

Occupational Health and Safety Amendment (Crystalline Silica) Regulations 2021

S.R. No. 137/2021

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STATUTORY RULES 2021

S.R. No. 137/2021

Occupational Health and Safety Act 2004

**Occupational Health and Safety Amendment
(Crystalline Silica) Regulations 2021**

The Governor in Council makes the following Regulations:

Dated: 9 November 2021

Responsible Minister:

INGRID STITT
Minister for Workplace Safety

ALEXANDRA DEBELJAKOVIC
Clerk of the Executive Council

1 Objective

The objective of these Regulations is to amend the Occupational Health and Safety Regulations 2017 to provide for the management of crystalline silica in the workplace by—

- (a) prescribing risk control measures that must be used when working with engineered stone; and
- (b) providing for the licensing of employers and self-employed persons who work with engineered stone; and
- (c) introducing duties for manufacturers and suppliers of crystalline silica substances; and
- (d) providing for the management of high risk crystalline silica work in workplaces; and

- (e) prescribing certain offences as offences for which an infringement notice may be issued; and
- (f) prescribing infringement penalties in respect of those infringement offences.

2 Authorising provision

These Regulations are made under section 158 of the **Occupational Health and Safety Act 2004**.

3 Commencement

These Regulations come into operation on 15 November 2021.

4 Principal Regulations

In these Regulations, the Occupational Health and Safety Regulations 2017¹ are called the Principal Regulations.

5 Definitions

- (1) In regulation 5 of the Principal Regulations **insert** the following definitions—

"crystalline silica means crystalline polymorphs of silica, including the following substances—

- (a) quartz;
- (b) cristobalite;
- (c) tridymite;
- (d) tripoli;

crystalline silica hazard control statement has the meaning given by regulation 319D;

crystalline silica process has the meaning given by regulation 319B;

crystalline silica substance means any substance that—

- (a) contains more than 1% crystalline silica; and
- (b) is reasonably likely to be mechanically processed at a workplace; and
- (c) is not in a respirable form;

Dust Class H Vacuum means—

- (a) a vacuum that complies with the Class H requirements in AS/NZS 60335.2.69:2017—Household and similar electrical appliances—Safety—Part 2.69: Particular requirements for wet and dry vacuum cleaners, including power brush, for commercial use; or
- (b) a vacuum that complies with equivalent requirements to the requirements referred to in paragraph (a);

engineered stone means a manufactured composite stone material that contains—

- (a) resins; and
- (b) 40% or more crystalline silica;

engineered stone control plan means a document prepared by an engineered stone licence holder or applicant in accordance with regulation 319ZF;

engineered stone licence means a licence required under regulation 319Z;

engineered stone process has the meaning given by regulation 319E;

high risk crystalline silica work has the meaning given by regulation 319C;

local exhaust ventilation means an engineering control that captures the emission of an airborne contaminant at its source and transports it to a safe emission point, filter or scrubber;

respiratory protective equipment, in Part 4.5 and Subdivision 6 of Division 1 of Part 6.1, means personal protective equipment that—

- (a) is designed to protect the wearer from the inhalation of airborne contaminants; and
 - (b) complies with AS/NZS 1716:2012—Respiratory protective devices, or requirements equivalent to those of that Standard;".
- (2) In regulation 5 of the Principal Regulations, in the definition of ***licence***—
- (a) in paragraph (d), for "licence;" **substitute** "licence; or";
 - (b) after paragraph (d) **insert**—
"(e) an engineered stone licence;".

6 Determinations of Authority

After regulation 6(1)(o) of the Principal Regulations **insert**—

- "(oa) a crystalline silica process for the purposes of regulation 319B(g);".

7 Part 4.5 substituted

For Part 4.5 of the Principal Regulations
substitute—

"Part 4.5—Crystalline silica

Division 1—Introductory matters

319A Application of Part

This Part applies in addition to Part 4.1
(Hazardous substances).

319B What is a crystalline silica process?

A *crystalline silica process* consists of one
or more of the following processes carried
out at a workplace—

- (a) the use of a power tool or other form of
mechanical plant to—
 - (i) cut, grind, polish or crush material
containing crystalline silica; or
 - (ii) carry out any other activity
involving material containing
crystalline silica that generates
crystalline silica dust;
- (b) the use of a roadheader on an excavated
face if the material in the face contains
crystalline silica;
- (c) a process that exposes a person to
crystalline silica dust arising from the
manufacture or handling of material
that contains crystalline silica;
- (d) the mechanical screening of crushed
material containing crystalline silica;
- (e) a quarrying process involving material
containing crystalline silica;

- (f) a tunnelling process involving material containing crystalline silica;
- (g) a process determined by the Authority under regulation 6(1)(oa) to be a crystalline silica process.

319C What is high risk crystalline silica work?

High risk crystalline silica work is work performed in connection with a crystalline silica process that is reasonably likely to result in—

- (a) an airborne concentration of respirable crystalline silica that exceeds half the exposure standard for respirable crystalline silica; or
- (b) a risk to the health of a person at the workplace.

319D What is a crystalline silica hazard control statement?

A crystalline silica hazard control statement is a document prepared for high risk crystalline silica work that—

- (a) states the hazards and risks associated with that work; and
- (b) sufficiently describes measures to control those risks; and

Note

Regulation 163 sets out the duty of an employer to control risks associated with silica dust produced or generated at a workplace. See also regulation 154.

- (c) describes how the risk control measures are to be implemented; and
 - (d) if an analysis is required under regulation 319O, contains the results of that analysis; and
-

- (e) is set out and expressed in a way that is readily accessible and comprehensible to the persons who use it.

319E What is an engineered stone process?

An *engineered stone process* is a process involving engineered stone at a workplace that generates crystalline silica dust, including cutting, grinding or abrasive polishing of engineered stone.

Division 2—Duties of manufacturers and suppliers

319F Application of Division

- (1) This Division applies on and from 15 May 2022.
- (2) This Division applies to the manufacture and supply of crystalline silica substances.

Note

Supply includes supply of crystalline silica substances by an importing supplier.

- (3) In this Division, the duties of a manufacturer only apply to the manufacture of a crystalline silica substance at a workplace for sale or exchange to another workplace.

319G Manufacturer or supplier to give information about crystalline silica substances

- (1) A manufacturer or supplier of a crystalline silica substance must give the following information to a person referred to in subregulation (2)—
 - (a) the proportion of crystalline silica contained in the substance, expressed as a percentage;

- (b) the name, address and telephone number of—
 - (i) the manufacturer of the crystalline silica substance in Australia; or
 - (ii) the importing supplier of the crystalline silica substance in Australia;
- (c) exposure controls, exposure standards, engineering controls and personal protection information in relation to the crystalline silica substance;
- (d) information relating to the handling and storage of the crystalline silica substance, including how the substance may be safely used.

Note

Act compliance—sections 29 and 30
(see regulation 7).

- (2) The information required under subregulation (1) must be given—
 - (a) in writing; and
 - (b) to any person to whom the crystalline silica substance is supplied on or before the first occasion that the crystalline silica substance is supplied to that person; and
 - (c) on request, to an employer who proposes to use the crystalline silica substance at a workplace.

Note

Act compliance—sections 29 and 30
(see regulation 7).

319H Review and revision of information

- (1) A manufacturer or supplier of a crystalline silica substance must review and, if necessary, revise the information referred to in regulation 319G(1) for that substance—
 - (a) as often as is necessary to ensure the information is current and accurate; and
 - (b) at least every 5 years.

Note

Act compliance—sections 29 and 30
(see regulation 7).

- (2) If a manufacturer or supplier of a crystalline silica substance revises information under subregulation (1), the manufacturer or supplier must give the revised information to any person to whom the substance is supplied on or before the first occasion that the substance is supplied to that person after the revision.

Note

Act compliance—sections 29 and 30
(see regulation 7).

Division 3—Duties of employers and self-employed persons

Subdivision 1—High risk crystalline silica work

319I Application of Subdivision

- (1) This Subdivision applies on and from 15 May 2022.

- (2) This Subdivision does not apply to—
- (a) an employer or a self-employed person who is an engineered stone licence holder; or

Note

Division 4 sets out requirements that apply to engineered stone licence holders.

- (b) a person undertaking an engineered stone process referred to in Division 5.

319J Identification of high risk crystalline silica work

- (1) Before an employer or a self-employed person undertakes a crystalline silica process or combination of crystalline silica processes, the employer or self-employed person must—
- (a) conduct a risk assessment in accordance with this regulation to identify whether the crystalline silica process or combination of crystalline silica processes is high risk crystalline silica work; or
 - (b) identify the crystalline silica process or combination of crystalline silica processes as high risk crystalline silica work.

Note

Act compliance—sections 21, 23 and 24 (see regulation 7).

- (2) In conducting a risk assessment under this regulation, the employer or self-employed person must take into account the following—
-

- (a) the specific tasks or processes required to be undertaken with material containing crystalline silica;
 - (b) the form of crystalline silica to be used;
 - (c) the proportion of crystalline silica contained in the material;
 - (d) previous atmospheric monitoring results;
 - (e) the likely frequency and duration of exposure to crystalline silica dust;
 - (f) any information about incidents, illnesses or diseases associated with exposure to crystalline silica dust at the workplace.
- (3) In conducting a risk assessment under this regulation, it is not sufficient compliance with this regulation for the employer or self-employed person to merely rely on the effect of any measures implemented to control exposure to crystalline silica dust in accordance with regulation 163.

Note

Regulation 163 sets out the duty of an employer to control risks associated with silica dust produced or generated at a workplace. See also regulation 154.

- (4) If an employer or a self-employed person is unable to identify whether a crystalline silica process or combination of crystalline silica processes is high risk crystalline silica work, the process or combination of processes must be treated as high risk crystalline silica work until the employer or self-employed person can identify that the process or combination of processes is not high risk crystalline silica work.
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319K Record of high risk crystalline silica work

- (1) An employer or a self-employed person who conducts a risk assessment under regulation 319J(1)(a) must make a written record that—
 - (a) describes how the matters referred to in regulation 319J(2) have been taken into account; and
 - (b) identifies whether or not the crystalline silica process or combination of crystalline silica processes is high risk crystalline silica work.

Penalty: 100 penalty units for a natural person;
500 penalty units for a body corporate.

- (2) An employer or a self-employed person who makes a written record under subregulation (1) must keep the record for the period during which the crystalline silica process or combination of crystalline silica processes is undertaken at the workplace.

Penalty: 100 penalty units for a natural person;
500 penalty units for a body corporate.

- (3) An employer who makes a written record under subregulation (1) must make the record readily accessible for the period during which the crystalline silica process or combination of crystalline silica processes is undertaken at the workplace to—
 - (a) any employee who may be exposed to crystalline silica dust; and

- (b) the health and safety representative of any affected designated work group.

Penalty: 100 penalty units for a natural person;
500 penalty units for a body corporate.

319L Crystalline silica hazard control statement required for high risk crystalline silica work

- (1) An employer or a self-employed person must not perform high risk crystalline silica work unless—
 - (a) a crystalline silica hazard control statement is prepared for the work before the work commences; and
 - (b) the work is performed in accordance with that statement.

Note

Act compliance—sections 21, 23 and 24 (see regulation 7).

- (2) If high risk crystalline silica work is not performed in accordance with a crystalline silica hazard control statement prepared under subregulation (1), the employer or self-employed person must—
 - (a) stop that work immediately or as soon as it is safe to do so; and
 - (b) not resume the work until the statement is—
 - (i) complied with; or
 - (ii) reviewed and, if necessary, revised in accordance with regulation 319M.

Note

Act compliance—sections 21, 23 and 24
(see regulation 7).

- (3) For high risk crystalline silica work that is high risk construction work, if a safe work method statement prepared under regulation 327 addresses the matters required by a crystalline silica hazard control statement—
- (a) preparation of that safe work method statement is sufficient compliance with the requirement to prepare a crystalline silica hazard control statement; and
 - (b) compliance with that safe work method statement is sufficient compliance with a crystalline silica hazard control statement in relation to the risk to health or safety of exposure to crystalline silica dust.

319M Crystalline silica hazard control statement to be reviewed and revised

An employer or a self-employed person performing high risk crystalline silica work must review and, if necessary, revise the crystalline silica hazard control statement required under regulation 319L for that work—

- (a) whenever the work changes; or
 - (b) if there is an indication that risk control measures (including risk control measures required under regulation 163) are not controlling the risks adequately, including after any incident that occurs during high risk crystalline silica work.
-

Notes

- 1 Act compliance—sections 21, 23 and 24 (see regulation 7).
- 2 Regulation 163 sets out the duty of an employer to control risks associated with silica dust produced or generated at a workplace. See also regulation 154.

319N Copy of crystalline silica hazard control statement to be kept

An employer or a self-employed person must keep a copy of a crystalline silica hazard control statement for the duration of the high risk crystalline silica work for which the statement has been prepared.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

319O Analysis of material to be used in quarrying or tunnelling process

If high risk crystalline silica work involves a quarrying or tunnelling process, an employer or a self-employed person, before the work commences, must—

- (a) collect samples of materials to be used in the quarrying or tunnelling process; and
- (b) arrange for analysis of those samples by a suitably competent person to identify the proportion of crystalline silica contained in each sample.

Note

Act compliance—sections 21, 23 and 24 (see regulation 7).

Subdivision 2—Provision of information for high risk crystalline silica work

319P Application of Subdivision

- (1) This Subdivision applies on and from 15 May 2022.
- (2) This Subdivision does not apply to—
 - (a) an employer or a self-employed person who is an engineered stone licence holder; or

Note

Division 4 sets out requirements that apply to engineered stone licence holders.

- (b) a person undertaking an engineered stone process referred to in Division 5.

319Q Information to job applicants

An employer must ensure that an applicant who applies for employment with the employer involving high risk crystalline silica work is given information about—

- (a) the health risks associated with exposure to crystalline silica dust; and
- (b) the need for, and details of, measures to control those risks.

Penalty: 5 penalty units for a natural person;

25 penalty units for a body corporate.

319R Information, instruction and training for employees

An employer must ensure that employees who are likely to be exposed to risks associated with high risk crystalline silica work are given information, instruction and training in—

- (a) the health risks associated with exposure to crystalline silica dust; and
- (b) the need for, and proper use of, any risk control measures required under these Regulations; and
- (c) how the risk control measures are to be implemented.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

Note

Regulation 163 sets out the duty of an employer to control risks associated with silica dust produced or generated at a workplace. See also regulation 154.

Subdivision 3—Specific measures to control risks associated with engineered stone

319S Specific risk control measures—use of power tool or mechanical plant

- (1) If a power tool or other form of mechanical plant is used to undertake an engineered stone process, an employer or a self-employed person must ensure that the power tool or mechanical plant is used with—

- (a) an integrated water delivery system that complies with subregulation (2); or
- (b) an on tool dust extraction system that is commercially available and is connected to—
 - (i) a Dust Class H Vacuum; or
 - (ii) another system that captures any dust generated by the use of the power tool or mechanical plant; or
- (c) if it is not reasonably practicable to use the systems referred to in paragraphs (a) or (b), local exhaust ventilation.

Note

Act compliance—sections 21, 23 and 24
(see regulation 7).

- (2) For the purposes of subregulation (1)(a), an integrated water delivery system must—
 - (a) deliver a continuous supply of water to the point of contact with the stone while the power tool or mechanical plant is in use; and
 - (b) if the system uses recycled or recirculated water, adequately treat that water.

319T Specific risk control measures—design and installation

An employer or a self-employed person who is required to use a system under regulation 319S must ensure that the system is designed and installed to—

- (a) so far as is reasonably practicable, eliminate any risk of exposure to crystalline silica dust; or
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- (b) if it is not reasonably practicable to eliminate the risk, reduce the risk so far as is reasonably practicable.

Note

Act compliance—sections 21, 23 and 24 (see regulation 7).

319U Specific risk control measures—use and maintenance

An employer or a self-employed person who is required to use a system under regulation 319S must ensure that the system is used and maintained in a manner that—

- (a) so far as is reasonably practicable, eliminates any risk of exposure to crystalline silica dust; or
- (b) if it is not reasonably practicable to eliminate the risk, reduces the risk so far as is reasonably practicable.

Note

Act compliance—sections 21, 23 and 24 (see regulation 7).

319V Specific risk control measures—respiratory protective equipment

- (1) An employer must ensure that an employee who undertakes an engineered stone process is provided with respiratory protective equipment.

Note

Act compliance—section 21 (see regulation 7).

- (2) An employer must ensure that an employee uses the respiratory protective equipment provided under subregulation (1).

Note

Act compliance—section 21 (see regulation 7).

**319W Specific risk control measures—
information, instruction and training**

An employer must ensure that an employee who uses a power tool or other form of mechanical plant to undertake an engineered stone process is provided with information, instruction and training in—

- (a) the use of that power tool or mechanical plant in accordance with regulation 319S; and
- (b) the use, fit, maintenance and storage of respiratory protective equipment provided under regulation 319V.

Note

Act compliance—section 21 (see regulation 7).

319X Specific risk control measures—cleaning

An employer or a self-employed person must not use or cause to be used compressed air or other compressed gases to clean the following, unless the use of that air or gas does not result in a concentration of respirable crystalline silica that exceeds the exposure standard for respirable crystalline silica—

- (a) a work area where an engineered stone process has been undertaken;
- (b) if a person has been in a work area where an engineered stone process is being or has been undertaken, the clothing the person was wearing in that area.

Note

Act compliance—sections 21, 23 and 24 (see regulation 7).

Division 4—Licensing requirements

319Y Application of Division

This Division applies to engineered stone in addition to Part 4.1 (Hazardous substances).

319Z Requirement to hold engineered stone licence

- (1) An employer or a self-employed person must hold an engineered stone licence if an engineered stone process is undertaken at the workplace for which the employer or self-employed person is responsible.

Note

Part 6.1 (Licences) sets out the process for obtaining an engineered stone licence.

- (2) Subject to subregulation (3), a person must not undertake an engineered stone process at a workplace unless the person—
 - (a) holds an engineered stone licence to undertake an engineered stone process at that workplace; or
 - (b) is an employee of a person referred to in paragraph (a).

Note

See section 40(4) of the Act.

- (3) A person referred to in subregulation (2) may undertake an engineered stone process at a workplace other than the workplace to which the licence relates if—
 - (a) the engineered stone process is necessary for performing installation work at that other workplace; and

- (b) it is not reasonably practicable to undertake the engineered stone process at the workplace to which the licence relates.

319ZA Supply of engineered stone

- (1) A supplier of engineered stone must not supply engineered stone to a person who requires an engineered stone licence and who is not an engineered stone licence holder.

Penalty: 100 penalty units for a natural person;
500 penalty units for a body corporate.

- (2) A supplier of engineered stone must record—
 - (a) the name and address of any person to whom engineered stone is supplied and the name and quantity of the engineered stone supplied; and
 - (b) the licence number of the relevant engineered stone licence held by the person to whom engineered stone is supplied.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (3) The supplier must keep the record referred to in subregulation (2) for at least 5 years.

Penalty: 100 penalty units for a natural person;
500 penalty units for a body corporate.

319ZB Information to job applicants

An employer who is an engineered stone licence holder must ensure that an applicant who applies for employment with the employer at a workplace where an engineered stone process is undertaken is given information about—

- (a) the health risks associated with exposure to crystalline silica dust; and
- (b) the need for, and details of, measures to control those risks.

Penalty: 5 penalty units for a natural person;
25 penalty units for a body corporate.

319ZC Information, instruction and training for employees

An employer who is an engineered stone licence holder must ensure that employees who are likely to be exposed to risks associated with the undertaking of an engineered stone process are given information, instruction and training in—

- (a) the health risks associated with exposure to crystalline silica dust; and
- (b) the need for, and proper use of, any risk control measures required under these Regulations; and
- (c) how the risk control measures are to be implemented.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

Notes

- 1 Regulation 163 sets out the duty of an employer to control risks associated with silica dust produced or generated at a workplace. See also regulation 154.
- 2 Subdivision 3 of Division 3 of this Part imposes duties on an employer to implement specific measures to control risks associated with engineered stone.

319ZD Health monitoring to be conducted by specialist registered medical practitioner

- (1) An employer who is an engineered stone licence holder and who is required under regulation 169 to ensure that health monitoring is carried out for an employee must ensure that the health monitoring is carried out under the supervision of—
 - (a) a specialist occupational and environmental physician; or
 - (b) a specialist respiratory and sleep medicine physician.

Note

Act compliance—section 22 (see regulation 7).

- (2) In this regulation—

specialist occupational and environmental physician means a person who is registered under the Health Practitioner Regulation National Law as a medical practitioner (other than as a student) in the specialty of occupational and environmental medicine;

specialist respiratory and sleep medicine physician means a person who is registered under the Health Practitioner Regulation National Law as a medical practitioner (other than as a student) in the specialty of physician in the field of

specialty practice of respiratory and sleep medicine.

319ZE Providing health and atmospheric monitoring reports to the Authority

- (1) An engineered stone licence holder must provide to the Authority a copy of—
 - (a) any health monitoring reports that relate to the health of employees at the workplace to which the licence relates, within 30 days of the report being received by the licence holder; and
 - (b) any atmospheric monitoring results that relate to atmospheric conditions at the workplace to which the licence relates, within 30 days of the results being received by the licence holder.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (2) The engineered stone licence holder is not required to provide the Authority with a health monitoring report under regulation 170 if that report would be identical to that which is provided under subregulation (1).

319ZF Engineered stone control plan required

- (1) An engineered stone licence holder must—
 - (a) prepare an engineered stone control plan in accordance with subregulation (2) before work that requires an engineered stone licence is undertaken; and

- (b) ensure that the work is performed in accordance with the engineered stone control plan.
- (2) An engineered stone control plan must—
- (a) identify the work undertaken by the licence holder that requires an engineered stone licence; and
 - (b) state the hazards and risks associated with that work; and
 - (c) sufficiently describe measures to control those risks; and
- Notes**
- 1 Regulation 163 sets out the duty of an employer to control risks associated with silica dust produced or generated at a workplace. See also regulation 154.
 - 2 Subdivision 3 of Division 3 of this Part imposes duties on employers and self-employed persons to implement specific measures to control risks associated with engineered stone.
- (d) describe how the risk control measures are to be implemented; and
 - (e) be set out and expressed in a way that is readily accessible and comprehensible to the persons who use it.
- (3) If work that requires an engineered stone licence is not performed in accordance with the engineered stone control plan for that work, the employer or self-employed person must—
- (a) stop that work immediately or as soon as it is safe to do so; and
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- (b) not resume the work until the engineered stone control plan is—
 - (i) complied with; or
 - (ii) reviewed and, if necessary, revised in accordance with subregulation (4).
- (4) An engineered stone licence holder must review and, if necessary, revise the engineered stone control plan if there is an indication that risk control measures (including risk control measures required under Part 4.1 and Subdivision 3 of Division 3 of this Part) are not controlling the risks adequately, including after any incident that occurs while working with engineered stone.
- (5) An engineered stone control plan is not required if—
 - (a) a crystalline silica hazard control statement has been prepared in accordance with regulation 319D; and
 - (b) the crystalline silica hazard control statement addresses the matters required for the engineered stone control plan.

319ZG Statement of work

- (1) An engineered stone licence holder must give an employee a written statement in accordance with subregulation (2) when the employee ceases employment at the licence holder's workplace.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (2) The written statement must contain the following—
 - (a) the period during which the employee worked with engineered stone;
 - (b) a statement advising the employee to have periodical health assessments and details of the types of tests that are relevant.

Division 5—Transitional provisions— engineered stone licences

319ZH Definition in this Division

In this Division—

transition period means the period commencing on 15 November 2021 and ending on 14 November 2022.

319ZI No contravention of Division 4 of this Part during transition period or later if application pending

- (1) Despite Division 4 of this Part, an employer or a self-employed person engaged in undertaking an engineered stone process before the commencement of that Division does not contravene a provision of that Division if the employer or self-employed person does not hold an engineered stone licence during the transition period.
- (2) A person referred to in subregulation (1) may undertake an engineered stone process without an engineered stone licence during the transition period until—
 - (a) that person is granted a licence by the Authority; or

- (b) that person is refused a licence by the Authority.
 - (3) Despite subregulation (1), if a person referred to in subregulation (1) undertakes an engineered stone process without an engineered stone licence during the transition period, that person must—
 - (a) prepare an engineered stone control plan in accordance with regulation 319ZF(2) before the work is undertaken, as if the person were an engineered stone licence holder; and
 - (b) ensure that the work is performed in accordance with the engineered stone control plan, as if the person were an engineered stone licence holder; and
 - (c) review and, if necessary, revise the engineered stone control plan as if the person were an engineered stone licence holder, if there is an indication that risk control measures (including risk control measures required under Part 4.1 and Subdivision 3 of Division 3 of this Part) are not controlling the risks adequately, including after any incident that occurs while working with engineered stone.
 - (4) An employer or a self-employed person does not contravene Division 4 of this Part after the end of the transition period if—
 - (a) the employer or self-employed person applied for an engineered stone licence before the end of the transition period; and
 - (b) at the relevant time, the application has not been decided by the Authority.
-

319ZJ Requirement to apply for an engineered stone licence

- (1) An employer or a self-employed person who would, apart from the operation of this Division, be required on 15 November 2021 to hold an engineered stone licence under regulation 319Z, must apply for a licence on that day or as soon as reasonably practicable after that day.
 - (2) During the transition period, if an employer or a self-employed person becomes a person required to hold an engineered stone licence under regulation 319Z, that person must apply for a licence within 14 days after an engineered stone process is commenced at the workplace.
 - (3) If an employer or a self-employed person has applied for an engineered stone licence and, at the end of the transition period, the Authority has not made a decision to grant or refuse to grant a licence, the employer or self-employed person is exempt from the requirement to hold a licence under regulation 319Z until—
 - (a) the Authority grants the licence; or
 - (b) the Authority refuses to grant the licence.
 - (4) If an employer or a self-employed person applies for an engineered stone licence before the end of the transition period and the Authority decides to grant the licence, the Authority must specify a date on which the licence comes into force that is on or after the end of the transition period.
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319ZK Time for processing engineered stone licence application

Despite regulation 453(2)(c), if an employer or a self-employed person applies for an engineered stone licence in accordance with regulation 319ZJ during the transition period, the Authority must give the applicant a written notice stating the Authority's intention to make a decision on the application for the licence—

- (a) within 60 days of receiving the application; or
- (b) before the end of the transition period.

319ZL Waiver of application fee during transition period

If an employer or a self-employed person applies for an engineered stone licence under regulation 319ZJ before the end of the transition period, no fee is payable under regulation 451A for that application."

8 New regulation 451A inserted

After regulation 451 of the Principal Regulations
insert—

"451A Application fees—engineered stone licence

An application for an engineered stone licence must be accompanied by a fee of 20.3 fee units for each licence that is sought."

9 Matters to be satisfied before licence can be granted

In the note at the foot of regulation 452(1) of the Principal Regulations, for "licences) and Subdivision 5 (major hazard facility licences)"
substitute "licences), Subdivision 5 (major

hazard facility licences) and Subdivision 6 (engineered stone licences)".

10 Form of evidence of licence document

In regulation 456 of the Principal Regulations—

- (a) in paragraph (i), for "facility." **substitute** "facility;";
- (b) after paragraph (i) **insert**—
 - "(j) in the case of an engineered stone licence, the address of the workplace at which an engineered stone process may be undertaken."

11 New Subdivision 6 of Division 1 of Part 6.1 inserted

After regulation 472 of the Principal Regulations **insert**—

"Subdivision 6—Additional provisions in relation to an engineered stone licence

472A Restriction on who may apply for an engineered stone licence

- (1) Only an employer or a self-employed person may apply for an engineered stone licence.
- (2) An engineered stone licence can only be granted in respect of the workplace of that employer or self-employed person.

472B Additional information to be included in an engineered stone licence application

In addition to any other information required by these Regulations, a person applying for an engineered stone licence must also include the following with the application—

- (a) the workplace address at which an engineered stone process is intended to be undertaken under the licence;
- (b) a copy of a proposed engineered stone control plan;
- (c) a description of the risk control measures intended to be put in place to eliminate or reduce risks and a justification of those risk control measures;
- (d) the number of employees who might be exposed to crystalline silica dust at the workplace;
- (e) the name and address of any supplier from whom the applicant intends to purchase engineered stone;
- (f) detailed information on the type of information, instruction and training that the applicant intends to provide to employees who undertake an engineered stone process;
- (g) detailed information on the respiratory protective equipment that the applicant intends to provide to persons who undertake an engineered stone process;
- (h) a statement that information has been provided to job applicants and employees regarding the health risks associated with exposure to crystalline silica dust that satisfies the requirements of regulations 319ZB and 319ZC.

472C Additional matters to be satisfied before engineered stone licence can be granted

In addition to the requirements specified in Subdivision 1 of this Division, the Authority must refuse to grant an engineered stone licence if it is not satisfied that—

- (a) the proposed engineered stone control plan accompanying the application satisfies the requirements of Part 4.5; or
- (b) information, instruction and training has been provided, or is to be provided, to employees that satisfies the requirements of regulation 319ZC; or
- (c) information has been provided, or is to be provided, to job applicants regarding the health risks associated with exposure to crystalline silica dust that satisfies the requirements of regulation 319ZB."

12 Grounds for suspension or cancellation

- (1) In regulation 496(h)(ii) of the Principal Regulations, for "safety." **substitute** "safety;".
- (2) After regulation 496(h) of the Principal Regulations **insert**—
 - "(i) in the case of the holder of an engineered stone licence—
 - (i) that the licence holder has ceased to carry on business at the workplace address to which the licence relates;
 - (ii) that the licence holder is not complying, or has not complied, with any of the risk control measures specified in an engineered stone control plan prepared by the licence holder;

- (iii) that the licence holder has not revised an engineered stone control plan as required under regulation 319ZF(4);
- (iv) that the licence holder is not complying, or has not complied, with any of the specific risk control measures required under Subdivision 3 of Division 3 of Part 4.5."

13 Authority may grant exemptions from these Regulations

After regulation 537(1)(f) of the Principal Regulations **insert**—

"(fa) Part 4.5 (Crystalline silica); and".

14 Schedule 20—Infringement offences and infringement penalties

(1) Before item 1 in the table in Schedule 20 to the Principal Regulations **insert**—

"1AA	An offence against section 22 of the Act constituted by a contravention of regulation 319ZD(1)	2 penalty units	10 penalty units".
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(2) After item 37 in the table in Schedule 20 to the Principal Regulations **insert**—

"37A	An offence against regulation 319K(1)	2 penalty units	10 penalty units
37B	An offence against regulation 319K(2)	2 penalty units	10 penalty units
37C	An offence against regulation 319N	1·2 penalty units	6 penalty units
37D	An offence against regulation 319ZA(1)	2 penalty units	10 penalty units
37E	An offence against regulation 319ZA(2)	1·2 penalty units	6 penalty units
37F	An offence against	2 penalty units	10 penalty units

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	regulation 319ZA(3)		
37G	An offence against regulation 319ZE(1)	1·2 penalty units	6 penalty units".

Endnotes

¹ Reg. 4: S.R. No. 22/2017 as amended by S.R. Nos 71/2018, 176/2018, 71/2019, 84/2020, 106/2020, 141/2020, 8/2021, 88/2021 and 112/2021.

Fee Units

These Regulations provide for fees by reference to fee units within the meaning of the **Monetary Units Act 2004**.

The amount of the fee is to be calculated, in accordance with section 7 of that Act, by multiplying the number of fee units applicable by the value of a fee unit.

The value of a fee unit for the financial year commencing 1 July 2021 is \$15.03. The amount of the calculated fee may be rounded to the nearest 10 cents.

The value of a fee unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a fee unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.

Penalty Units

These Regulations provide for penalties by reference to penalty units within the meaning of section 110 of the **Sentencing Act 1991**. The amount of the penalty is to be calculated, in accordance with section 7 of the **Monetary Units Act 2004**, by multiplying the number of penalty units applicable by the value of a penalty unit.

The value of a penalty unit for the financial year commencing 1 July 2021 is \$181.74.

The amount of the calculated penalty may be rounded to the nearest dollar.

The value of a penalty unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a penalty unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.

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Endnotes

Table of Applied, Adopted or Incorporated Matter

The following table of applied, adopted or incorporated matter is included in accordance with the requirements of regulation 5 of the Subordinate Legislation Regulations 2014.

Statutory rule provision	Title of applied, adopted or incorporated document	Matter in applied, adopted or incorporated document
Regulation 5 (inserts definition of <i>Dust Class H Vacuum</i> into regulation 5 of the Occupational Health and Safety Regulations 2017)	AS/NZS 60335.2.69:2017 Household and similar electrical appliances—Safety—Part 2.69: Particular requirements for wet and dry vacuum cleaners, including power brush, for commercial use, published by Standards Australia on 30 June 2017	The whole
Regulation 5 (inserts definition of <i>respiratory protective equipment</i> into regulation 5 of the Occupational Health and Safety Regulations 2017)	AS/NZS 1716:2012—Respiratory protective devices, published by Standards Australia on 13 February 2012	The whole