



New South Wales

Work Health and Safety Amendment (Crystalline Silica Substances) 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 give effect to the *Model Work Health and Safety Regulations (Crystalline Silica Substances) Amendment 2024*.

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

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Work Health and Safety Act 2011

1 Name of regulation

This regulation is the *Work Health and Safety Amendment (Crystalline Silica Substances) Regulation 2024*.

2 Commencement

This regulation commences on 1 September 2024.

Schedule 1 Amendment of Work Health and Safety Regulation 2017

[1] Clause 5 Definitions

Omit clause 5(1), definitions of *controlled* and *processing*. Insert instead—
controlled, in relation to the processing of a CSS—see clause 529B.
processing, in relation to a CSS—see clause 529A.

[2] Clause 5(1)

Insert in alphabetical order—

crystalline silica—see clause 529A.

crystalline silica substance (CSS)—see clause 529A.

high risk, in relation to the processing of a CSS, means the processing of a CSS that is reasonably likely to result in a risk to the health of a person at the workplace.

silica risk control plan means, in relation to the processing of a CSS that is high risk, a silica risk control plan prepared under clause 529CB.

[3] Clause 5(1), definition of “engineered stone”

Omit “529A(1)”. Insert instead “529A(4)”.

[4] Chapter 8A, heading

Omit the heading. Insert instead—

Chapter 8A Crystalline silica

[5] Clauses 529A–529CE

Omit clauses 529A–529C. Insert instead—

529A Meaning of “processing” in relation to crystalline silica substances and related terms

- (1) In this chapter, *processing*, in relation to a CSS, means—
 - (a) the use of power tools or mechanical plant to carry out an activity involving the crushing, cutting, grinding, trimming, sanding, abrasive polishing or drilling of a CSS, or
 - (b) the use of roadheaders to excavate material that is a CSS, or
 - (c) the quarrying of a material that is a CSS, or
 - (d) mechanical screening involving a material that is a CSS, or
 - (e) tunnelling through a material that is a CSS, or
 - (f) a process that exposes, or is reasonably likely to expose, a person to respirable crystalline silica during the manufacture or handling of a CSS.
- (2) In this part, *crystalline silica substance (CSS)* means material that contains at least 1% crystalline silica, determined as a weight/weight (w/w) concentration.
Note— Engineered stone is a type of CSS.
- (3) In this part, *crystalline silica*—
 - (a) means crystalline polymorphs of silica, and

- (b) includes the following substances—
 - (i) cristobalite,
 - (ii) quartz,
 - (iii) tridymite,
 - (iv) tripoli.
- (4) In this chapter, ***engineered stone***—
 - (a) means a CSS that—
 - (i) is an artificial product, 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.

529B When processing of CSS is “controlled”

- (1) In this part, the processing of a CSS is ***controlled*** if—
 - (a) control measures to eliminate or minimise risks arising from the processing are implemented so far as is reasonably practicable, and
 - (b) at least 1 of the following measures is used during the processing—
 - (i) the isolation of a person from dust exposure,
 - (ii) a fully enclosed operator cabin fitted with a high-efficiency air filtration system,
 - (iii) an effective wet dust suppression method,
 - (iv) an effective on-tool extraction system,
 - (v) an effective local exhaust ventilation system, and
 - (c) a person still at risk of being exposed to respirable crystalline silica after 1 or more of the measures in paragraph (b) are used—
 - (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) Despite subclause (1), if the measures in subclause (1)(b) are not reasonably practicable, the processing of a CSS is controlled if a person who is at risk of being exposed to respirable crystalline silica during the processing—
 - (a) is provided with respiratory protective equipment, and
 - (b) wears the respiratory protective equipment while the work is carried out.
- (3) 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 subclauses (1)(c) and (2).

529C Duty for processing of CSS to be controlled

A person conducting a business or undertaking must not carry out, or direct or allow a worker to carry out, processing of a CSS unless the processing is controlled.

Maximum penalty—

- (a) for an individual—73 penalty units, or
- (b) for a body corporate—364 penalty units.

Note— Clauses 529D and 529F apply to the processing of engineered stone.

529CA Identifying processing of CSS that is high risk

- (1) A person conducting a business or undertaking at a workplace must assess the processing of a CSS carried out by the business or undertaking at the workplace to determine if the processing is high risk.

Maximum penalty—

- (a) for an individual—73 penalty units, or
- (b) for a body corporate—364 penalty units.

- (2) In assessing whether the processing of a CSS is high risk, the person must have regard to the following—

- (a) the specific processing that will be undertaken,
- (b) the form or forms of crystalline silica present in the CSS,
- (c) the proportion of crystalline silica contained in the CSS, determined as a weight/weight (w/w) concentration,
- (d) the hazards associated with the work, including the likely frequency and duration that a person will be exposed to respirable crystalline silica,
- (e) whether the airborne concentration of respirable crystalline silica that is present at the workplace is reasonably likely to exceed half the workplace exposure standard,
- (f) any relevant air and health monitoring results previously undertaken at the workplace,
- (g) any previous incidents, illnesses or diseases associated with exposure to respirable crystalline silica at the workplace.

- (3) In assessing whether the processing of a CSS is high risk, the person must not—

- (a) rely on the control measures implemented under clause 529B(1)(b), and
- (b) have regard to the use of personal protective equipment and administrative controls used to control the risks associated with respirable crystalline silica.

- (4) The person must ensure that a risk assessment conducted under subclause (1) is recorded in writing.
Maximum penalty—
 - (a) for an individual—15 penalty units, or
 - (b) for a body corporate—75 penalty units.
- (5) If a person conducting a business or undertaking is unable to determine whether the processing of a CSS carried out at the workplace is high risk, the processing is taken to be high risk until the person determines that the processing is not high risk.

529CB Silica risk control plan required for processing of CSS that is high risk

- (1) A person conducting a business or undertaking carrying out the processing of a CSS that is high risk must, before the processing commences, ensure that a silica risk control plan for the processing—
 - (a) is prepared, or
 - (b) has already been prepared by another person.Maximum penalty—
 - (a) for an individual—73 penalty units, or
 - (b) for a body corporate—364 penalty units.
- (2) A silica risk control plan must—
 - (a) identify all the processing of a CSS carried out at the workplace that is high risk, and
 - (b) include the risk assessment undertaken under clause 529CA for all processing of a CSS that is high risk, and
 - (c) document what control measures will be used to control the risks associated with the processing that is high risk and how the measures will be implemented, monitored and reviewed, and
 - (d) be set out and expressed in a way that is readily accessible and understandable to persons who use it.
- (3) A silica risk control plan is not required to be prepared before the processing of a CSS that is high risk commences if—
 - (a) the processing that is high risk is also high risk construction work, and
 - (b) a safe work method statement is prepared, or has already been prepared by another person, before the processing commences, and
 - (c) the safe work method statement satisfies the requirements in subclause (2).

529CC Compliance with silica risk control plan

- (1) A person conducting a business or undertaking carrying out the processing of a CSS that is high risk must put in place arrangements for ensuring that the processing is carried out in accordance with the silica risk control plan, including by ensuring that the silica risk control plan is—
 - (a) available to all workers, and
 - (b) provided to all workers before they commence the processing.Maximum penalty—
 - (a) for an individual—73 penalty units, or
 - (b) for a body corporate—364 penalty units.

- (2) If the processing of a CSS that is high risk is not carried out in accordance with the silica risk control plan that applies to the processing, the person must ensure that the processing is—
- (a) stopped immediately or as soon as it is safe to do so, and
 - (b) resumed only in accordance with the silica risk control plan.
- Maximum penalty—
- (a) for an individual—73 penalty units, or
 - (b) for a body corporate—364 penalty units.
- (3) A person conducting a business or undertaking must ensure that a silica risk control plan is reviewed and as necessary revised if relevant control measures are revised under clause 38.
- Maximum penalty—
- (a) for an individual—43 penalty units, or
 - (b) for a body corporate—217 penalty units.

529CD Duty to train workers about risks of crystalline silica

- (1) A person conducting a business or undertaking must ensure that a worker receives crystalline silica training if the person reasonably believes that the worker may be—
- (a) involved in the processing of a CSS that is high risk, or
 - (b) at risk of exposure to respirable crystalline silica because of the processing of a CSS that is high risk.
- Maximum penalty—
- (a) for an individual—73 penalty units, or
 - (b) for a body corporate—364 penalty units.
- (2) The person must ensure that a record is kept of the training undertaken by the worker—
- (a) while the worker is carrying out the processing of a CSS that is high risk, and
 - (b) for 5 years after the day the worker ceases working for the person.
- Maximum penalty—
- (a) for an individual—15 penalty units, or
 - (b) for a body corporate—75 penalty units.
- (3) The person must keep the record available for inspection under the Act.
- Maximum penalty—
- (a) for an individual—15 penalty units, or
 - (b) for a body corporate—75 penalty units.
- (4) In this clause—
- crystalline silica training*** means training that is accredited, or training approved by the regulator, in relation to the following—
- (a) the health risks associated with exposure to respirable crystalline silica,
 - (b) the need for, and proper use of, any risk control measures required by this regulation.

Note— Part 3.2, Division 1 also applies to a person conducting a business or undertaking involving the processing of a CSS.

529CE Monitoring in relation to processing of CSS that is high risk

A person conducting a business or undertaking that is carrying out, or directing or allowing a worker to carry out, the processing of a CSS that is high risk must—

- (a) undertake air monitoring for respirable crystalline silica in accordance with clause 50, and
- (b) provide air monitoring results to the regulator, in a form approved by the regulator, if the airborne concentration of respirable crystalline silica has exceeded the workplace exposure standard as soon as reasonably practicable and no more than 14 days from the date that the air monitoring result was reported to the person conducting the business or undertaking, and
- (c) provide health monitoring for all workers carrying out the processing of a CSS that is high risk in accordance with Part 7.1, Division 6.

Maximum penalty—

- (a) for an individual—73 penalty units, or
- (b) for a body corporate—364 penalty units.

[6] Clause 529D Work involving engineered stone benchtops, panels or slabs—prohibition

Omit the penalty provision. Insert instead—

Maximum penalty—

- (a) for an individual—73 penalty units, or
- (b) for a body corporate—364 penalty units.

[7] Clauses 529G(2), 529H(1), 529I(2) and 529J

Omit the penalty provision wherever occurring. Insert instead—

Maximum penalty—

- (a) for an individual—43 penalty units, or
- (b) for a body corporate—217 penalty units.

[8] Parts 8A.4 and 8A.5

Omit the parts.

[9] Schedule 18A Penalty notice offences

Insert “529CC(3),” after “529,” in the table.

[10] Schedule 18A, table

Insert “529C, 529CA(1), 529CB(1), 529CC(1) and (2), 529CD(1), 529CE,” after “483(1) and (2),”.

[11] Schedule 18A, table

Insert “529CA(4), 529CD(2) and (3),” after “525,”.

[12] Schedule 18A, table

Omit “529K(2), 529L,”.