



Victoria Government Gazette

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Subordinate Legislation Act 1994

NOTICE OF DECISION

Occupational Health and Safety Amendment (Crystalline Silica) Regulations 2021

I, Ingrid Stitt, Minister for Workplace Safety, and Minister responsible for administering the **Occupational Health and Safety Act 2004**, give notice under section 12 of the **Subordinate Legislation Act 1994** of my decision to make the proposed Occupational Health and Safety Amendment (Crystalline Silica) Regulations 2021 (the proposed Regulations).

The proposed Regulations will make amendments to the Occupational Health and Safety Regulations 2017 (OHS Regulations) and replace the Occupational Health and Safety Amendment (Crystalline Silica) Interim Regulations 2021 (Interim Regulations).

The proposed Regulations are required to further strengthen Victoria's occupational health and safety regulatory regime to better protect workers from exposure to respirable crystalline silica. The objectives of these regulations are to:

- introduce Australia's first licensing regime for engineered stone, including increased manufacturer and supplier duties;
- make permanent Victoria's prohibition on uncontrolled dry-cutting of engineered stone;
- add additional regulatory oversight of high risk crystalline silica work outside of engineered stone across all industries, including the construction and earth resources industries; and
- prescribe eight offences as offences for which an infringement notice may be issued and prescribe infringement penalties in respect of those infringement offences.

A Regulatory Impact Statement (RIS) was prepared in relation to the proposed Regulations and was made available for public consultation and comment from 22 January 2021 until 18 February 2021 on the Engage Victoria website (engage.vic.gov.au). A notice of the public comment period was published in the Victorian Government Gazette and Herald Sun newspaper on 22 January 2021.

In response to the RIS and the proposed Regulations, WorkSafe Victoria (WorkSafe) received 32 submissions from employer and employee representatives, medical professionals, industry peak bodies, businesses and individuals, and all submissions were considered. The key issues raised related to:

- the proposed reduction in crystalline silica content percentage in the definition of engineered stone from 80% to 40%;
- controlling risks associated with engineered stone in applying power tools and mechanical plant as a threshold criteria;
- identification of high-risk silica work through the use of risk assessments;
- the use of hazard control statements and control planning;
- health monitoring obligations; and
- support for the staggered commencement of the engineered stone licensing scheme and the high risk crystalline silica work reform.

After consideration of the submissions received in accordance with section 11 of the **Subordinate Legislation Act 1994** (SL Act), and further information from WorkSafe and key stakeholders, I have decided that the proposed Regulations should be made with minor amendments. These are to:

- clarify that the control measures apply to all engineered stone processes regardless of whether the engineered stone process is undertaken with a power tool or mechanical plant;

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- clarify that the intent of risk assessments when identifying high-risk crystalline silica work is to allow duty holders to demonstrate, in a structured, documented way, that their crystalline silica process is not high risk in the particular circumstances of their processes;
- clarify expectations for the use of hazard control statements and control planning, and the specific requirements to stop work where crystalline silica processes are not being carried out in accordance with the hazard control statement; and
- enable the duty holder to meet health monitoring obligations under regulation 319ZD, by permitting specialist occupational and environmental physicians and specialist respiratory and sleep medicine physicians to conduct health monitoring.

The proposed Regulations also amend Schedule 20 of the OHS Regulations to prescribe eight of the new offences created by the proposed Regulations to be infringement offences within the meaning of the **Infringements Act 2006** and to prescribe infringement penalties for each offence, for the purpose of section 139 of the **Occupational Health and Safety Act 2006**.

Proposed Regulation 14 (the amendment to Schedule 20) is a variation that has been made to the consultation draft of the proposed Regulations. The reason this amendment was included after the completion of the RIS consultation process was that at the time of that consultation, it was intended that the Occupational Health and Safety Amendment (Infringements and Miscellaneous Matters) Regulations 2021 (Infringement Regulations) would prescribe the eight silica-related offences to be infringement offences. However, as these proposed Regulations were not made by the time the Infringement Regulations were made (on 20 July 2021); the eight silica-related offences had to be removed from the Infringement Regulations.

During the preparation of the Infringement Regulations, analysis was undertaken to determine what, if any, social or economic burden would be imposed on any sector of the public by the prescription of specified offences as infringement offences. The eight silica-related offences were included in this assessment. It was estimated that the cost to business imposed by the proposed infringement offences (collectively) was estimated to be significantly below the \$2 million per year threshold. Better Regulation Victoria supported this assessment. On this ground the Minister for Workplace Safety provided an exemption certificate under section 8 of the SL Act for the purpose of the making of the Infringement Regulations.

On the basis of this same assessment, an exemption for proposed Regulation 15 (the amendment to Schedule 20) from the requirements of section 7 of the SL Act is considered appropriate on the grounds that the amendment does not impose a significant social or economic burden on any sector of the public.

A response to public comment, with further detail about the submissions received and WorkSafe's response to these, will be made publicly available at www.worksafe.vic.gov.au.

Dated 28 October 2021

INGRID STITT MP
Minister for Workplace Safety

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