

COMMUNIQUÉ

Meeting of Work Health and Safety Ministers

22 March 2024

1. Commonwealth, State and Territory Work Health and Safety (WHS) Ministers met today to agree a number of key implementation matters associated with a prohibition on the use of engineered stone benchtops, panels and slabs and to endorse a stronger regulatory framework to manage the risk of exposure to respirable crystalline silica from other materials and products.
2. The meeting was chaired by the Hon Tony Burke MP, Commonwealth Minister for Employment and Workplace Relations.

Implementation of the prohibition on the use of engineered stone benchtops, panels and slabs

3. Ministers agreed draft amendments to the model WHS laws to give effect to the prohibition on the use of engineered stone from 1 July 2024. These amendments:
 - make clear that the prohibition applies to engineered stone benchtops, panels and slabs,
 - specify that all sintered stone and porcelain products (including benchtops, panels and slabs) are excluded from the prohibition, and for the avoidance of doubt, clarify that porcelain products and sintered stone for this purpose are products that do not contain resin, and
 - clarify that finished engineered stone products (such as jewellery, garden ornaments, sculptures, kitchen sinks) which do not require processing or modification, and pose minimal risk to the health and safety of workers, are not prohibited.
4. Ministers noted Safe Work Australia's proposed framework for exemptions from the prohibition, which would be managed by WHS regulators through an application process requiring compelling evidence that a product can be worked with safely. To ensure a nationally consistent approach, the framework would include arrangements for the mutual recognition of exemptions by jurisdictions, and will operate consistently with the existing National Exemption Framework published on the Safe Work Australia website.
5. Safe Work Australia will develop common criteria for WHS regulators to use for the grant, refusal and variation of exemptions, with consideration of appropriate consultation with employer and employee representatives and technical experts. To ensure consistency in the decisions to exempt products, Safe Work Australia will also develop an oversight process for Safe Work Australia Members about the basis of decisions to issue an exemption as part of the national framework for exempting engineered stone products.
6. Safe Work Australia will provide advice relating to further development of the exemption framework to WHS Ministers for consideration by the end of April 2024.

Benchtop, panels and slabs made from alternative materials

7. Ministers acknowledged the evidence set out in Safe Work Australia's Decision Regulation Impact Statement: *Prohibition on the use of engineered stone* (Decision RIS) that notes the health risks associated with the dust produced when processing benchtops, panels and slabs composed of alternative materials (which may contain or be free from crystalline silica) will require further consideration.
8. Ministers noted that processing alternative products containing crystalline silica will be subject to the stronger regulations on crystalline silica processes, which include a prohibition on uncontrolled processing. Businesses also have existing duties to manage the risks to workers and others in the workplace from exposure to harmful airborne chemicals.
9. Ministers condemned any attempt by companies to rebrand engineered stone as another product to intentionally avoid the prohibition, noting the continued risk that this poses to worker health and safety.
10. Ministers encouraged WHS regulators to take strong compliance and enforcement action in relation to the prohibition, including to address instances of rebranding engineered stone as a different product.
11. Ministers agreed that Safe Work Australia will come back to Ministers by the end of April 2024 with urgent advice on the health risks of sintered stone, and whether any additional safeguards are necessary to address the issue of rebranding.
12. Ministers agreed that Safe Work Australia review the operation of the prohibition to ensure it is operating effectively. As part of this process, Safe Work Australia has been asked to review the health risks to workers associated with processing slabs, panels and benchtops made from alternative materials, which may contain or be free from crystalline silica. The review is to be completed by 31 July 2025.

Transitional arrangements for contracts for engineered stone benchtops, panels and slabs

13. Ministers agreed jurisdictions may adopt a transition period for contracts entered into prior to the announcement of the prohibition. This means that work that involves the supply, installation or processing of engineered stone benchtops, panels and slabs between 1 July 2024 and 31 December 2024 would be exempt from the prohibition provided the work is carried out under, or for the purposes of, a contract that provides for the installation of engineered stone entered into on or before 31 December 2023. Activities undertaken during this period must be appropriately controlled and will be subject to stronger WHS regulations for high-risk crystalline processes, also agreed at the meeting.
14. Ministers encouraged businesses and consumers to explore alternative products under eligible contracts as soon as possible, and approach any required contract negotiations in good faith, to minimise the use of engineered stone benchtops, panels and slabs during this transitional period.

Legacy engineered stone

15. Ministers considered a national framework for the removal, disposal, repair or minor modification of legacy engineered stone developed by Safe Work Australia and agreed a notification framework be adopted in the model WHS laws. Under this framework, businesses which plan to undertake permitted work with legacy engineered stone will be required to notify WHS regulators and failure to provide the required information will constitute an offence.
16. Ministers noted the need for further work to be undertaken by Safe Work Australia to finalise the framework as a priority and agreed by majority that, under this framework, persons conducting a business or undertaking would need to demonstrate compliance with notification requirements upon request.

Disposal of engineered stone

17. The prohibition of engineered stone will allow for the disposal of installed and uninstalled engineered stone benchtops, panels and slabs, requiring processing to be controlled. The disposal of engineered stone held in stock will be in line with existing jurisdictional waste management requirements.

Regulation of other crystalline silica processes

18. Ministers reaffirmed their commitment to preventing workers and others at the workplace from exposure to respirable crystalline silica across all industries and agreed the policy parameters for a stronger regulatory framework for workers processing crystalline silica-containing materials and products. This includes specific requirements for persons conducting a business or undertaking carrying out high risk crystalline silica processes to:
 - develop a Silica Risk Control Plan aimed at identifying hazards associated with crystalline silica processes and measures to control these risks;
 - provide additional training for workers or others likely exposed to the risks associated with high risk crystalline silica processes;
 - undertake air and health monitoring for workers; and
 - report workplace exposure standard exceedances to the relevant WHS regulator.
19. Ministers agreed that all crystalline silica processes are to be considered high risk unless determined otherwise by a person conducting a business or undertaking through a risk assessment, and for minimum requirements in relation to risk assessments be set out in these regulations. These minimum requirements will include an assessment of whether the airborne concentration of respirable crystalline silica is reasonably likely to exceed half the workplace exposure standard.
20. In addition, to better protect workers from the risks of respirable crystalline silica, Ministers also agreed to the prohibition of uncontrolled processing of all crystalline silica substances, across all industries.

21. Ministers confirmed that these strengthened regulations, which include the prohibition of uncontrolled processing of all crystalline silica substances, will apply to porcelain products and sintered stone.

Review

22. Ministers agreed Safe Work Australia finalise a review of the prohibition by 31 July 2025 to ensure it is working effectively to protect workers from exposure to respirable crystalline silica and to identify and assess any unintended consequences. This process includes Ministers' request for Safe Work Australia to consider the health risks posed to workers from processing slabs, panels and benchtops made from alternative products which may contain or be free from crystalline silica.

Next steps

23. Ministers agreed that Safe Work Australia work with the Australasian Parliamentary Counsel's Committee to finalise amendments to the model WHS Regulations that give effect to the prohibition, exemption provisions, transitional arrangements, and legacy management framework, by the end of April 2024. This will ensure jurisdictions are able to expedite adoption of these arrangements in their respective WHS laws ahead of 1 July 2024.

24. Ministers noted additional time may be required to settle arrangements and assessment criteria for the exemption framework. Safe Work Australia will provide further advice relating to further development of the national framework for exempting engineered stone products to WHS Ministers for consideration by the end of April 2024.

25. Ministers also agreed that Safe Work Australia work with the Australasian Parliamentary Counsel's Committee to finalise the amendments to the model WHS Regulations for crystalline silica processes, and for these amendments to be provided to Ministers by the end of April 2024.

26. Once amendments are finalised, Ministers agreed to implement these regulations by 1 September 2024 for all work with substances containing at least 1 per cent crystalline silica. In the interim, regulations prohibiting uncontrolled processing of engineered stone, sintered stone and porcelain benchtops, panels and slabs will continue to apply.

27. Ministers agreed further guidance be developed by Safe Work Australia to support businesses in implementing the new regulations, particularly to assist in understanding and implementing the prohibition and the safety frameworks applicable to alternative products, as well as the development of any codes of practice.

28. Further detail on the agreed amendments to the model WHS Regulations and agreed policy parameters for a national framework for working with legacy engineered stone, exemption framework for the prohibition, engineered stone amendments and regulation of crystalline silica processes, will be available on the [Safe Work Australia](#) in coming weeks.

29. Ministers agreed to meet again in May 2024.