered Stone) Regulation 2024

under the

Work Health and Safety Act 2011

Her Excellency the Governor, with the advice of the Executive Council, has made the following regulation under the *Work Health and Safety Act 2011*.

SOPHIE COTSIS, MP
Minister for Work Health and Safety

Explanatory note

The object of this regulation is to amend the *Work Health and Safety Regulation 2017* to—

- (a) remove Part 4.10, which prescribes worker protection in relation to manufactured stone cutting, and
- (b) insert new provisions to give effect to the *Model Work Health and Safety Regulations (Engineered Stone) Amendment 2024*, and
- (c) insert corresponding penalty notice amounts for the new provisions in Schedule 18A.

This regulation is made under the *Work Health and Safety Act 2011*, including section 276, the general regulation-making power, and Schedule 3.

Work Health and Safety Amendment (Engineered Stone) Regulation 2024

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Work Health and Safety Act 2011

1 Name of regulation

This regulation is the *Work Health and Safety Amendment (Engineered Stone) Regulation 2024*.

2 Commencement

This regulation commences immediately after the commencement of the *Work Health and Safety Amendment (Penalty Notices) Regulation 2024*.

Schedule 1 Amendment of Work Health and Safety Regulation 2017

[1] Clause 5 Definitions

Insert in alphabetical order—

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

engineered stone—see clause 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 clause 529C.

sintered stone does not include a product that contains resin.

[2] Part 4.10 Manufactured stone—cutting

Omit the part.

[3] Chapter 8A

Insert after Chapter 8—

Chapter 8A Engineered stone, porcelain products and sintered stone

Part 8A.1 Preliminary

529A Meaning of “engineered stone”

(1) In this part, *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 clause, *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 this part, 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 clause 351.

- (2) In this clause—
- 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— Clauses 44–46 apply to the provision and use of personal protective equipment, including the respiratory protective equipment provided under subclause (1)(c).

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

In this part—

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—

- (a) for an individual—70 penalty units, or
- (b) for a body corporate—345 penalty units.

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

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

Clause 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

Clause 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 clause 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—
- (a) for an individual—40 penalty units, or
 - (b) for a body corporate—210 penalty units.
- (3) Subclause (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 subclause (2) in relation to the work.
- (4) If the regulator receives a notice under subclause (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—
- (a) for an individual—40 penalty units, or
 - (b) for a body corporate—210 penalty units.
- (2) If the regulator receives a notice under subclause (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 clause 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—
- (a) for an individual—40 penalty units, or
 - (b) for a body corporate—210 penalty units.
- (3) If the regulator receives a notice under subclause (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—

- (a) for an individual—40 penalty units, or
- (b) for a body corporate—210 penalty units.

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 clause 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—

- (a) for an individual—70 penalty units, or
- (b) for a body corporate—345 penalty units.

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—

- (a) for an individual—70 penalty units, or
- (b) for a body corporate—345 penalty units.

[4] Clause 676 Which decisions under this Regulation are reviewable

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

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

Insert at the end of clause 684(4)(b)—

, or

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

[6] **Division 3A**

Insert after clause 689—

Division 3A Engineered stone

689A Engineered stone—exemption

- (1) The regulator may exempt a type of engineered stone from clause 529D.
- (2) A person conducting a business or undertaking is exempt from compliance with clause 529D if the work involves a type of engineered stone that is the subject of an exemption granted under—
 - (a) subclause (1), or
 - (b) a corresponding WHS law that is equivalent to subclause (1).

Note—A decision to refuse to grant an exemption is a reviewable decision—see clause 676.

689B Engineered stone—application for exemption

- (1) A person with an interest in having an exemption granted under clause 689A(1) may apply to the regulator for an exemption.
- (2) However, before the person can apply under subclause (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 subclause (2), and
 - (c) accompanied by any submissions received by the person from social partner SWA members under subclause (2).
- (4) In this clause—

social partner SWA member 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 clause 689A(1) to each corresponding regulator.
- (2) The regulator may also give the application documents for an application for an exemption under clause 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 clause—
- application documents**, in relation to an application for an exemption under clause 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 clause 689B(3)(c).

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

- (1) The regulator must not grant an exemption under clause 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 the exemption.
- (2) For subclause (1), the regulator must have regard to all relevant matters, including—
 - (a) any submissions received under clause 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 clause 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 at <https://www.safeworkaustralia.gov.au>.

[7] Clause 692 Form of exemption document

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

[8] Clauses 694 and 695

Omit the clauses. Insert instead—

694 Notice of decision in relation to exemption

- (1) The regulator must give a copy of the exemption document referred to in clause 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 clause 695 applies, to whom the exemption will apply.
- (2) If the regulator grants an exemption under clause 689A(1), the regulator must notify each corresponding regulator that the exemption is granted.

695 Publication of exemption

- (1) This clause applies to an exemption that—
 - (a) relates to a class of persons, or
 - (b) is granted under clause 689A(1).
- (2) The regulator must publish a copy of the exemption—
 - (a) on an appropriate government website, and
 - (b) in the Gazette.
- (3) If the regulator grants an exemption under clause 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 at <https://www.safeworkaustralia.gov.au>.

[9] Clause 698 Notice of amendment or cancellation

Omit “persons,” from clause 698(2). Insert instead “persons or is granted under clause 689A(1),”.

[10] Part 11.4

Insert after Part 11.3—

Part 11.4 Transitional and Saving Provisions for Model Work Health and Safety Regulations (Engineered Stone) Amendment 2024

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

Clause 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.

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

- (1) Clause 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) Clause 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 subclause (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) Clause 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 clause 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 clause 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) For Part 8A.3, a notice given under subclause (1)(b) is taken to be a notice given under clause 529G(2).

[11] Schedule 18A Penalty notice offences

Insert “529G(2), 529H(1), 529I(2), 529J,” after “529,” in the table.

[12] Schedule 18A, table

Insert “529D, 529K(2), 529L,” after “483(1) and (2),”.