



Australian Capital Territory

Work Health and Safety Amendment Regulation 2022 (No 2)

Subordinate Law SL2022-13

The Australian Capital Territory Executive makes the following regulation under the *Work Health and Safety Act 2011*.

Dated 17 October 2022.

ANDREW BARR
Chief Minister

MICK GENTLEMAN
Minister



Australian Capital Territory

Work Health and Safety Amendment Regulation 2022 (No 2)

Subordinate Law SL2022-13

made under the

[Work Health and Safety Act 2011](#)

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Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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1 Name of regulation

This regulation is the *Work Health and Safety Amendment Regulation 2022 (No 2)*.

2 Commencement

- (1) This regulation (other than schedule 1) commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

- (2) Schedule 1 commences immediately after the commencement of the *Work Health and Safety Amendment Regulation 2022 (No 1)*, schedule 1.

3 Legislation amended

This regulation amends the *Work Health and Safety Regulation 2011*.

4 Sections 418A and 418B

substitute

418A Definitions—ch 7A

- (1) In this chapter:

additional crystalline silica control measure—each of the following control measures is an ***additional crystalline silica control measure*** in relation to the cutting of material containing crystalline silica:

- (a) the isolation of the place where the cutting occurs from the rest of the workplace;
- (b) the attachment of a Class H vacuum cleaner to the tool used for cutting;

- (c) for material containing less than 25% crystalline silica—the attachment of a Class M vacuum cleaner to the tool used for cutting;
- (d) the use of a local exhaust ventilation system.

airborne crystalline silica means an airborne contaminant containing respirable crystalline silica.

cut includes crush, drill, grind, polish, sand and trim.

engineered stone means a stone that is artificially produced by combining natural stone that contains crystalline silica with other materials such as resin and pigment.

material containing crystalline silica means—

- (a) engineered stone; or
- (b) any cement, concrete, masonry, mortar or brick product containing crystalline silica; or
- (c) natural stone containing crystalline silica.

mechanical process does not include a process that involves plant or a tool—

- (a) that relies exclusively on manual power for its operation; and
- (b) is designed to be primarily supported by hand.

respiratory protective equipment means personal protective equipment that—

- (a) is designed to protect the wearer from inhaling airborne crystalline silica; and
- (b) complies with AS/NZS 1716:2012 (Respiratory protective devices) or requirements equivalent to the standard.

Note AS/NZS 1716:2012 does not need to be notified under the [Legislation Act](#) because s 47 (5) does not apply (see s 15 and [Legislation Act](#), s 47 (7)). The standard may be purchased at www.standards.org.au.

wet dust suppression method—

- (a) means a method of suppressing airborne contaminants that involves the use of water or other suitable liquid, or a wetting agent; and
- (b) includes using a continuous feed of water, or an emulsion, spray, curtain, mist or foam of water or other suitable liquid over the place where airborne contaminants are produced.

(2) In this section:

Class H vacuum cleaner means a vacuum cleaner that complies with the requirements of Class H of AS/NZS 60335.2.69:2017 (Household and similar electrical appliances – Safety, Part 2.69: Particular requirements for wet and dry vacuum cleaners, including power brush, for commercial use), or requirements equivalent to the standard.

Class M vacuum cleaner means a vacuum cleaner that complies with the requirements of Class M of AS/NZS 60335.2.69:2017 (Household and similar electrical appliances – Safety, Part 2.69: Particular requirements for wet and dry vacuum cleaners, including power brush, for commercial use), or requirements equivalent to the standard.

Note AS/NZS 60335.2.69.2017 does not need to be notified under the [Legislation Act](#) because s 47 (5) does not apply (see s 15 and [Legislation Act](#), s 47 (7)). The standard may be purchased at www.standards.org.au.

local exhaust ventilation system means an engineering control that reduces worker exposure to airborne crystalline silica in the workplace by capturing the emission of airborne crystalline silica at the source and transporting it to a safe emission point, filter or scrubber.

418B Uncontrolled dry cutting of material containing crystalline silica

A person conducting a business or undertaking at a workplace must not direct or allow a worker to cut material containing crystalline silica with a power tool or use another mechanical process to cut the material unless—

- (a) either—
 - (i) a water delivery system supplying a continuous feed of water over the cutting area is used to suppress airborne crystalline silica produced by the cutting; or
 - (ii) for material containing crystalline silica other than engineered stone—a wet dust suppression method is used to suppress airborne crystalline silica produced by the cutting; and
- (b) at least 1 additional crystalline silica control measure is in place.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

418BA Uncontrolled dry cutting of material containing crystalline silica—transitional

- (1) This section applies to a person conducting a business or undertaking at a workplace to whom the *Work Health and Safety (Silica Dust Uncontrolled Dry-Cutting Prohibition Regulator Transition) Exemption 2022 (No 1)* (NI2022-349) applied.

- (2) The person must not direct or allow a worker to cut material containing crystalline silica with a power tool or use another mechanical process to cut the material unless at least 1 additional crystalline silica control measure is in place.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
(b) in the case of a body corporate—\$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) This section expires 2 weeks after the day it commences.

5 Section 418C (b) (i)

substitute

- (i) using either of the following crystalline silica control measures with at least 1 additional crystalline silica control measure:
- (A) a water delivery system supplying a continuous feed of water over the cutting area to suppress airborne crystalline silica produced by the cutting;
- (B) if it is not reasonably practicable to use the control measure mentioned in subparagraph (A) for material containing crystalline silica other than engineered stone—a wet dust suppression method to suppress airborne crystalline silica produced by the cutting; and

6 New section 418CA

in chapter 7A, insert

418CA Effective control measures for cutting material containing crystalline silica—transitional

- (1) This section applies to a person conducting a business or undertaking at a workplace to whom the *Work Health and Safety (Silica Dust Uncontrolled Dry-Cutting Prohibition Regulator Transition) Exemption 2022 (No 1)* (NI2022-349) applied.
- (2) The person must ensure that the risk of cutting material containing crystalline silica with a power tool or using another mechanical process is—
 - (a) eliminated so far as is reasonably practicable; or
 - (b) if it is not reasonably practicable to eliminate the risk—minimised so far as is reasonably practicable by—
 - (i) using at least 1 additional crystalline silica control measure; and
 - (ii) ensuring each worker at the workplace who may be exposed to airborne crystalline silica produced by the cutting is wearing respiratory protective equipment.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) This section expires 2 weeks after the day it commences.

7 Dictionary, new definition of *additional crystalline silica control measure*

insert

additional crystalline silica control measure, for chapter 7A (Crystalline silica)—see section 418A.

8 Dictionary, definitions of *Class H vacuum cleaner* and *Class M vacuum cleaner*

omit

9 Dictionary, new definition of *engineered stone*

insert

engineered stone, for chapter 7A (Crystalline silica)—see section 418A.

10 Dictionary, definition of *local exhaust ventilation system*

omit

11 Dictionary, new definitions of *mechanical process* and *wet dust suppression method*

insert

mechanical process, for chapter 7A (Crystalline silica)—see section 418A.

wet dust suppression method, for chapter 7A (Crystalline silica)—see section 418A.

Schedule 1 Other amendments

(see s 3)

[1.1] Sections 418A and 418B

substitute

418A Definitions—ch 7A

(1) In this chapter:

additional crystalline silica control measure—each of the following control measures is an ***additional crystalline silica control measure*** in relation to the cutting of material containing crystalline silica:

- (a) the isolation of the place where the cutting occurs from the rest of the workplace;
- (b) the attachment of a Class H vacuum cleaner to the tool used for cutting;
- (c) for material containing less than 25% crystalline silica—the attachment of a Class M vacuum cleaner to the tool used for cutting;
- (d) the use of a local exhaust ventilation system.

airborne crystalline silica means an airborne contaminant containing respirable crystalline silica.

cut includes crush, drill, grind, polish, sand and trim.

engineered stone means a stone that is artificially produced by combining natural stone that contains crystalline silica with other materials such as resin and pigment.

high risk crystalline silica work means work carried out in a workplace in relation to a crystalline silica process that is reasonably likely to result in a risk to the health of a person at the workplace.

material containing crystalline silica means—

- (a) engineered stone; or
- (b) any cement, concrete, masonry, mortar or brick product containing crystalline silica; or
- (c) natural stone containing crystalline silica.

mechanical process does not include a process that involves plant or a tool—

- (a) that relies exclusively on manual power for its operation; and
- (b) is designed to be primarily supported by hand.

respiratory protective equipment means personal protective equipment that—

- (a) is designed to protect the wearer from inhaling airborne crystalline silica; and
- (b) complies with AS/NZS 1716:2012 (Respiratory protective devices) or requirements equivalent to the standard.

Note AS/NZS 1716:2012 does not need to be notified under the [Legislation Act](#) because s 47 (5) does not apply (see s 15 and [Legislation Act](#), s 47 (7)). The standard may be purchased at www.standards.org.au.

wet dust suppression method—

- (a) means a method of suppressing airborne contaminants that involves the use of water or other suitable liquid, or a wetting agent; and
- (b) includes using a continuous feed of water, or an emulsion, spray, curtain, mist or foam of water or other suitable liquid over the place where airborne contaminants are produced.

- (2) For subsection (1), definition of *high risk crystalline silica work*, a person may not rely upon a control measure required under this chapter when assessing if work is likely to result in a risk to the health of a person at the workplace.
- (3) In this section:

Class H vacuum cleaner means a vacuum cleaner that complies with the requirements of Class H of AS/NZS 60335.2.69:2017 (Household and similar electrical appliances – Safety, Part 2.69: Particular requirements for wet and dry vacuum cleaners, including power brush, for commercial use), or requirements equivalent to the standard.

Class M vacuum cleaner means a vacuum cleaner that complies with the requirements of Class M of AS/NZS 60335.2.69:2017 (Household and similar electrical appliances – Safety, Part 2.69: Particular requirements for wet and dry vacuum cleaners, including power brush, for commercial use), or requirements equivalent to the standard.

Note AS/NZS 60335.2.69.2017 does not need to be notified under the [Legislation Act](#) because s 47 (5) does not apply (see s 15 and [Legislation Act](#), s 47 (7)). The standard may be purchased at www.standards.org.au.

crystalline silica process consists of 1 or more of the following processes carried out at a workplace:

- (a) the use of a power tool or another mechanical process to—
- (i) crush, drill, grind, polish, sand or trim material containing crystalline silica; or
 - (ii) carry out any other activity involving material containing crystalline silica that produces airborne crystalline silica;
- (b) the use of a roadheader on an excavated face if the material in the face contains crystalline silica;

- (c) a process that exposes a person to airborne crystalline silica arising from the manufacture or handling of material that contains crystalline silica;
- (d) the mechanical screening of crushed material containing crystalline silica;
- (e) a quarrying process involving material containing crystalline silica;
- (f) a tunnelling process involving material containing crystalline silica;
- (g) any other process prescribed by regulation.

local exhaust ventilation system means an engineering control that reduces worker exposure to airborne crystalline silica in the workplace by capturing the emission of airborne crystalline silica at the source and transporting it to a safe emission point, filter or scrubber.

418B Uncontrolled dry cutting of material containing crystalline silica

A person conducting a business or undertaking at a workplace must not direct or allow a worker to cut material containing crystalline silica with a power tool or use another mechanical process to cut the material unless—

- (a) either—
 - (i) a water delivery system supplying a continuous feed of water over the cutting area is used to suppress airborne crystalline silica produced by the cutting; or
 - (ii) for material containing crystalline silica other than engineered stone—a wet dust suppression method is used to suppress airborne crystalline silica produced by the cutting; and

(b) at least 1 additional crystalline silica control measure is in place.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

[1.2] Section 418C (b) (i)

substitute

- (i) using either of the following crystalline silica control measures with at least 1 additional crystalline silica control measure:
 - (A) a water delivery system supplying a continuous feed of water over the cutting area to suppress airborne crystalline silica produced by the cutting;
 - (B) if it is not reasonably practicable to use the control measure mentioned in subparagraph (A) for material containing crystalline silica other than engineered stone—a wet dust suppression method to suppress airborne crystalline silica produced by the cutting; and

Endnotes

1 Notification

Notified under the [Legislation Act](#) on 17 October 2022.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
