



Australian Capital Territory

Work Health and Safety Amendment Regulation 2022 (No 3)

Subordinate Law SL2022-15

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

Dated 31 October 2022.

MICK GENTLEMAN
Minister

YVETTE BERRY
Minister



Australian Capital Territory

Work Health and Safety Amendment Regulation 2022 (No 3)

Subordinate Law SL2022-15

made under the

[Work Health and Safety Act 2011](#)

Contents

		Page
1	Name of regulation	1
2	Commencement	1
3	Legislation amended	1
4	Section 291 (1), definition of <i>high risk construction work</i> , new paragraph (s)	1
5	Section 291 (2), new definitions	1

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

Contents

	Page
6	Section 418A (1), definition of <i>additional crystalline silica control measure</i> 2
7	Section 418A (1), new definitions 2
8	Section 418A (1), definition of <i>material containing crystalline silica</i> 3
9	Section 418A (1), definition of <i>wet dust suppression method</i> , paragraph (a) 3
10	Section 418A (1), definition of <i>wet dust suppression method</i> , paragraph (b) 4
11	Section 418B 4
12	Section 418C 5
13	Dictionary, definition of <i>additional crystalline silica control measure</i> 7
14	Dictionary, new definitions 8
15	Dictionary, definition of <i>material containing crystalline silica</i> 8
Schedule 1	Other amendment 9

1 Name of regulation

This regulation is the *Work Health and Safety Amendment Regulation 2022 (No 3)*.

2 Commencement

- (1) This regulation (other than sections 4 and 5 and 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) Sections 4 and 5 commence on 31 January 2023.
- (3) Schedule 1 commences immediately after the commencement of the *Work Health and Safety Amendment Regulation 2022 (No 2)*, schedule 1.

3 Legislation amended

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

4 Section 291 (1), definition of *high risk construction work*, new paragraph (s)

insert

- (s) involves the cutting of crystalline silica material using a power tool or another mechanical process.

5 Section 291 (2), new definitions

insert

crystalline silica material—see section 418A (1).

cut, crystalline silica material—see section 418A (1).

mechanical process—see section 418A (1).

6 Section 418A (1), definition of *additional crystalline silica control measure*

omit

7 Section 418A (1), new definitions

insert

Class H vacuum means a vacuum 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 means a vacuum 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 control measure—each of the following control measures is a **crystalline silica control measure** in relation to the cutting of engineered stone or other crystalline silica material:

- (a) 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;
- (b) a wet dust suppression method;
- (c) the attachment of a Class H vacuum to the tool used for cutting;

- (d) for other crystalline silica material containing less than 25% crystalline silica—the attachment of a Class M vacuum to the tool used for cutting;
- (e) the use of a local exhaust ventilation system;
- (f) the isolation of the place where the cutting occurs from other workers.

crystalline silica material means—

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

8 Section 418A (1), definition of *material containing crystalline silica*

omit

9 Section 418A (1), definition of *wet dust suppression method*, paragraph (a)

omit

airborne contaminants

substitute

airborne crystalline silica

10 Section 418A (1), definition of *wet dust suppression method*, paragraph (b)

omit

airborne contaminants are

substitute

airborne crystalline silica is

11 Section 418B

substitute

418B Uncontrolled dry cutting of engineered stone

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

- (a) 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; and
- (b) at least 1 other crystalline silica control measure is used.

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).

418BAA Uncontrolled dry cutting of other crystalline silica material

A person conducting a business or undertaking at a workplace must not direct or allow a worker to cut crystalline silica material other than engineered stone with a power tool or use another mechanical process to cut the material unless at least 1 crystalline silica control measure is used.

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).

12 Section 418C

substitute

418C Effective control measures for cutting engineered stone

A person conducting a business or undertaking at a workplace must ensure that the risk of cutting engineered stone with a power tool or using another mechanical process to cut the material 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 a water delivery system supplying a continuous feed of water over the cutting area to suppress airborne crystalline silica produced by the cutting; and
 - (ii) using at least 1 other crystalline silica control measure; and

- (iii) ensuring that each worker at the workplace who may be exposed to airborne crystalline silica produced by the cutting wears 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).

418CAA Effective control measures for cutting other crystalline silica material

- (1) A person conducting a business or undertaking at a workplace must ensure that the risk of cutting crystalline silica material other than engineered stone with a power tool or using another mechanical process to cut the material 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 using the following:
 - (i) a water delivery system supplying a continuous feed of water over the cutting area to suppress airborne crystalline silica produced by the cutting and at least 1 other crystalline silica control measure;
 - (ii) if it is not reasonably practicable to use a control measure mentioned in subparagraph (i)—a wet dust suppression method and at least 1 other crystalline silica control measure;
 - (iii) if it is not reasonably practicable to use a control measure mentioned in subparagraph (ii)—attaching an approved vacuum to the tool used for cutting and at least 1 other crystalline silica control measure;

- (iv) if it is not reasonably practicable to use a control measure mentioned in subparagraph (iii)—a wet dust suppression method or attaching an approved vacuum to the tool used for cutting or a fully enclosed operator cabin fitted with a high efficiency air filtration system;
- (v) if it is not reasonably practicable to use the control measure mentioned in subparagraph (iv)—at least 1 crystalline silica control measure and 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).

(2) In this section:

approved vacuum means—

- (a) a Class H vacuum; or
- (b) for other crystalline silica material containing less than 25% crystalline silica—a Class M vacuum.

13 Dictionary, definition of *additional crystalline silica control measure*

omit

14 Dictionary, new definitions

insert

Class *H vacuum*, for chapter 7A (Crystalline silica)—see section 418A (1).

Class *M vacuum*, for chapter 7A (Crystalline silica)—see section 418A (1).

crystalline silica control measure, for chapter 7A (Crystalline silica)—see section 418A (1).

crystalline silica material, for chapter 7A (Crystalline silica)—see section 418A (1).

15 Dictionary, definition of *material containing crystalline silica*

omit

Schedule 1 Other amendment

(see s 3)

[1.1] Sections 418A to 418CAA

substitute

418A Definitions—ch 7A

- (1) In this chapter:

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

Class H vacuum means a vacuum 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 means a vacuum 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 control measure—each of the following control measures is a ***crystalline silica control measure*** in relation to the cutting of engineered stone or other crystalline silica material:

- (a) 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;

- (b) a wet dust suppression method;
- (c) the attachment of a Class H vacuum to the tool used for cutting;
- (d) for other crystalline silica material containing less than 25% crystalline silica—the attachment of a Class M vacuum to the tool used for cutting;
- (e) the use of a local exhaust ventilation system;
- (f) the isolation of the place where the cutting occurs from other workers.

crystalline silica material means—

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

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

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.

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 crystalline silica 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 crystalline silica is 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:

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 engineered stone

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

- (a) 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; and
- (b) at least 1 other crystalline silica control measure is used.

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).

418BAA Uncontrolled dry cutting of other crystalline silica material

A person conducting a business or undertaking at a workplace must not direct or allow a worker to cut crystalline silica material other than engineered stone with a power tool or use another mechanical process to cut the material unless at least 1 crystalline silica control measure is used.

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).

418C Effective control measures for cutting engineered stone

A person conducting a business or undertaking at a workplace must ensure that the risk of cutting engineered stone with a power tool or using another mechanical process to cut the material 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 a water delivery system supplying a continuous feed of water over the cutting area to suppress airborne crystalline silica produced by the cutting; and
 - (ii) using at least 1 other crystalline silica control measure; and

- (iii) ensuring that each worker at the workplace who may be exposed to airborne crystalline silica produced by the cutting wears 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).

418CAA Effective control measures for cutting other crystalline silica material

- (1) A person conducting a business or undertaking at a workplace must ensure that the risk of cutting crystalline silica material other than engineered stone with a power tool or using another mechanical process to cut the material 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 using the following:
 - (i) a water delivery system supplying a continuous feed of water over the cutting area to suppress airborne crystalline silica produced by the cutting and at least 1 other crystalline silica control measure;
 - (ii) if it is not reasonably practicable to use a control measure mentioned in subparagraph (i)—a wet dust suppression method and at least 1 other crystalline silica control measure;
 - (iii) if it is not reasonably practicable to use a control measure mentioned in subparagraph (ii)—attaching an approved vacuum to the tool used for cutting and at least 1 other crystalline silica control measure;

- (iv) if it is not reasonably practicable to use a control measure mentioned in subparagraph (iii)—a wet dust suppression method or attaching an approved vacuum to the tool used for cutting or a fully enclosed operator cabin fitted with a high efficiency air filtration system;
- (v) if it is not reasonably practicable to use the control measure mentioned in subparagraph (iv)—at least 1 crystalline silica control measure and 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).

(2) In this section:

approved vacuum means—

- (a) a Class H vacuum; or
- (b) for other crystalline silica material containing less than 25% crystalline silica—a Class M vacuum.

Endnotes

1 Notification

Notified under the [Legislation Act](#) on 1 November 2022.

2 Republications of amended laws

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

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