

**WORK HEALTH AND SAFETY AMENDMENT (PENALTIES AND
ENGINEERED STONE AND CRYSTALLINE SILICA SUBSTANCES)
REGULATIONS 2024**

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment and Workplace Relations
under section 276 of the *Work Health and Safety Act 2011* (Cth)

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Work Health and Safety Amendment (Penalties and Engineered Stone and Crystalline Silica Substances) Regulations 2024* (Amendment Regulations) amend the *Work Health and Safety Regulations 2011* (Cth) (Principal Regulations) to adopt recent amendments to the Model Work Health and Safety Regulations (model Regulations) to:

- increase monetary penalty levels,
- prohibit the use of engineered stone benchtops, panels and slabs, and
- provide for stronger regulation of the processing of materials containing crystalline silica across all industries.

Subsection 276(1) of the *Work Health and Safety Act 2011* (Cth) (WHS Act) provides that the Governor-General may make regulations in relation to any matter relating to work health and safety, and any matter or thing required or permitted by the WHS Act to be prescribed or that is necessary or convenient to be prescribed to give effect to the WHS Act. In addition, subparagraphs 276(3)(h)(i)-(v) provide that the regulations may prescribe a tier E to I monetary penalty as the penalty for an offence under the regulations.

The WHS Act and the Principal Regulations provide the primary WHS legislation for the Commonwealth jurisdiction and are based on model WHS laws (model laws) developed by Safe Work Australia (SWA) under the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*. The model laws have been implemented in all jurisdictions across Australia, except for Victoria which has laws that are very similar.

Schedule 1 - Penalties and miscellaneous amendments

The Amendment Regulations amend penalty provisions to align with recent model amendments. The Amendment Regulations replace monetary penalty amounts with references to a penalty tier. This ensures indexing applies to all monetary penalties in the Commonwealth WHS legislation. The Amendment Regulations also make several technical amendments to move existing notes and examples for consistency with current drafting practice.

A technical amendment is also made to regulation 55C to clarify that where identified, psychosocial controls must be implemented by a person conducting a business or undertaking (PCBU).

Schedules 2 and 3 - the prohibition on the use of engineered stone benchtops, panels and slabs, and regulation of crystalline silica substances

The Amendment Regulations implement the prohibition on the use, supply and manufacture of engineered stone in the Commonwealth work health and safety jurisdiction and introduce a stronger regulatory framework for work with all crystalline silica substances (CSS) to protect workers from exposure to respirable crystalline silica (RCS) across all industries.

A substantial rise in silicosis case numbers and other silica-related diseases has led to urgent national action to reduce workers' exposure to RCS. Dust containing RCS is generated during mechanical processing of materials containing crystalline silica such as tunnelling, quarrying, crushing, cutting, drilling, grinding or sanding. When inhaled into the lungs, RCS can cause silicosis and other silica-related diseases. Silicosis can cause permanent disability and death and has no cure except for lung transplantation.

The National Dust Diseases Taskforce (NDDT) was established in 2019, and in June 2021 submitted a final report to the then Minister for Health and Aged Care recommending a national approach to the prevention, early identification, control and management of silicosis and other occupational dust diseases in Australia. The NDDT's Final Report recommended various reforms to better protect people from the risks of working with engineered stone and in other silica dust generating industries. Further, it stated that if industry and government did not demonstrate that engineered stone can be used safely within the next three years, immediate action must be taken to ban the product. The All of Government's response, released in April 2022, noted the recommendation, reflecting work underway by SWA on policies to improve worker safety in affected industries and conducted extensive public consultation on managing the risks of RCS at work. In August 2022, SWA published the *Decision Regulation Impact Statement: Managing respirable crystalline silica at work* (Silica DRIS). The Silica DRIS recommended stronger regulations for high-risk crystalline silica processes (CSP) for all materials (including legacy engineered stone) across all industries.

The Amendment Regulations implement this recommendation by establishing a stronger regulatory framework for all CSS. The Amendment Regulations include a prohibition on uncontrolled processing of CSS within the workplace and requirements for PCBUs carrying out CSP processing of CSS to:

- develop a Silica Risk Control Plan;
- provide additional training for workers;
- undertake air and health monitoring for workers; and
- report exceedances of the workplace exposure standard for RCS to the relevant WHS regulator.

The Silica DRIS also led to further analysis of options to prohibit the use of engineered stone. The vast majority of silicosis cases identified in recent years are in engineered stone workers.

These workers get sick sooner, and experience faster disease progression and higher mortality than other workers exposed to respirable crystalline silica or silica dust. In October 2023, SWA published the *Decision Regulation Impact Statement: Prohibition on the use of Engineered Stone* (Engineered Stone DRIS) and recommended banning the use, supply and manufacture of all engineered stone under the model laws, with limited exceptions, to protect engineered stone workers from the risk of preventable and devastating disease.

A range of options were considered in the Engineered Stone DRIS including the status quo, a prohibition on high silica content engineered stone, and licencing schemes. These options were evaluated with reference to evidence about the scope of the problem, scientific evidence, and consideration of measures taken to date in Australia, including increased compliance and enforcement activity. The Engineered Stone DRIS found that less restrictive options would not be effective in protecting workers and the only way to ensure another generation of engineered stone workers do not go on to develop silicosis is a complete prohibition. In particular:

- Expert analysis shows dust from engineered stone poses unique hazards, and there is no evidence that engineered stone with a lower silica content (e.g. 40% or 10%) is safer to work with. There were also concerns that permitting work with lower silica products may encourage greater non-compliance because products may be viewed as ‘safe’.
- There is evidence of continued non-compliance with WHS laws by PCBU's and workers in the engineered stone industry, despite significant education and awareness-raising activities as well as compliance and enforcement action by WHS regulators.

All Australian governments agreed to Safe Work Australia's recommendation to ban the use of all engineered stone due to the unacceptable risk it poses to workers. The ban will be implemented in the laws of all states and territories and is mirrored in the Commonwealth work health and safety jurisdiction in these Amendment Regulations. This national ban will be the first of its kind in the world.

These amendments would align the Commonwealth WHS laws with the model WHS laws and protect the health and safety of all workers who carries out work with CSS.

Sunsetting

The *Legislation (Exemptions and Other Matters) Regulation 2015* at regulation 12, item 68, provides that a regulation made under WHS Act is a legislative instrument that is not subject to sunseting. The Amendment Regulations is a legislative instrument made under the WHS Act and is therefore exempt.

Commonwealth WHS regulations 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. They are part of a system of nationally harmonised work health and safety laws.

Details of the Amendment Regulations are set out in [Attachment A](#).

CONSULTATION

Section 17 of the *Legislation Act 2003* requires the Governor General to be satisfied that any consultation considered to be appropriate and that is reasonably practicable to undertake, has been undertaken before making the instrument.

The model amendments were developed by SWA. State and territory regulators, relevant government agencies, industry and peak bodies were consulted in the development of these policies. SWA also undertook public consultation from 2 March 2023 until 2 April 2023 on the prohibition on the use of engineered stone. Workers, businesses, employer and worker representatives, WHS professionals, medical professionals, academics, government agencies, industry and peak bodies made submissions. Although some stakeholders argued for the status quo a significant majority supported a prohibition on engineered stone.

Comcare, the WHS Regulator for the Commonwealth jurisdiction, was also consulted during the development of the model measures and about the approach to transitional arrangements in the Commonwealth.

The WHS Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

REGULATION IMPACT STATEMENT

The Office of Impact Analysis (OIA) advised that a Regulation Impact Statement is not required for the Amendment Regulations (Reference Number OIA24-07547).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The Amendment Regulations are 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](#).

NOTES ON SECTIONS

In these notes on sections, the following abbreviations are used.

Abbreviation	Definition
Closing Loopholes	<i>Fair Work Amendment (Closing Loopholes) Act 2023</i>
WHS	work health and safety
WHS Act	<i>Work Health and Safety Act 2011</i>
WHS Amendment Act	<i>Work Health and Safety Amendment Act 2023</i>
Principal Regulations	<i>Work Health and Safety Regulations 2011</i>
Amendment Regulations	<i>Work Health and Safety Amendments (Penalties and Engineered Stone and Crystalline Silica Substances) Regulations 2024</i>
PCBU	person conducting a business or undertaking

Section 1 – Name

1. This section provides that the title of the instrument is *Work Health and Safety Amendment (Penalties and Engineered Stone and Crystalline Silica Substances) Regulations 2024*.

Section 2 – Commencement

2. The table in this section sets out when the provisions of the instrument commence. The instrument commences on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

3. This section provides that the instrument is made under 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 amended or 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 – Amendments

5. Schedule 1 makes two classes of amendments across penalty provisions in the Principal Regulations. Penalty levels are updated in line with model amendments by replacing monetary penalties with tiers to allow for future indexing. The location of existing notes and examples within penalty provisions are moved to align with current drafting practice.
6. The Model Work Health and Safety Legislation Amendment (Offences and Penalties) 2023 developed by SWA amended the penalties scheme in both the model *Work Health and Safety Act* (model Act) and model *Work Health and Safety Regulations*. Recommendation 22 of the *Review of the model Work Health and Safety laws: Final report* found that penalties in the model laws had not increased since publication and needed to be increased to maintain relative value to ensure they remain effective and appropriate. Schedule 4 to the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (the Closing Loopholes Act) adopted and implemented those model amendments to the WHS Act. The *Work Health and Safety Amendment (Penalties and Engineered Stone and Crystalline Silica Substances) Regulations 2024* (the Amendment Regulations) adopt and implement the model amendments to the *Work Health and Safety Regulations 2011* (Principal Regulations).
7. Part 6 of Schedule 4 to the Closing Loopholes Act added a new Schedule 4 to the WHS Act setting out new monetary penalty tiers and an annual indexing mechanism. The number of monetary penalty provisions in the WHS Act and the Principal Regulations meant it was considered impractical to modify each penalty provision annually. The Amendment Regulations amend penalty provisions to replace monetary penalty amounts with references to the relevant penalty tier. This ensures indexing applies to all monetary penalties in the WHS Act and Principal Regulations.
8. The pre-existing notes which are relocated by amendments in Schedule 1 identify the operation of section 12F of the WHS Act for the reader. Section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated. The reference in section 12F to the Act includes the Principal Regulations. These notes do not introduce new offences with strict liability.

Explanation about strict liability in the Principal Regulations

9. Due to the operation of subsection 12F(2) of the WHS Act, strict liability applies to the offences in the Amendment Regulations. Most offences in the WHS Act and Principal Regulations include strict liability elements or are strict liability. Including strict liability as a feature of offences was carefully considered when the WHS Act was first introduced as the presumption of innocence can be seen to be impinged by removing the requirement for the prosecution to prove fault in relation to one or more physical elements of an offence.
10. WHS offences arise in a regulatory context where, for reasons such as public safety, and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. The offences also arise in a context where a defendant can reasonably be expected, because of their professional involvement, to know the requirements of the law,

and the mental, or fault, element can justifiably be excluded. The rationale is that people who owe WHS duties such as employers, persons in control of aspects of work, and designers and manufacturers of work structures and products, as opposed to members of the general public, can be expected to be aware of their duties and obligations to workers and the wider public.

11. The application of strict liability to a particular element means that the prosecution is not required to prove fault in relation to that matter. However, as per paragraph 6.1(2)(b) of the *Criminal Code Act 1995* (Criminal Code), the defence of mistake of fact under section 9.2 of the Criminal Code would be available in relation to these elements. This means where the accused produced evidence of an honest and reasonable, but mistaken, belief in the existence of certain facts which, if true, the conduct would not have constituted the offence, it will be incumbent on the prosecution to establish that there was not an honest and reasonable mistake of fact.
12. The legitimate aim of strict liability for WHS offences, is to ensure defendants operating in the WHS regulatory context are held accountable for breaches of their positive duties to ensure a safe and healthy workplace, is proportionate to any limitation it places on the presumption of innocence.

Part 1– Tier G monetary penalty offences

Division 1 – Amendments of listed provisions

13. Part 1 amends several penalty provisions in the Principal Regulations to replace the existing monetary amount with the tier G monetary penalty. The location of existing notes and examples within these provisions are moved for consistency with current drafting practice.
14. The note provides that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated. The reference in section 12F of the Act includes these Amendment Regulations and the Principal Regulations.
15. The use of strict liability in WHS offences is explained above.

Item 1 Amendments to listed provisions- tier G penalties

16. This item amends regulations 19, 22(3), 46(2) to (4), 47, 50(3), 66(2) and (5), 68(1), 70(1) and (2), 77(5), 85(1) to (3), 149(1), 150(1), 151, 162(4), 165(1), 176(2), 182(4)195, 196, 198, 200, 213(1), 224(1) and (2), 235(2), 236(1) to (3), 239(1) and (2), 253, 254, 294(1), 295 (1) and (2),296, 298(1), 301, 302, 303(3), 304(2) and (3), 308, 310, 311(1) and (2), 313(3), 316, 317(1), 327, 337(1) and (2), 338(1), 344(3), (5) and (6), 346(3), 347(3), 369, 371(2), 372(1), 373, 385, 387(3), 388(2) and (3), 398(2), 401(1), 403(1) and (3), 409(1), 410, 415(2), 425(1) and (2), 426, 427(1) and (2), 428, 429(5), 430(1), 432(5), 438(1) and (2), 439, 446(1) and (3), 451(5), 454(2) and (3), 455(2) and (3), 464(3), 465(1) to (3), 466(1) and (3), 482(3), 529,

547(2), 548(2), 551, 553(4) and (5), 555(5), 560, 562(2), 567(4), 576(1). Each penalty would be amended to provide for a maximum tier G monetary penalty instead of the current monetary amount.

Division 2 – Other amendments

Item [2] Subregulation 150(2) (penalty and notes)

Item [3] Regulations 187 and 188 (penalty and notes)

Item [4] Subregulation 304(4) (penalty and notes)

Item [5] Regulation 312 (penalty and notes)

Item [9] Subregulation 557(8) (penalty and notes)

Item [10] Regulation 563 (penalty and notes)

Item [11] Regulation 570 (penalty and notes)

17. These items amend several penalty provisions in the Principal Regulations to replace the existing monetary amount with the tier G monetary penalty. The location of existing notes within these provisions are moved for consistency with current drafting practice.

Item [6] Regulation 336 (penalty, examples and note)

Item [7] Regulation 433 (penalty, example and note)

Item [8] Regulation 448 (penalty, example and note)

18. These items amend several penalty provisions in the Principal Regulations to replace the existing monetary amount with the tier G monetary penalty. The location of existing notes and examples within these provisions are moved for consistency with current drafting practice.

Part 2– Tier E monetary penalty offences

Division 1 – Amendments of listed provisions

19. Part 2 amends several penalty provisions to replace the existing monetary amount with the tier E monetary penalty. The location of existing notes and examples within these provisions are moved for consistency with current drafting practice.

20. The note provides that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated. The reference in section 12F of the Act includes these Amendment Regulations.

21. The use of strict liability in WHS offences is explained above.

Item [12] Amendments of listed provisions – tier E penalties

22. This item amends regulations 39(2) and (3), 40, 41(1) and (2), 42(1) and (2), 43(1), (2) and (4), 45, 48(2), 49, 50(1), 53(1), 55(2), 57(2), 58(2), 59(1) to (6), 61(1) to (8), 64(2), 65, 67(1) and (4), 69, 71(1) and (2), 72(1) and (2), 73, 74(1), 75(2), 76(1), 78(3) and (4), 79(2), 80(2) to (4), 84(1), 154, 155(2), 156, 157(1), 158(1), 159, 160, 161(1) and (2), 163(1), 164(2), 166(1), 168(1) and (2), 178(1), 179(1) and (2), 183(1) and (3), 184A(1), 189(2) to (6), 190(1) and (2), 191(1) and (2), 192(2), 193(1), 194(1) and (2), 197, 199(1) and (2), 201(2), 202(2), 204(1) to (5), 205, 206(1) to (3), 207, 208(2) to (5), 209, 210(1) and (2), 211(1) and (2), 212(2), 215(2) to (5), 216(1), 218(1) and (2), 219(2) to (7), 222(2) and (3), 223(2) to (6), 225(2) to (4), 231, 232, 233, 234(2), 238(1) and (2), 240(1), 241(1), 299(1), 300(1) and (2), 306(1) and (3), 309(1), 329, 330(1), (3) and (4), 331(2), 332(2), 333, 334, 335(1), 339(1) and (3), 340(1) and (2), 341, 342(1), (2) and (3), 343, 344(1), 347(1), 348(1), (4) and (6), 349(1), 350(1), 352, 353(2), 354(1), 355, 356(1) and (2), 357(1) to (3), 358, 359(1) to (3), 361(2) and (3), 362(2), 363(1), 365(2), 366(2) and (3), 367(3), 370, 371(1), 374(1), 375, 376, 377, 379(1), 389(2), 391(2), 395(1) and (2), 396, 397(1) and (2), 398(1), 399(1) and (2), 400(3), 402(1), 405(1) and (2), 406, 407(1) and (2), 408(1) and (2), 411(1), 412, 413, 414, 415(1), 416(2) and (3), 417(2) and (3), 419(1), 420(2), 422(1), 424, 429(2) and (3), 432(2) and (3), 434, 435(1) and (3), 436, 437(1) and (2), 440(1), 441, 442, 443, 445(1), 449, 450, 451(2) and (3), 452(3), 453(1), 456(3), 457, 458(1) and (3), 459, 460(1) and (2), 462, 463(1), 464(1), 467(2) and (3), 468(2) and (3), 469, 470(2) and (5), 471(1) and (2), 472(1), 473(2), 474(2) to (4), 475(1) and (2) and (4) to (6), 476(1) and (2), 477(1) and (2) and (4) to (6), 479(1), 480, 481, 482(1) and (2), 483(1) and (2), 484(1), 536(1), 554(1) and (3), 555(1) and (4), 556(2), 557(1) and (5) to (7), 558(1) and (2), 564(1) and (3), 565, 566(2), 567(1) to (3), 568(1), 569(1), 571, 572(1), 573(1), 574(1) and (2), 575(1). Each penalty would be amended to provide for a maximum tier E monetary penalty instead of the current monetary amount.

Division 2 – Other amendments

Item [13] Subregulation 44(2) (penalty, example and note)

Item [22] Subregulation 225(5) (penalty, example and note)

Item [26] Subregulation 354(3) (penalty, examples and note)

Item [28] Subregulation 363(2) (penalty, example and note)

Item [31] Subregulation 389(1) (penalty, example and note)

Item [32] Subregulation 400(1) (penalty, example and note)

Item [35] Subregulation 472(2) (penalty, example and note)

Item [37] Subregulation 484(2) (penalty, example and note)

23. These items amend penalty provisions in the Principal Regulations to replace the existing monetary amount with the tier E monetary penalty. The location of existing notes and examples within these provisions are moved for consistency with current drafting practice.

Item [14] Subregulation 44(4) (penalty and notes)

Item [16] Subregulation 74(3) (penalty and notes)

Item [17] Subregulation 75(3) (penalty and notes)

Item [18] Subregulation 155(1) (penalty and notes)

Item [19] Subregulation 166(2) (penalty and notes)

Item [20] Regulation 177 (penalty and notes)

Item [21] Subregulation 218(3) (penalty and notes)

Item [23] Regulation 314 (penalty and notes)

Item [24] Regulation 345 (penalty and notes)

Item [27] Regulation 360 (penalty and notes)

Item [29] Subregulation 365(3) (penalty and notes)

Item [30] Regulation 368 (penalty and notes)

Item [33] Subregulation 400(2) (penalty and notes)

Item [34] Subregulation 407(5) (penalty and notes)

Item [36] Subregulation 472(3) (penalty and notes)

Item [38] Subregulation 484(3) (penalty and notes)

Item [40] Subregulation 575(2) (penalty and notes)

24. These items amend penalty provisions in the Principal Regulations to replace the existing monetary amount with the tier E monetary penalty. The location of existing notes within these provisions are moved for consistency with current drafting practice.

Item [25] At the end of subregulation 346(1)

25. This item amends this provision by introducing a new tier E monetary penalty and a note on strict liability.

Item [15] Subregulation 74(2) (penalty)

Item [39] Subregulation 559(1) (penalty)

26. These items amend these penalty provisions in the Principal Regulations to replace the existing monetary amount with the tier E monetary penalty.

Part 3– Tier I monetary penalty offences

Division 1 – Amendments of listed provisions

27. Part 3 amends several penalty provisions to replace the existing monetary amount with the tier I monetary penalty. The location of existing notes and examples within these provisions are moved for consistency with current drafting practice.

28. The note provides that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated. The reference in section 12F of the Act includes these Amendment Regulations.

29. The use of strict liability in WHS offences is explained above.

Item [41] Amendments of listed provisions – tier I penalties

30. This item amends regulations 50(2), 66(3), 76(2), 77(2) to (4), 85(4), 94(1), 96, 97, 98(1), 111, 150(3), 162(2), (3) and (5), 165(2), 170, 175(1) to (3), 176(3), 180, 181(2) to (4), 182(2), (3) and (5), 226(1), (3) and (4), 228, 229(1) and (2), 230(1) to (3), 237(2), (4) and (5), 242(1) and (3), 260(3) and (5), 262(1), 273(3) and (4), 275(1), 282(2), 287, 288(1), 288D, 303(1), (2) and (4), 304(5), 313(1), (2) and (4), 326(1) and (2), 340(3) and (4), 364, 378(1) and (2), 390(2) and (3), 391(3), 404(1) and (2), 418(1) and (2), 423(2), 444(2), 445(3) and (4), 461(1) and (2), 572(4), 587(1), 593, 594(1) and 607. Each penalty would be amended to provide for a maximum tier I monetary penalty instead of the current monetary amount.

Division 2 – Other amendments

Item [42] Subregulation 142(1) (penalty and notes)

Item [43] Subregulation 242(2) (penalty and notes)

31. These items amend these penalty provisions to replace the existing monetary amount with the tier I monetary penalty. The location of existing notes within these provisions are moved for consistency with current drafting practice.

Item [44] Subregulation 444(1) (penalty)

Item [45] Subregulation 505(1) (penalty)

Item [46] Subregulation 506(1) (penalty)

Item [47] Subregulation 507(1) (penalty)

Item [48] Regulation 512 (penalty)

Item [49] Subregulation 513(1) (penalty)

Item [50] Regulation 525 (penalty)

32. These items amend these penalty provisions in the Principal Regulations to replace the existing monetary amount with the tier I monetary penalty.

Item [51] Subregulation 588(1) (penalty, example and note)

33. This item amends these penalty provisions to replace the existing monetary amount with the tier I monetary penalty. The location of existing notes within these provisions be moved for consistency with current drafting practice.

Part 4 – Miscellaneous amendments

Item [52] Regulation 55C

34. This item repeals and replaces regulation 55C. The amendment clarifies that a person conducting a business or undertaking must manage psychosocial risks in accordance with Part 3.1 and implement the control measures required by regulation 55D. A note would refer to the reader to the WHS Act—section 19 (see regulation 9).

Schedule 2 – Engineered Stone

Work Health and Safety Regulations 2011

Item [1] Subregulation 5(1)

35. This item inserts the following terms into the definition section in regulation 5(1), and signals where the terms are defined in another section of the Regulations:

controlled, in relation to work involving processing engineered stone, porcelain products or sintered stone—see regulation 529B(1).

engineered stone—see regulation 529A.

porcelain product does not include a product that contains resin.

processing, in relation to work involving processing engineered stone, porcelain products or sintered stone — see regulation 529C.

sintered stone does not include a product that contains resin.

Item [2] Part 4.9

36. This item repeals Part 4.9 (Processing engineered stone containing crystalline silica) of the Principal Regulations. As the Amendment Regulations make it an offence for a person conducting a business or undertaking (PCBU) to carry out work with engineered stone benchtops, panels and slabs or to carry out uncontrolled processing of other engineered stone products, the offence in regulation 184A, which sits within Part 4.9, is no longer required.

Item [3] After Chapter 8

37. This item inserts a new Chapter 8A – Engineered stone, porcelain products and sintered stone which includes Parts 8A.1-8A.5 and regulations 529A-529L.

Part 8A.1 Preliminary

529A Meaning of *engineered stone*

38. Paragraph 529A(1)(a) defines ‘engineered stone’ as an artificial product that contains 1% or more crystalline silica (determined as a weight/weight (w/w) concentration), is created by combining natural stone materials with other chemical constituents (such as water, resins or pigments) and becomes hardened.

39. However, engineered stone does not include concrete and cement products, bricks, pavers and other similar blocks, ceramic wall and floor tiles, grout, mortar and render, plasterboard, porcelain products, sintered stone and roof tiles (paragraph 529A(1)(b)).

40. Subregulation 529A(2) defines 'crystalline silica' for the purpose of regulation 529A to mean crystalline polymorphs of silica, including the substances cristobalite, quartz, tridymite and tripoli.

529B When work involving processing engineered stone, porcelain products or sintered stone is *controlled*

41. Subregulation 529B(1) specifies that the processing of engineered stone, porcelain products or sintered stone will be controlled if control measures to eliminate or minimise risks arising from the processing of the stone or product are implemented so far as is reasonably practicable, and at least one of the following systems is used while the stone or product is processed:

- an effective water delivery system that supplies a continuous feed of water over the stone or product to suppress the generation of dust
- an effective on-tool extraction system, or

- an effective local exhaust ventilation system.
42. An effective on-tool extraction system typically includes a shroud, which is an on-tool hose attachment connected to a vacuum extraction system. Guidance on effective local exhaust ventilation is available on the Safe Work Australia website.
43. All persons who are at risk from the processing of the stone or product must also be provided with respiratory protective equipment (RPE) and must wear RPE while the work is carried out for the processing to be controlled (paragraph 529B(1)(c)).
44. The note to subregulation 529B(1) refers to regulation 351, which requires a PCBU to manage the risks to health and safety associated with using, handling, generating or storing a hazardous chemical at a workplace in accordance with Part 3.1 of the Principal Regulations. RCS is a hazardous chemical.
45. Subregulation 529B(2) defines RPE for the purpose of regulation 529B to mean personal protective equipment (PPE) that is designed to prevent a person wearing the equipment from inhaling airborne contaminants, and complies with the following Australian Standards:
- AS/NZS 1716:2012 (Respiratory protective devices), and
 - AS/NZS 1715:2009 (Selection, use and maintenance of respiratory protective equipment).
46. The note to subregulation 529B(2) sets out that regulations 44 to 46 apply to the use of PPE, including the RPE provided under paragraph 529B(1)(c). These regulations deal with the provision by a PCBU of PPE to workers and others (including in relation to its suitability, maintenance and use) and the duties of workers who are provided with PPE.

529C Meaning of *processing* in relation to engineered stone, porcelain products or sintered stone

47. Regulation 529C defines ‘processing’ in relation to engineered stone, porcelain products or sintered stone to mean using a power tool or other mechanical plant to crush, cut, grind, trim, sand, abrasive polish or drill the stone or product.

Part 8A.2 Work involving engineered stone benchtops, panels or slabs

529D Work involving engineered stone benchtops, panels or slabs —prohibition

48. Regulation 529D prohibits a PCBU from carrying out, directing or allowing a worker to carry out, work that involves manufacturing, supplying, processing or installing engineered stone benchtops, panels or slabs.
49. The note 1 to regulation 529D provides that under Part 11.2 Division 3A (Engineered stone), work involving a type of engineered stone may be the subject of an exemption from regulation 529D.

50. The note 2 to regulation 529D provides that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.
51. The use of strict liability in WHS offences is explained above in Schedule 1.
52. The penalty for contravening regulation 529D is a tier E monetary penalty.
53. The terms ‘benchtop’, ‘panel’ and ‘slab’ are not defined and carry their ordinary meaning. For example, the prohibition on work with engineered stone in regulation 529D applies to engineered stone:
- benchtops, such as those installed in kitchens and bathrooms and outdoor surfaces
 - panels, such as kitchen splashbacks or floor or wall tiles, and
 - slabs, that might need to be cut to fit a variety of different installation settings.
54. The prohibition in this regulation does not apply to benchtops, panels and slabs that are porcelain products or which are manufactured by sintering (sintered stone), provided the product does not contain resin, consistent with the new definitions in subregulations 5(1). The terms ‘porcelain product’ and ‘sintered stone’ otherwise have their ordinary meanings. Additionally, the prohibition does not apply to other artificial products which are excluded from the definition of engineered stone including:
- concrete and cement products
 - bricks, pavers and other similar blocks
 - ceramic wall and floor tiles
 - roof tiles
 - grout, mortar and render
 - plasterboard.
55. The effect of the definition in regulation 529A and the prohibition in new regulation 529D also means that finished engineered stone products that are not in benchtop, panel or slab form (such as jewellery, garden ornaments, sculptures and kitchen sinks) are not prohibited. Because such products do not require processing or modification, they pose minimal risk to the health and safety of workers. However, in the unlikely event that processing of these products is required, it must still be controlled (see regulation 529K).
56. The prohibition does not apply to natural stone products that have not been combined with other constituents. For example, natural granite that has been quarried, cut, and polished, without being combined with other materials, is not prohibited. Of course, a PCBU that is using natural stone is required to ensure the health and safety of its workers so far as is

reasonably practicable and must manage the risks from generating RCS in processing natural stone, in accordance with regulation 351.

529E Work involving engineered stone benchtops, panels or slabs—exception for particular supply and installation

57. Regulation 529E provides an exception to regulation 529D for work that involves supplying or installing engineered stone benchtops, panels or slabs if the work is for genuine research and analysis, or to sample and identify engineered stone.

529F Work involving engineered stone benchtops, panels or slabs—exception for particular processing

58. Regulation 529F provides an exception to the prohibition in regulation 529D for work that involves processing engineered stone benchtops, panels or slabs if the work is controlled and carried out:

- for genuine research and analysis, or
- to sample and identify engineered stone, or
- to remove, repair or make minor modifications to installed engineered stone, or
- to dispose of the engineered stone, whether it is installed or not.

59. Regulation 529B explains when processing is controlled. Regulation 529F would allow, for example, a PCBU to use a power tool to remove a damaged engineered stone benchtop in a client's kitchen provided that it has an effective on-tool dust extraction system. The worker removing the benchtop must be given and wear appropriate RPE when carrying out the work. Similarly, a PCBU may repair or modify the client's kitchen benchtop (e.g. cutting to install a new power point) using a power tool, provided it has an effective on-tool dust extraction system and the PCBU ensure the worker has and wears appropriate RPE.

Part 8A.3 Regulator to be notified of particular processing of engineered stone

529G Notification of particular processing of engineered stone

60. Regulation 529G applies where work involving processing engineered stone benchtops, panels or slabs is carried out to remove, repair or make minor modifications to installed engineered stone, or to dispose of the engineered stone, whether it is installed or not.

61. Subregulation 529G(2) requires that before the work is carried out, a PCBU carrying out, or directing or allowing a worker to carry out, the work, must give the regulator a written notice in the form approved by the regulator:

- stating the work being carried out, and
- describing the type of the work being carried out, and

- stating the frequency and duration of the work, and
 - stating the other information in relation to the work required by the form (if any).
62. The note to regulation 529G(2) provides that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.
63. The use of strict liability in WHS offences is explained above in Schedule 1.
64. The penalty for contravening subregulation 529G(2) is a tier G monetary penalty. Subregulation 529G(3) provides that subregulation 529G(2) will not apply to a PCBU if:
- the PCBU does not know, and could not reasonably be expected to know, before the work is carried out that the work involves processing engineered stone benchtops, panels or slabs, and
 - as soon as practicable after the PCBU becomes aware that the work involves processing engineered stone benchtops, panels or slabs, the person gives the regulator a written notice in relation to the work in accordance with subregulation 529G(2).
65. If the regulator receives a notice under subregulation 529G(2) or (3), the regulator must give the PCBU an acknowledgement of receipt of the notice (subregulation 529G(4)).

529H Notification of change in information given under Part 8A.3

66. Regulation 529H applies where a PCBU has given the regulator a written notice under Part 8A.3 (for example, under regulation 529G to notify of particular processing of engineered stone) and the information in relation to work changes, other than because the work is no longer being carried out. Where this occurs, the PCBU must give the regulator a written notice stating the information has changed, and describing the change to the information, within the period ending 30 days after the day the change occurs (subregulation 529H(1)).
67. The note to regulation 529H(1) provides that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.
68. The use of strict liability in WHS offences is explained above in Schedule 1.
69. The penalty for contravening subregulation 529H(1) is a tier G monetary penalty.
70. If the regulator receives a notice under subregulation 529H(1), the regulator must give the PCBU an acknowledgement of receipt of the notice (subregulation 529H(2)).

529I Notification that work continues 12 months after last notice given under Part 8A.3

71. Regulation 529I applies where a PCBU gives a notice under Part 8A.3 in relation to work, and a period of 12 months (beginning on the day the last notice is given about the work) ends, and the work is still being carried out.
72. Where this occurs, subregulation 529I(2) requires the PCBU to give the regulator a written notice stating that the work is still being carried out, and any information given to the regulator that has changed. The notice must be given to the regulator within the period of 30 days ending after the day the 12-month period ends.
73. The note to regulation 529I(2) provides that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.
74. The use of strict liability in WHS offences is explained above in Schedule 1.
75. The penalty for contravening subregulation 529I(2) is a tier G monetary penalty.
76. If the regulator receives a notice under subregulation 529I(2), the regulator must give the PCBU an acknowledgement of receipt of the notice (subregulation 529I(3)).

529J Duty to keep notice given under Part 8A.3

77. Regulation 529J requires that a PCBU who gives the regulator a notice under Part 8A.3, must for a period of 5 years (beginning on the day the notice is given to the regulator):
 - keep a copy of the notice, and
 - ensure that a copy of the notice is readily accessible, and
 - allow a person to access a copy of the notice upon request.
78. The note to regulation 529J provides that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.
79. The use of strict liability in WHS offences is explained above in Schedule 1.
80. The penalty for contravening regulation 529J is a tier G monetary penalty.

Part 8A.4 Processing engineered stone other than benchtops, panels or slabs

529K Duty to prevent uncontrolled processing of engineered stone other than benchtops, panels or slabs

81. Regulation 529K does not apply to engineered stone benchtops, panels and slabs (subregulation 529K(1)) (see regulation 529D for the prohibition on work with engineered stone benchtops, panels and slabs).
82. Subregulation 529K(2) prohibits a PCBU from processing, or directing or allowing a worker to process, engineered stone unless the processing of the stone is controlled.
83. The note to new regulation 529K provides that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.
84. The use of strict liability in WHS offences is explained above in Schedule 1.
85. The penalty for contravening regulation 529K is a tier E monetary penalty.

Part 8A.5 Processing porcelain products and sintered stone

529L Duty to prevent uncontrolled processing of porcelain products and sintered stone

86. Regulation 529L prohibits a PCBU from processing, or directing or allowing a worker to process, porcelain products and sintered stone unless the processing is controlled (see regulation 529B for when work involving porcelain products and sintered stone is controlled).
87. The note to regulation 529L provides that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.
88. The use of strict liability in WHS offences is explained above in Schedule 1.
89. The penalty for contravening regulation 529L is a tier E monetary penalty.

Item [4] Subregulation 676(1) (after table item 65)

90. This item amends the table in regulation 676(1) to provide that a decision to refuse to grant an exemption from regulation 529D under subregulation 689A(1) is a reviewable decision under regulation 676.

Item [5] Paragraph 684(4)(b)

91. This item would omit the word ‘facility’ and substitute it with ‘facility, or’.

Item [6] After paragraph 684(4)(b)

92. This item adds a new paragraph (c) to subregulation 684(4) which provides that regulation 684 (General power to grant exemptions) does not apply to an exemption from “regulation 529D in relation to exempting a type of engineered stone from that regulation”.

Item [7] After Division 3 of Part 11.2

93. This item inserts a new Division 3A into Part 11.2 of the Regulations which includes new regulations 689A-689E.

689A Engineered stone — exemption

94. Subregulation 689A(1) allows the regulator to exempt a type of engineered stone from regulation 529D (Work involving engineered stone benchtops, panels or slabs — prohibition).

95. A PCBU will be exempt from compliance with regulation 529D if the work involves a type of engineered stone that is the subject of an exemption granted under subregulation 689A(1) or a corresponding WHS law that is equivalent to subregulation 689A(1) (subregulation 689A(2)).

96. This means that an exemption granted in one jurisdiction will also apply in all other corresponding jurisdictions — in effect, there will be mutual recognition of exemption decisions. Only a PCBU subject to the WHS Act (e.g. the Commonwealth, a Commonwealth public authority or a non-Commonwealth licensee) would be able to make an application to Comcare.

97. The note to regulation 689A provides that a decision to refuse to grant an exemption is a reviewable decision under regulation 676 (Which decisions under these Regulations are reviewable).

689B Engineered stone — application for exemption

98. Subregulation 689B(1) provides that a person with an interest in having an exemption granted under subregulation 689A(1) may apply to the regulator for an exemption. In the Commonwealth jurisdiction, relevant ‘persons’ are the Commonwealth, public authorities and non-Commonwealth licensees. Other PCBUs will apply to state and territory regulators for an exemption.

99. However, subregulation 689B(2) requires that before the person can apply for an exemption under subregulation 689A(1), the person must give each social partner SWA member a written notice stating:

- the person intends to make the application; and
- the social partner SWA member may give the person submissions for the regulator about the application within the reasonable period stated in the notice; and
- the person must provide the social partner SWA member's submissions to the regulator as part of the person's application.

100. The person must also provide a copy of the proposed application for the exemption to each social partner SWA member (subregulation 689B(2)(b)).
101. Subregulation 689B(3) also requires that the person's application be in writing, accompanied by the written notice the person gives the social partner SWA member under subregulation 689B(2), and accompanied by any submissions received by the person from social partner SWA members under subregulation 689B(2).
102. Subregulation 689B(4) defines 'social partner SWA members' for the purpose of regulation 689B to mean the 2 members of SWA who represent the interests of workers in Australia, and the 2 members of SWA who represent the interests of employers in Australia.

689C Engineered stone —notifying persons of application for exemption

103. The regulator must give the application documents in relation to an application for an exemption under subregulation 689A(1) to each corresponding regulator (subregulation 689C(1)).
104. Subregulation 689C(2) provides that the regulator may also give the application documents for an application for an exemption under subregulation 689A(1) to:
- an employer organisation that includes employers who engage in work involving engineered stone
 - a union representing employees whose work includes work involving engineered stone, or
 - a person who has qualifications, knowledge, skills and experience relating to engineered stone.
105. Subregulation 689C(3) defines application documents in relation to an application for exemption under subregulation 689A(1) to mean:
- a written notice stating the regulator has received the application, and the person receiving the notice may make submissions to the regulator about the application within the reasonable period set out in the notice, and
 - a copy of the application and any submissions that the regulator receives in relation to the application under regulation 689B(4)(c).

689D Engineered stone — regulator to be satisfied about certain matters

106. Subregulation 689D(1) provides that a regulator must not grant an exemption under subregulation 689A(1) unless satisfied that granting the exemption will result in a standard of health and safety that is at least equivalent to the standard that would have been achieved without that exemption.

107. Subregulation 689D(2) requires that for the purposes of subregulation 689D(1) the regulator must have regard to all relevant matters including:

- any submissions received under paragraph 689B(4)(c) or regulation 689C, and
- whether the regulator is satisfied that, if the exemption were granted, the risk associated with the type of engineered stone that is the subject of the application would not be significant, and
- if SWA publishes a document under regulation 689E, the relevant matters contained in the document.

689E Safe Work Australia may issue and publish document in relation to exemptions

108. Subregulation 689E(1) provides that SWA may issue a document setting out the matters to be considered when granting an exemption under this Division. Where SWA issues a document it must be published on the SWA website (subregulation 689E(2)).

109. The note to regulation 689E provides the details for the SWA website (<https://www.safeworkaustralia.gov.au>).

Item [8] Paragraph 692(1)(b)

110. This item omits the word ‘apply’ in paragraph (b) of regulation 692 and substitutes it with the phrase ‘apply, if applicable;’.

Item [9] Regulation 694

111. This item would repeal and substitute current regulation 694. The substantive changes are to omit the phrase ‘—each person (other than persons to whom regulation 695 applies)’ and insert the phrase “and the exemption does not exempt a class of persons—each person”. This amendment corrects an error in the Principal Regulations which reference regulation 695, which has not been adopted in the Commonwealth jurisdiction.

112. This item would also add new subregulation 694(2).

113. Subregulation 694(2) would provide that if the regulator grants an exemption under subregulation 689A(1), the regulator must notify each corresponding regulator that the exemption is granted. This is appropriate given the exemptions operate in each corresponding WHS jurisdiction. The reasons for the decision must be published on the regulator’s website within 14 days after the day the exemption is granted.

114. The note in regulation 694 would state that exemptions referred to in paragraph (b) are legislative instruments, see the Federal Register of Legislation website. It would also note that all exemptions could, in 2024, be viewed on the Safe Work Australia website.

Item [10] Paragraph 698(1)(b)

115. This item amends paragraph 698(1)(b) to omit the phrase ‘to subregulation (2)’ and insert the phrase ‘to whom subregulation (2)’. It would correct an existing error in the Principal Regulations.

Item [11] Subregulation 698(2)

116. This item amends subregulation 698(2) to insert the phrase ‘or is granted under subregulation 689A(1)’. An exemption for a type of engineered stone would be a legislative instrument.

Item [12] After Part 5 of Chapter 12

117. This item inserts new Part 8A – Engineered stone, porcelain products and sintered stone into Chapter 12 of the Principal Regulations, which set out transitional arrangements for various parts. Part 8A makes transitional arrangements relating to Chapter 8A. The note clarifies that the numbering of these Divisions and Subdivisions match the Parts and Divisions of Chapter 8A.

Division 8A.2—Work involving engineered stone benchtops, panels or slabs

698A Particular work involving engineered stone – exception if carried out under pre-2024 contract

118. Subregulation 698A(1) provides that, for a transitional period until 31 December 2024, regulation 529D does not apply to work that involves installing engineered stone benchtops, panels or slabs if the work is carried out under a contract originally entered into on or before 31 December 2023, and the work is carried out in a jurisdiction which has also put corresponding transitional provisions in place. The effect of this section would be to ‘mirror’ state and territory arrangements so, for example, work undertaken by a non-Commonwealth licensee is permitted in a jurisdiction which will allow work for state based PCBUs under transitional arrangements. In jurisdictions which do not provide for transitional arrangements, non-Commonwealth licensees will not be allowed to perform prohibited work.

119. Subregulation 698A(2) permits upstream activities such as supply and processing where the work involves supplying or processing products to be installed under a contract originally entered into on or before 31 December 2023 and other conditions are met. For example, a supplier could provide an engineered stone product to a workplace for installation if the contract for *installation* was entered into before 31 December 2023. The other conditions are that the work is carried out in a jurisdiction which has put transitional provisions in place and the work is complete on or before 31 December 2024. Work involving processing will only be exempt if the processing is controlled.

120. This approach is necessary because section 12 of the WHS Act provides that corresponding WHS laws do not apply to the Commonwealth, public authorities, and non-

Commonwealth licensees. This means that the state prohibitions do not apply to Commonwealth PCBUs, but these duty holders are involved in projects with state based PCBUs who may be subject to transitional arrangements. Mirroring the arrangements in state and territory jurisdictions ensures that the ban will operate consistently across workplaces in a jurisdiction.

698B Application – acquisition of property

121. Subregulation 698B provides that regulation 529D has no effect to the extent (if any) that the operation of the subregulation would result in acquisition of property from a person otherwise than on just terms.
122. This regulation ensures that the prohibition in new regulation 529D is constitutionally valid. Because of the small number of PCBUs working with engineered stone in the Commonwealth jurisdiction and the approach taken to transitional arrangements, it is not expected that the prohibition would constitute an acquisition of property. If Commonwealth PCBUs have contracts to install engineered stone in a jurisdiction which will permit the work to be undertaken, the Commonwealth regulations will also allow it. However, because pre-existing contracts could be affected, a provision has been included to ensure that the prohibition as a whole is not undermined by unforeseen circumstances constituting an acquisition of property otherwise than on just terms. Contracts may be affected where for example the contract was entered into after the 31 December 2023 date or where work is not completed before 31 December 2024.

Schedule 3 – Crystalline Silica Substances

Work Health and Safety Regulations 2011

Item [1] Subregulation 5(1) (definition of *controlled*)

123. This item omits the existing definitions of *controlled* and inserts the following definition, and signals where the term is defined in another provision of the Regulations:

controlled, in relation to the processing of a CSS—see regulation 529B.

Item [2] Subregulation 5(1)

124. This item inserts the following terms into the definition section in subregulation 5(1), and signals where the terms are defined in another section of the Regulations:

crystalline silica—see regulation 529A

crystalline silica substance (CSS)—see regulation 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.

Item [3] Subregulation 5(1) (definition of processing)

125. This item repeals the existing definition of *processing* and substitutes the following definition and signals where the term is defined in another provision of the Regulations:

processing, in relation to a CSS - see regulation 529A.

Item [4] Subregulation 5(1)

126. This item would insert the term *silica risk control plan* into the definition section in subregulation 5(1), and signals where the term is defined in another section of the Regulations:

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

Item [5] Chapter 8A (heading)

127. This item omits the Chapter 8A heading "Engineered stone, porcelain products and sintered stone" and replaces it with the heading "Crystalline silica".

Item [6] Regulations 529A-529CE

128. This item omits regulations 529A-529C and inserts new regulations 529A-529CE.

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

129. Regulation 529A defines the terms *processing* in relation to a CSS, *crystalline silica substance* (CSS), *crystalline silica* and *engineered stone* for the purposes of the Regulations.

130. Subregulation 529A(1) defines processing in relation to a CSS to mean:

- 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
- the use of roadheaders to excavate material that is a CSS, or
- the quarrying of a material that is a CSS, or
- mechanical screening involving a material that is a CSS, or
- tunnelling through a material that is a CSS, or
- a process that exposes, or is reasonably likely to expose, a person to RCS during the manufacture or handling of a CSS.

131. Crystalline silica substance (CSS) means material that contains at least 1% crystalline silica, determined as a weight/weight (w/w) concentration (subregulation 529A(2)). The note to subregulation 529A(2) makes clear that engineered stone is a type of CSS.

132. Crystalline silica means crystalline polymorphs of silica, and includes the substances; cristobalite, quartz, tridymite and tripoli (subregulation 529A(3)).
133. Engineered stone means a CSS that is an artificial product and is created by combining natural stone materials with other chemical constituents (such as water, resins or pigments), and becomes hardened (paragraph 529A(4)(a)). However, engineered stone does not include concrete and cement products, bricks, pavers and other similar blocks, ceramic wall and floor tiles, grout, mortar and render, plasterboard, porcelain products, sintered stone and roof tiles (paragraph 529A(4)(b)).

529B When processing of CSS is *controlled*

134. Subregulation 529B(1) provides that the processing of a CSS is *controlled* if control measures to eliminate or minimise risks arising from the processing are implemented so far as is reasonably practicable, and at least one of the following measures are used during the processing:
- the isolation of a person from dust exposure
 - a fully enclosed operator cabin fitted with a high efficiency air filtration system
 - an effective wet dust suppression method
 - an effective on-tool extraction system, and
 - an effective local exhaust ventilation system.
135. If a person is still at risk of being exposed to RCS after one or more of the measures in paragraph 529B(1)(b) are used, the person must be provided with respiratory protective equipment (RPE) and must wear the RPE while the work is carried out, in order for the processing to be controlled (paragraph 529B(1)(c)).
136. The note to subregulation 529B(1) refers to regulation 351 which requires a PCBU to manage, in accordance with Part 3.1 of the Principal Regulations, the risks to health and safety associated with using, handling, generating or storing a hazardous chemical at a workplace. RCS is a type of hazardous chemical.
137. Despite subregulation 529B(1), if the measures in paragraph 529B(1)(b) are not reasonably practicable, the processing of a CSS is controlled if a person who is at risk of being exposed to RCS during the processing is provided with RPE and wears the RPE while the work is carried out (subregulation 529B(2)).
138. Subregulation 529B(2) contemplates that there will be some cases where the implementation of a control measure specified in paragraph 529B(1)(b) may not be reasonably practicable. In such cases, the processing of the CSS may be controlled through the use of RPE only. The PCBU will still need to ensure that it complies with its primary health and safety duty in section 19 of the WHS Act.

139. Subregulation 529B(3) defines RPE for the purpose of regulation 529B *respiratory protective equipment* means personal protective equipment (PPE) that is designed to prevent a person wearing the equipment from inhaling airborne contaminants, and complies with Australian standards:

- AS/NZS 1716:2012 (Respiratory protective devices), and
- AS/NZS 1715:2009 (Selection, use and maintenance of respiratory protective equipment).

140. The note to subregulation 529B(3) provides that regulations 44-46 apply to the provision and use of PPE, including the RPE provided under paragraph 529B(1)(c) and subregulation (2). These regulations deal with the provision by a PCBU of PPE to workers and other persons (including in relation to its suitability, maintenance and use) and the duties of workers who are provided with PPE.

529C Duty for processing of CSS to be controlled

141. Regulation 529C prohibits a PCBU from carrying out, or directing or allowing a worker to carry out, processing of a CSS unless the processing is controlled.

142. The note to regulation 529C sets out that regulations 529D and 529F apply to the processing of engineered stone. Regulation 529D prohibits the processing of engineered stone benchtops, panels and slabs. Regulation 529F sets out limited exceptions to this prohibition, and requires that any permitted processing is controlled.

143. The note 2 to regulation 529C provides that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated. The reference in section 12F of the WHS Act includes these Regulations.

144. The use of strict liability in WHS offences is explained above in Schedule 1.

145. The penalty for contravening regulation 529C is a tier E monetary penalty.

529CA Identifying processing of CSS that is a high risk

146. Subregulation 529CA(1) requires a PCBU at a workplace to assess the processing of a CSS carried out by the business or undertaking at the workplace to determine if the processing is high risk.

147. The note to regulation 529CA(1) provides that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated. The reference in section 12F of the WHS Act includes these Regulations.

148. The use of strict liability in WHS offences is explained above in Schedule 1.
149. The penalty for contravening subregulation 529CA(1) is a tier E monetary penalty.
150. In assessing whether the processing of a CSS is high risk, subregulation 529CA(2) requires the person to have regard to the matters listed at paragraphs 529CA(2)(a)-(g) which are:
- the specific processing that will be undertaken
 - the form or forms of crystalline silica present in the CSS
 - the proportion of crystalline silica contained in the CSS (determined as a weight/weight (w/w) concentration)
 - the hazards associated with the work, including the likely frequency and duration that a person will be exposed to respirable crystalline silica
 - whether the airborne concentration of RCS that is present at the workplace is reasonably likely to exceed half the workplace exposure standard
 - any relevant air and health monitoring results previously undertaken at the workplace, and
 - any previous incidents, illnesses or diseases associated with exposure to respirable crystalline silica at the workplace.
151. Paragraph 529CA(3)(a) provides that in assessing whether the processing of a CSS is high risk, the person must not rely on the control measures implemented under paragraph 529B(1)(b). This is because a PCBU must have regard to all the matters specified in paragraphs 529CA(2)(a)-(g) to determine if the processing is high risk. The implementation of control measures, including the implementation of control measures in accordance regulation 529B, will not necessarily mean that the processing is not high risk.
152. Paragraph 529CA(3)(b) provides that in assessing whether the processing of a CSS is high risk, the person must not have regard to the use of PPE and administrative controls used to control the risks associated with RCS. These types of control measures are excluded from the assessment on the basis that they provide the lowest level of protection and reliability.
153. Subregulation 529CA(4) provides that the PCBU must ensure that a risk assessment conducted under subregulation 529CA(1) is recorded in writing.
154. The note to regulation 529CA(4) provides that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated. The reference in section 12F of the WHS Act includes these Regulations.
155. The use of strict liability in WHS offences is explained above in Schedule 1.

156. The penalty for contravening subregulation 529CA(4) is a tier I monetary penalty.
157. If a PCBU is unable to determine whether the processing of CSS carried out at the workplace is high risk, the processing is taken to be high risk until the person determines — in accordance with the process in regulation 529CA — that the processing is not high risk (subregulation 529CA(5)).

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

158. Subregulation 529CB(1) requires that where a PCBU is carrying out the processing of a CSS that is high risk, before the processing commences, the PCBU must ensure that a silica risk control plan for the processing is prepared, or has already been prepared by another person.
159. The penalty for contravening regulation 529CB(1) is a tier E monetary penalty.
160. Paragraphs 529CB(2)(a)-(d) set out a list of requirements for a silica risk control plan.
161. Subregulation 529CB(3) provides that a silica risk control plan is not required to be prepared before the processing of a CSS that is high risk if:
- the processing is also high risk construction work, and
 - a safe work method statement is prepared or has already been prepared by another person before the processing commences, and
 - the safe work method statement satisfies the requirements in subregulation 529CB(2).

529CC Compliance with silica risk control plan

162. Subregulation 529CC(1) requires a PCBU, carrying out the processing of a CSS that is high risk, to put in place arrangements for ensuring that processing is carried out in accordance with the silica risk control plan, including by ensuring that the silica risk control plan is available to all workers and provided to all workers before they commence the processing.
163. The note to subregulation 529CC(1) provides that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated. The reference in section 12F of the WHS Act includes these Regulations.
164. The use of strict liability in WHS offences is explained above in Schedule 1.

165. The penalty for contravening subregulation 529CC(1) is a tier E monetary penalty.
166. Subregulation 529CC(2) provides that if the processing of a CSS that is high risk is not carried out in accordance with the silica risk control plan for the process, the person must ensure that the processing is stopped immediately and is resumed only in accordance with the silica risk control plan.
167. The note to subregulation 529CC(2) provides that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated. The reference in section 12F of the WHS Act includes these Regulations.
168. The use of strict liability in WHS offences is explained above in Schedule 1.
169. The penalty for contravening subregulation 529CC(2) is a tier E monetary penalty.
170. Subregulation 529CC(3) requires a PCBU to ensure that a silica risk control plan is reviewed and revised as necessary if relevant control measures are revised under regulation 38 (Review of control measures).
171. The penalty for contravening subregulation 529CC(3) is a tier G monetary penalty.

529CD Duty to train workers about the risks of crystalline silica

172. Subregulation 529CD(1) requires a PCBU to ensure that a worker receives crystalline silica training if the PCBU reasonably believes that the worker may be involved in the processing of a CSS that is high risk, or may be at risk of exposure to RCS because of the processing of a CSS that is high risk. The training must either be a course accredited by the National VET Regulator or approved by the WHS regulator.
173. The note to subregulation 529CD(1) provides that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated. The reference in section 12F of the WHS Act includes these Regulations.
174. The use of strict liability in WHS offences is explained above in Schedule 1.
175. The penalty for contravening subregulation 529CD(1) is a tier E monetary penalty.
176. A PCBU must ensure that a record is kept of the training undertaken by the worker while the worker is carrying out the processing of a CSS that is high risk, and for 5 years after the day the worker ceases working for the person (subregulation 529CD(2)).

177. The note to subregulation 529CD(2) provides that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated. The reference in section 12F of the WHS Act includes these Regulations.
178. The use of strict liability in WHS offences is explained above in Schedule 1.
179. The penalty for contravening subregulation 529CD(2) is a tier I monetary penalty.
180. Subregulation 529CD(3) requires the PCBU to keep the record available for inspection under the Act.
181. The note to subregulation 529CD(3) provides that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated. The reference in section 12F of the WHS Act includes these Regulations.
182. The use of strict liability in WHS offences is explained above in Schedule 1.
183. The penalty for contravening subregulation 529CD(3) is a tier I monetary penalty.
184. For the purposes of regulation 529CD, crystalline silica training is training that is accredited, or training approved by the regulator, in relation to the health risks associated with exposure to RCS and the need for, and proper use of, any risk control measures required by the Regulations (subregulation 529CD(4)).
185. The note to regulation 529CD makes clear that Division 1 of Part 3.2 (Information, training and instruction) also applies to a PCBU involving processing of a CSS.

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

186. Regulation 529CE requires a PCBU that is carrying out, or directing or allowing a worker to carry out, processing of a CSS that is high risk to undertake air monitoring for RCS in accordance with regulation 50 (Monitoring airborne contaminant levels).
187. If the airborne concentration of RCS has exceeded the workplace exposure standard, the PCBU must provide air monitoring results to the regulator. The results must be provided in a form approved by the regulator as soon as reasonably practicable, and no more than 14 days from the date that the air monitoring result was reported to the PCBU.
188. The PCBU must also provide health monitoring for all workers carrying out the processing of a CSS that is high risk in accordance with Division 6 of Part 7.1 (Health monitoring - Hazardous chemicals) of the Regulations.

189. The note to regulation 529CE provides that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated. The reference in section 12F of the WHS Act includes these Regulations.
190. The use of strict liability in WHS offences is explained above in Schedule 1.
191. The penalty for contravening regulation 529CE is a tier E monetary penalty.
192. The Principal Regulations require health monitoring for a range of work, including work with RCS. Health monitoring for workers exposed to crystalline silica primarily involves screening the changes in a worker's body that may indicate the development of silica related-injury, illness or disease. Health monitoring is necessary to:
- detect the early signs of adverse health effects
 - help identify control measures that are not working effectively; and
 - assist in protecting workers from the risk of exposure to silica dust.
193. The Principal Regulations require a PCBU to ensure health monitoring occurs and to provide certain information to the relevant health practitioner. Information provided to a health practitioner includes personal information in the form of the worker's name, address, date of birth and details about the work they do. The disclosure of this information is necessary for the health monitoring to be undertaken and would be subject to patient confidentiality once received by the health practitioner.
194. The Principal Regulations also require the PCBU to take all reasonable steps to obtain a health monitoring report from the registered medical practitioner who carries out the monitoring.
195. Records are required to be kept confidential (regulation 378) but disclosure is required in certain circumstances:
- the report must be given to the worker
 - if the report indicates the worker may have contracted a disease or includes recommendations that remedial measures occur at the workplace, the report must be provided to Comcare, the Commonwealth WHS regulator (regulation 376)
 - This ensures that the regulator has appropriate visibility over injuries and illnesses and can undertake monitoring, compliance and enforcement activities as appropriate.
 - reports must be shared with other PCBUs which are also obliged to arrange for monitoring of the same worker (regulation 377).
 - This is necessary because more than one PCBU may have a duty in relation to the same worker (WHS Act section 16), for example if the workplace is shared by

two employers. It is important that duty holders cooperate and coordinate activities to ensure the health and safety of affected workers.

196. A health monitoring record will contain a range of sensitive information. Regulation 374 provides that it must contain the name and date of birth of the worker and the results of the monitoring which would pertain to the person's health.

197. There are protections which apply to the information once it is received:

- Information obtained by Comcare in performing functions under the WHS Act is subject to strict confidentiality provisions (section 271). Information collected by Comcare that is personal information is also subject to the requirements of the Privacy Act 1988 (Privacy Act) which governs its collection, use, disclosure, storage and disposal.
- The Commonwealth WHS jurisdiction is unique in that it applies to the Commonwealth, public authorities and non-Commonwealth licensees (large companies). These entities would be subject to the Privacy Act. There may be scope for contractors to be provided information where the Commonwealth entity and the contractor are both responsible for a worker's health monitoring. Whether the Privacy Act applies would be a question of fact.

198. The Amendment Regulations also require a PCBU to undertake a risk assessment for any processing of CSS to determine if the processing is high risk. In doing this assessment, the PCBU must have regard to any relevant health monitoring results previously undertaken at the workplace (paragraph 529CA(2)(f)) and previous incidents, illnesses or diseases associated with exposure to RCS at the workplace (paragraph 529CA(2)(g)). The risk assessment outcome (e.g. the reasons for determining whether the processing is high risk or not) must be documented in writing (paragraph 529CA(4)). Any reports containing personal information would not be included in the risk assessment.

Item [7] Parts 8A.4 and 8A.5

199. This item repeals parts 8A.4 (Processing engineered stone other than benchtops, panels or slabs) and 8A.5 (Processing porcelain products and sintered stone). These Parts relate to products that are CS. The obligations regarding their processing is now dealt with by the Amendment Regulations which apply generally to processing of CSS.

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 Amendment Regulations 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 Act 2011* (WHS Act) and the *Work Health and Safety Regulations 2011* (Principal Regulations) provide the primary work health and safety (WHS) legislation for the Commonwealth jurisdiction. They are based on model WHS laws (model laws) developed by Safe Work Australia (SWA).

The purpose of the *Work Health and Safety Amendment (Penalties and Engineered Stone and Crystalline Silica Substances) Regulations 2024* (Amendment Regulations) is to improve work health and safety outcomes by introducing recent amendments to the model WHS regulations to:

- prohibit the use, supply and manufacture of engineered stone benchtops, panels and slabs,
- include additional obligations on a person conducting business or undertaking who carries out work with a crystalline silica substance (CSS). This provides stronger regulation of high-risk crystalline silica processes (that is, where the processing of a CSS is high risk) for all materials (including engineered stone) across all industries, and
- increase monetary penalties.

Human rights implications

This Disallowable Legislative Instrument engages the following human rights:

- 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);
- The right to physical and mental health under Article 12 of the ICESCR;

- The right to be presumed innocent until proven guilty according to law under article 14(2) of the International Covenant on Civil and Political Rights (ICCPR); and
- The right to privacy under article 17 of the ICCPR.

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.

The Amendment Regulations promote the right to safe and healthy working conditions by prohibiting the use, supply and manufacture of engineered stone benchtops, panels and slabs to protect the health and safety of workers in the engineered stone industry. Further, it also prescribes additional obligations on PCBUs across all industries to take proactive measures to eliminate or minimise risks associated with working with CSS, so far as is reasonably practicable. This approach helps to create safer working environments and reduce silica-related diseases.

The Amendment Regulations also promote the right to safe and healthy working conditions by increasing penalty amounts across the Principal Regulations and implementing reforms which will ensure penalties are automatically updated each year to maintain relative value.

Strengthening the Commonwealth WHS framework through these measures would promote the right to safe and healthy working conditions by introducing specific regulations for working with crystalline silica and deterring non-compliance with WHS laws.

Right to physical and mental health

The right to physical and mental health expressed in Article 12 of the ICESCR is engaged by this Amendment Regulations as the United Nations Committee on Economic Social and Cultural Rights has stated that the right to health concerns safe and healthy working conditions. Guidance from the Attorney-General's Department clarifies that where Article 12(2)(b) mentions 'industrial hygiene' this 'refers to the minimisation, so far as is reasonably practicable, of the causes of health hazards inherent in the working environment'.

Promoting 'industrial hygiene' involves taking steps to protect the work environment by reducing workers' exposure to substances that impact upon human health including where workplace exposure to RCS results in people developing serious health conditions. The new regulations which prohibit the use of engineered stone benchtops, panels and slabs would eliminate silicosis and other silica-related diseases among engineered stone workers. Further, the new stronger regulations on working with crystalline silica substances would result in eliminating or minimising exposure to RCS across all industries.

The Amendment Regulations also promote the right to physical and mental health by introducing new offences and strengthening the penalties framework which accompany a person's duty to minimise the causes of health hazards inherent in the working environment. The Amendment Regulations achieves this by amending the Principal Regulations to better deter non-compliance with WHS duties.

Right to be presumed innocent until proven guilty according to law

The Parliamentary Joint Committee on Human Rights has noted the imposition of strict or absolute liability will not violate Article 14(2) where it pursues a legitimate aim and is reasonable and proportionate to that aim.

The Amendment Regulations insert notes within penalty provisions to explain that section 12F of the WHS Act provides that strict liability applies to each physical element of each offence under the WHS Act, unless otherwise stated, and the reference in section 12F of the Act includes these Regulations.

The Amendment Regulations also introduce a strict liability offence for carrying out, directing or allowing a worker to carry out, work that involves manufacturing, supplying, processing or installing engineered stone benchtops, panels or slabs (regulation 529). New Part 8A.3

(Regulator to be notified of particular processing of engineered stone) and new regulations on processing of crystalline silica substances at work (regulations 529C to 529CE) also contain strict liability offences.

Due to the operation of subsection 12F(2) of the WHS Act, strict liability applies to the offences in the Amendment Regulations. Most offences in the WHS Act include strict liability elements or are strict liability. Including strict liability as a feature of offences was carefully considered when the WHS Act was first introduced as the presumption of innocence can be seen to be impinged by removing the requirement for the prosecution to prove fault in relation to one or more physical elements of an offence.

WHS offences arise in a regulatory context where, for reasons such as public safety, and the public interest in ensuring regulatory schemes are observed, the sanction of criminal penalties is justified. The offences also arise in a context where a defendant can reasonably be expected, because of their professional involvement, to know the requirements of the law, and the mental, or fault, element can justifiably be excluded. The rationale for this is that people who owe WHS duties such as employers, persons in control of aspects of work, and designers and manufacturers of work structures and products, as opposed to members of the general public, can be expected to be aware of their duties and obligations to workers and the wider public.

The application of strict liability to a particular element means that the prosecution is not required to prove fault in relation to that matter. However, as per paragraph 6.1(2)(b) of the Criminal Code, the defence of mistake of fact under section 9.2 of the Criminal Code would be available in relation to these elements. This means where the accused produced evidence of an honest and reasonable, but mistaken, belief in the existence of certain facts which, if true, the conduct would not have constituted the offence, it will be incumbent on the prosecution to establish that there was not an honest and reasonable mistake of fact.

The legitimate aim of strict liability for WHS offences, is to ensure defendants operating in the WHS regulatory context are held accountable for breaches of their positive duties to ensure a safe and healthy workplace, is proportionate to any limitation it places on the presumption of innocence.

Right to privacy

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home and correspondence. This includes respect for informational privacy, including in respect of storing, using, and sharing private information and the right to control the dissemination of personal and private information. Privacy guarantees a right to secrecy from the publication of personal information.

The Amendment Regulations requires PCBUs to provide health monitoring for all workers carrying out the processing of a CSS that is high risk under Principal Regulations Division 6 of Part 7.1 (Health monitoring - Hazardous chemicals) (regulation 529CE(c)).

The Principal Regulations require health monitoring for a range of work, including work with RCS. Health monitoring for workers exposed to crystalline silica primarily involves screening the changes in a worker's body that may indicate the development of silica related-injury, illness or disease. Health monitoring is necessary to:

- detect the early signs of adverse health effects
- help identify control measures that are not working effectively; and
- assist in protecting workers from the risk of exposure to silica dust.

The Principal Regulations require a PCBU to ensure health monitoring occurs and to provide certain information to the relevant health practitioner. Information provided to a health practitioner includes personal information in the form of the worker's name, address, date of birth and details about the work they do. The disclosure of this information is necessary for the health monitoring to be undertaken and would be subject to patient confidentiality once received by the health practitioner.

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 - This ensures that the regulator has appropriate visibility over injuries and illnesses and can undertake monitoring, compliance and enforcement activities as appropriate.
- reports must be shared with other PCBUs which are also obliged to arrange for monitoring of the same worker (regulation 377).
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- Information obtained by Comcare in performing functions under the WHS Act is subject to strict confidentiality provisions (section 271). Information collected by Comcare that is personal information is also subject to the requirements of the *Privacy Act 1988* (Privacy Act) which governs its collection, use, disclosure, storage and disposal.
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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