

**WORK HEALTH AND SAFETY (REVOCATION OF THE MANAGING
THE RISKS OF RESPIRABLE CRYSTALLINE SILICA FROM
ENGINEERED STONE IN THE WORKPLACE CODE OF PRACTICE
2022) INSTRUMENT 2024**

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment and Workplace Relations
under section 274 of the *Work Health and Safety Act 2011* (Cth)

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Work Health and Safety (Revocation of the Managing the Risk of Respirable Crystalline Silica from Engineered Stone in the Workplace Code of Practice 2022) Instrument 2024* (the revocation instrument) would revoke the *Work Health and Safety (Managing the Risk of Respirable Crystalline Silica from Engineered Stone in the Workplace) Code of Practice 2022* (Code of Practice). The Code of Practice is being revoked because some of its content will be incorrect from 1 July 2024 when amendments to the *Work Health and Safety Regulations 2011* (the WHS Regulations) that implement the engineered stone prohibition commence.

The *Work Health and Safety Act 2011* (Cth) (WHS Act) and the WHS Regulations provide the primary work health and safety legislation for the Commonwealth jurisdiction. They are based on model laws developed by Safe Work Australia (SWA) under the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*. The model codes of practice form the third tier of laws in the WHS framework. All jurisdictions apart from Victoria have implemented the model WHS laws, including most of the model codes of practice.

SWA published the model Code of Practice *Managing the risks of respirable crystalline silica from engineered stone in the workplace* (model Code). The model Code provides practical guidance on how to achieve the standards required under work health and safety laws, as well as effective ways to identify and manage the risks of working with respirable crystalline silica from engineered stone. A model Code must be adopted by a jurisdiction before it has any effect. It then becomes an ‘approved code of practice’ in the relevant jurisdiction. This usually involves the WHS minister approving the code. The Commonwealth adopted the model Code in 2022.

A code of practice is not directly enforceable as a law, but it may be relied upon in a WHS prosecution to determine what is reasonably practicable in the relevant circumstances. Section 275 of the WHS Act provides that an approved code of practice is admissible in proceedings and that the court may have regard to the code as evidence of what is known about a particular hazard or risk, risk assessment or risk control to which the code relates. However, nothing prevents a person from introducing evidence of compliance in a way that is different from the

code but provides a standard of work health and safety that is equivalent to or higher than the standard required in the code.

Section 274 of the WHS Act provides that the Minister may revoke an approved code of practice. In accordance with paragraph 273B(1)(d) of the WHS Act, this instrument is a legislative instrument within the meaning of the *Legislation Act 2003* (Legislation Act).

When the Code of Practice is revoked, persons conducting business or undertaking (PCBUs) will be able to refer to guidance from SWA about how to perform work safely. In March 2024, WHS ministers tasked SWA with developing further guidance to support PCBUs to understand the engineered stone prohibition and other amendments to the model WHS Regulations in relation to processing CSS.

The expected guidance will:

- (a) assist PCBUs and workers understand and comply with the prohibition on the manufacture, supply, installation and processing of engineered stone benchtops, panels and slabs, including the definition of engineered stone and the transitional arrangements for the prohibition;
- (b) for PCBUs carrying out work that is exempt from the prohibition – including the removal, disposal, repair or minor modification of legacy engineered stone benchtops, panels and slabs, and
- (c) to allow PCBUs to prepare for the 1 September 2024 commencement of further regulation of CSS across all industries.

Details of the revocation instrument are set out in [Attachment A](#).

CONSULTATION

Prior to revoking the Code of Practice, section 274(2) of the WHS Act requires the Minister to be satisfied that the revocation instrument was developed by a process that involved consultation with the Governments of the Commonwealth and each State and Territory, unions and employer organisations.

SWA recommended revoking the Code of Practice to its members which consists of the Commonwealth, state and territory governments, Australian Council of Trade Unions, Australian Chamber of Commerce and Industry and the Australian Industry Group. All the members agreed.

SUNSETTING

The *Legislation (Exemptions and Other Matters) Regulation 2015* at regulation 12, item 68, provides that an instrument made under subsection 274(1) of the WHS Act is a legislative

instrument that is not subject to sunseting. The revocation instrument is a legislative instrument made under s 274(1) of the WHS Act and is therefore exempt.

Commonwealth approved codes of practice (also made under subsection 274(1)) are exempt from sunseting because they form part of an intergovernmental scheme for a nationally consistent framework to secure the health and safety of workers and workplaces. The Commonwealth and all states and territories formally committed to the harmonisation of work health and safety laws by signing the *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*. As such, the codes form part of an intergovernmental scheme and it is appropriate to exempt them from sunseting.

REGULATION IMPACT STATEMENT

The Office of Impact Analysis advised that a Regulation Impact Statement is not required for this instrument (Reference Number: OIA24-07600).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is set out in Attachment B.

Section 1 – Name

1. This section provides that the title of the instrument is *Work Health and Safety (Revocation of the Managing the Risk of Respirable Crystalline Silica from Engineered Stone in the Workplace Code of Practice 2022) Instrument 2024*.

Section 2 – Commencement

2. This section sets out when the provisions of the instrument commence. The instrument commences on 30 June 2024.

Section 3 – Authority

3. This section provides that the instrument is made under subsection 274(1) of the *Work Health and Safety Act 2011*.

Section 4 – Schedules

4. This section provides that each instrument that is specified in a Schedule to the instrument is repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 – Repeals

Work Health and Safety (Managing the Risks of Respirable Crystalline Silica from Engineered Stone in the Workplace) Code of Practice 2022

Item 1 – The Whole of the Instrument

5. This item repeals the *Work Health and Safety (Managing the Risks of Respirable Crystalline Silica from Engineered Stone in the Workplace) Code of Practice 2022*.

Statement of Compatibility with Human Rights

Issued by the Minister for Employment and Workplace Relations

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Work Health and Safety (Revocation of the Managing the Risk of Respirable Crystalline Silica from Engineered Stone in the Workplace Code of Practice 2022) Instrument 2024

This Disallowable Legislative Instrument is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Work Health and Safety (Revocation of the Managing the Risk of Respirable Crystalline Silica from Engineered Stone in the Workplace Code of Practice 2022) Instrument 2024* (the revocation instrument) would revoke the *Work Health and Safety (Managing the Risk of Respirable Crystalline Silica from Engineered Stone in the Workplace) Code of Practice 2022* (Code of Practice). The Code of Practice is being revoked because some of its content will be incorrect from 1 July 2024 when amendments to the *Work Health and Safety Regulations 2011* (the WHS Regulations) implementing the engineered stone prohibition commence.

The *Work Health and Safety Act 2011* (the WHS Act) and the *Work Health and Safety Regulations 2011* (the WHS Regulations) provide the primary work health and safety legislation for the Commonwealth jurisdiction. They are based on model laws developed by Safe Work Australia (SWA) under the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*. The model codes of practice form the third tier of laws in the WHS framework. All jurisdictions apart from Victoria have implemented the model WHS laws, including most of the model codes of practice.

The Code of Practice is not directly enforceable as a law, but it may be relied upon in a WHS prosecution to determine what is reasonably practicable in the relevant circumstances. Section 275 in the WHS Act provides that an approved code of practice is admissible in proceedings and that the court may have regard to the code as evidence of what is known about a particular hazard or risk, risk assessment or risk control to which the code relates. However, nothing prevents a person from introducing evidence of compliance in a way that is different from the code but provides a standard of work health and safety that is equivalent to or higher than the standard required in the code.

When the Code of Practice is revoked persons conducting business or undertaking (PCBUs) will be able to refer to guidance from SWA about how to perform work safely. In March 2024, WHS ministers tasked SWA with developing further guidance to support PCBUs to understand the engineered stone prohibition and other amendments to the model WHS Regulations in relation to processing CSS.

Human rights implications

This disallowable Legislative Instrument engages the right to the enjoyment of just and favourable conditions of work under Article 7 of the International Covenant on Economic Social and Cultural Rights (ICESCR).

Rights to enjoyment of just and favourable conditions of work

Article 7 of the ICESCR provides that everyone has the right to the ‘enjoyment of just and favourable conditions of work, which ensure, in particular...[s]afe and healthy working conditions’.

The content of the right to just and favourable conditions of work can be informed by specific obligations in treaties of the International Labour Organization, including, the *Occupational Safety and Health Convention 1981* (No. 155) which requires the adoption of a coherent national policy on occupational safety, occupational health and the working environment.

The prevention of occupational diseases is a fundamental aspect of the right to just and favourable conditions of work. Its realisation requires the adoption of a national policy for the prevention of work-related diseases and deaths by minimising hazards in the working environment and ensuring broad participation in its formulation, implementation and review, of workers and employers and their representative organisations.

Australia complies with its obligation under Article 7 of the ICESCR through the harmonised system of Commonwealth, state and territory WHS laws (including the Principal Regulations).

Workplace exposure to respirable crystalline silica (RCS) is a serious issue threatening the lives of Australian workers. The increase in silicosis and other silica-related occupational diseases has led to urgent national reform. Engineered stone contains crystalline silica, and when it is processed by cutting, grinding, trimming, sanding, polishing or drilling, dust containing RCS is released. RCS is also generated during mechanical processing materials containing crystalline silica, such as quarrying, tunnelling, crushing, cutting, drilling, grinding, or sanding. Other common material containing crystalline silica include natural stone, bricks, pavers, cement, grout, mortar and tiles. Inhaling RCS can cause silicosis and other silica-related diseases. Silicosis can cause permanent disability and death and has no cure except for lung transplantation.

While the instrument revokes the Code of Practice which provides practice guidance to PCBUs, SWA will develop guidance:

- (a) to assist PCBUs and workers understand and comply with the prohibition on the manufacture, supply, installation and processing of engineered stone benchtops, panels and slabs, including the definition of engineered stone and the transitional arrangements for the prohibition;
- (b) for PCBUs carrying out work that is exempt from the prohibition – including the removal, disposal, repair or minor modification of legacy engineered stone benchtops, panels and slabs; and
- (c) to allow PCBUs to prepare for the 1 September 2024 commencement of further regulation of CSS across all industries.

There is an intention to develop a new model Code of Practice which will reflect the prohibition and new WHS requirements. In the interim, the guidance published by SWA will assist businesses and workers understand and comply with the new regulations. The new guidance will prevent any gap in practical guidance and continue to promote the right to safe and healthy working conditions.

Conclusion

This Legislative Instrument is compatible with human rights because it seeks to promote the right to safe and healthy working conditions by clarifying and improving the Commonwealth WHS laws. To the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Minister for Employment and Workplace Relations, the Hon Tony Burke MP