

Occupational Health and Safety Amendment (Crystalline Silica) Regulations 2021 – Guide to changes

Victoria's new Occupational Health and Safety Amendment (Crystalline Silica) Regulations 2021 (the Regulations) will commence on 15 November 2021.

The Regulations replace the Occupational Health and Safety Amendment (Crystalline Silica) Interim Regulations 2019 (Interim Regulations) and will strengthen the regulatory regime to better protect workers from exposure to respirable crystalline silica.

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 for compensation. Following this, over 300 silicosis cases were diagnosed nationally. Victoria responded by introducing the [Silica Action Plan](#), which committed to strengthening legislation, raising awareness, and providing education and support for workers affected by silica exposure.

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

Part 4.5 – Crystalline Silica was introduced as an interim measure to provide immediate protections in response to the health crisis associated with engineered stone and to cut workers' exposure to crystalline silica, therefore reducing their likelihood of developing silicosis or other silica-related disease.

The Interim Regulations also included provisions relating to the use of hazardous substances in a work activity and are listed in **Part 4.1 – Hazardous substances of the OHS Regulations**.

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

Under Part 4.5 of the OHS Regulations employers had to ensure power tools were not used to cut, grind or abrasively polish engineered stone unless on-tool water dust suppression or dust extraction devices were in place and respiratory protection was provided.

The Regulations

The Regulations build on the Interim Regulations and aim to eliminate (so far as reasonably practicable) the risk of adverse health effects from work involving materials containing crystalline silica.



To achieve this, the Regulations implement the following changes:

- 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; and
- add additional regulatory oversight of high risk crystalline silica work outside of engineered stone across all industries, including the construction and earth resources industries

Commencement

The Regulations will be introduced over a phased commencement to ensure duty holders are provided with enough time to ensure they are prepared for the relevant changes to their duties and obligations.

The table below outlines the phased commencement for high-risk silica work reform, manufacturer and supplier duties and a 12 month transition period for the engineered stone licence scheme.

Timing	Activity
Commencement of regulations (15 Nov 2021)	<ul style="list-style-type: none">• Commencement of licensing applications, beginning of transition to licensing scheme (Part 4.5, Division 1; Part 4.5, Division 5; Part 6.1, Division 1, Subdivision 6);• Commencement of specific controls to be used when working with engineered stone (including continued prohibition on dry-cutting) (Part 4.5, Division 3, Subdivision 3).
6 months later (15 May 2022)	<ul style="list-style-type: none">• Commencement of high risk crystalline silica work reform (Part 4.5, Division 3, Subdivision 1; Part 4.5, Division 3, Subdivision 2);• Commencement of manufacturer and supplier duties (Part 4.5, Division 2).
12 months later (15 Nov 2022)	<ul style="list-style-type: none">• All businesses working with engineered stone must be licenced (Part 4.5, Division 4);• Suppliers cannot supply engineered stone to businesses who require a licence but do not have one (Part 4.5, Division 4).

Summary of changes

The following section summarises the changes between the Interim Regulations and the Regulations

Part 1.1—Introductory matters

Definitions

A number of new definitions have been included in the OHS Regulations to provide clarity on substances, processes and controls that are subject to the Regulations.



These include:

- crystalline silica
- crystalline silica hazard control statement
- crystalline silica process
- crystalline silica substance
- 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

WorkSafe Victoria (WorkSafe) holds the power to determine a process as a 'crystalline silica processes' for the purposes of the Regulations.

Part 4.5 – Crystalline Silica

The existing Part 4.5 will be substituted with the Regulations.

Division 1 – Introductory matters

- Clarity of differences between engineered stone processes and crystalline silica processes.
- Defines high risk crystalline silica work and the new crystalline silica hazard control statement. The hazard control statement outlines specific requirements of duty holders to stop work where crystalline silica processes are not being carried out in accordance with the hazard control statement.

Division 2 – Duties of manufacturers and suppliers

Clarity of the ongoing 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

Subdivisions focussed on specific products and/or practices which include:

- Subdivision 1 – Identifying and controlling high-risk crystalline silica work (outside of engineered stone) and the intent of risk assessments when identifying high-risk silica work to allow duty holders the opportunity to demonstrate that their crystalline silica process (as defined in regulation 319C) are not high risk in the particular circumstance of their processes;
- Subdivision 2 – 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; and

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- Subdivision 3 – Specific measures to control risks associated with all engineered stone processes whether it is undertaken with a power tool or mechanical process



Division 4 – Licensing requirements

An employer or self-employed person is required to hold an engineered stone licence by 15 November 2022 if an engineered stone process is undertaken at the workplace for which they are responsible.

Introduction of the requirement of a supplier duty to not supply engineered stone to a person who requires an engineered stone licence but does not have one.

Introduction of the requirement for an employer to provide information to job applicants about the health risks associated with exposure to crystalline silica dust and ensure employees are given information, instruction and training to control risks.

Introduction of the requirement for health monitoring to be conducted by a specialist occupational and environmental physician or a specialist respiratory and sleep medicine physician and atmospheric monitoring with information provision requirements and administrative controls that are specific to engineered stone licence holders.

Division 5 – Transitional provisions – engineered stone licences

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

Part 6.1 – Licences

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

Insertion of 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 matters to be satisfied before an engineered stone licence is granted; and
- grounds for suspension or cancellation of an engineered stone licence.

Part 7.2 – Exemptions

This is an administrative amendment to give WorkSafe the power to grant an exemption to complying with the new Part 4.5 (Crystalline Silica).