

# Engineered stone prohibition

Guidance for PCBUs

**JUNE 2024**



**safe work** australia

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## **Guidance for PCBUs**

Engineered stone prohibition

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# 1. Introduction

## 1.1 Summary

From 1 July 2024, a person conducting a business or undertaking (PCBU) must not carry out, or direct or allow a worker to carry out, work that involves the manufacture, supply, processing, or installation of engineered stone benchtops, panels, and slabs. This is referred to as the 'engineered stone prohibition' in this guide.

For specific details about the implementation of the engineered stone prohibition in your jurisdiction, including the commencement date and any applicable transitional arrangements, **please refer to the [WHS regulator](#)** for the jurisdiction in which you carry out work on engineered stone.

Importantly, the engineered stone prohibition only applies to engineered stone benchtops, panels and slabs. Engineered stone products not in these forms are not prohibited. Engineered stone does not include sintered stone or porcelain products, provided they do not contain resin. However, under the WHS Regulations, processing of sintered stone and porcelain products, and engineered stone that is not a benchtop, panel or slab, must be controlled.

There are limited exceptions from the prohibition which permit certain processing to be carried out on legacy engineered stone benchtops, panels and slabs.

- Any processing involved in permitted work with legacy engineered stone must be controlled, and
- the PCBU must also comply with notification requirements before carrying out permitted work with legacy engineered stone.

Under the WHS Regulations, a person may apply for an exemption from the prohibition for a type of engineered stone product. A WHS regulator may grant an exemption if certain criteria are met. An exemption granted by a WHS regulator is recognised by all WHS regulators with a corresponding WHS law in relation to granting engineered stone prohibition exemptions.<sup>1</sup>

The purpose of this guide is to assist PCBUs to understand their obligations in relation to the engineered stone prohibition.

A glossary of terms used in the guidance is at Appendix A.

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<sup>1</sup> Victoria is the only jurisdiction that does not have a corresponding WHS law for the mutual recognition of an exemption from the prohibition granted by another WHS regulator with respect to a type of engineered stone. A person would need to separately apply for an exemption in Victoria.

## 1.2 How to use this guide

This document provides guidance to assist PCBUs to meet their new obligations under the WHS Regulations in relation to the engineered stone prohibition.

- **Part 2 - Engineered stone prohibition:** Explains the scope of the engineered stone prohibition, why it was introduced, what is prohibited under the WHS Regulations, and the limited circumstances in which work with engineered stone is permitted.
- **Part 3 - Notification of work with legacy engineered stone:** Provides guidance on a PCBU's obligation to notify the WHS regulator before any permitted work with legacy engineered stone is carried out.
- **Part 4 - Controlled processing:** Provides guidance on complying with the obligation to ensure that any processing of engineered stone, sintered stone and porcelain products is controlled.
- **Part 5 - Exemptions from the prohibition on application:** Provides guidance on how to make an application to a WHS regulator to request an exemption from the prohibition in respect of a type of engineered stone benchtop, panel, or slab.

This guide includes references to various legal requirements under the WHS Act and Regulations. These are included for convenience only and should not be relied on in place of the full text of the WHS Act or WHS Regulations.

This guide should be read in conjunction with:

- [model Code of Practice: How to manage work health and safety risks](#)
- [model Code of Practice: Construction work](#)
- [Working with crystalline silica and crystalline silica containing products guide](#)
- [National Exemption Framework](#)
- [Workplace exposure standards for airborne contaminants \(2024\)](#)
- [Health monitoring for persons conducting a business or undertaking](#)
- [Health monitoring for crystalline silica](#)

This guidance is relevant to all jurisdictions with harmonised WHS laws. **Refer to your [WHS regulator](#)** for information about how the prohibition and related regulations apply in your jurisdiction, including any Codes of Practice that may be in place.

In this guide, the word 'must' indicates a legal requirement that must be complied with. The word 'should' indicates a recommended course of action, while 'may' is used to indicate an optional course of action.

## 2. Engineered stone prohibition

### 2.1 Why is engineered stone prohibited?

Crystalline silica is the crystalline form of silicon dioxide, a naturally occurring mineral that is found in most soils and rocks, including granite and sandstone, and is a component of artificial products like concrete, mortar, ceramic tiles, and engineered stone. Engineered stone can contain up to 97% crystalline silica.

The processing of engineered stone such as cutting, grinding and polishing with a power tool can create substantial volumes of dust. When being processed, products that contain crystalline silica generate dust that includes airborne particles that can be inhaled deep into the lungs. This is known as respirable crystalline silica (RCS).

Exposure to RCS can lead to serious respiratory diseases such as silicosis, progressive massive fibrosis, chronic obstructive pulmonary disease, chronic bronchitis, and lung cancer. RCS also increases the risk of developing chronic kidney disease, autoimmune disorders, and other adverse health effects.

There has been a significant increase in cases of silicosis in Australia in recent years, particularly in workers exposed to RCS from processing engineered stone. Many of these cases are in younger workers who are experiencing faster disease progression (accelerated silicosis<sup>2</sup>). Silicosis is an irreversible and debilitating disease which can be fatal. Silicosis and other silica-related diseases are entirely preventable by either eliminating or minimising exposure to RCS.

In response to the significant increase in cases of silicosis, particularly in younger engineered stone workers, WHS ministers unanimously agreed to prohibit the manufacture, supply, processing and installation of engineered stone benchtops, panels and slabs.

**Further information** about [crystalline silica and silicosis](#) is available on Safe Work Australia's website.

### 2.2 What is prohibited?

#### **WHS Regulation 529D**

Prohibition of work involving engineered stone benchtops, panels or slabs.

Under regulation 529D, it is an offence for a PCBU to carry out work involving the manufacture, supply, processing or installation of engineered stone benchtops, panels or slabs. It is also an offence for a PCBU to direct or allow a worker to carry out this type of work.

There are limited exceptions to the prohibition for which work with engineered stone benchtops, panels or slabs is permitted. These are:

- for research and analysis
- to sample and identify engineered stone
- for removal, repair and minor modification of legacy engineered stone, and
- disposal of engineered stone.

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<sup>2</sup> Accelerated silicosis results from short term exposure to large amounts of RCS (1 to 10 years of exposure)

See Parts 2.4 and 2.5 of this guide for further information.

## 2.3 Definition of engineered stone and the scope of the prohibition

For the purposes of the WHS Regulations, engineered stone is defined as an artificial product that contains 1% or more crystalline silica<sup>3</sup> (as a weight/weight concentration) that is created by combining materials such as natural stone, water, resins, or pigments and becomes hardened.

The prohibition applies to engineered stone (as described above):

- benchtops
- panels, and
- slabs.

### Exclusions

The prohibition does not apply to engineered stone products that are not benchtops, panels or slabs, such as finished products including jewellery, garden ornaments, sculptures and kitchen sinks. The prohibition does not apply to these types of finished products because they are not intended to be further processed to be used or installed.

The prohibition does not apply to porcelain or sintered stone benchtops, panels or slabs, provided they do not contain resin.

**Processing must still be controlled** when working with sintered stone or porcelain products, and engineered stone that are not benchtops, panels, or slabs. See Part 4.

Additionally, the prohibition does not apply to other artificial products including:

- concrete and cement products,
- bricks, pavers and other similar blocks,
- ceramic wall and floor tiles,
- roof tiles,
- grout, mortar and render, and
- plasterboard.

The prohibition does not apply to natural stone benchtops, panels or slabs. For example, the manufacture, supply, installation or processing of a granite benchtop is not prohibited. However, PCBU's still owe a duty to ensure the health and safety of workers who are processing natural stone products.

If your product **does not** meet the definition of engineered stone or falls under one of the exclusions outlined above, then it is not prohibited.

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<sup>3</sup> Crystalline silica includes cristobalite, quartz, tridymite and tripoli forms.

## 2.4 Permitted work for research & analysis and to sample & identify

### WHS Regulations 529E and 529F

Exceptions for research and analysis, and to sample and identify engineered stone.

Regulations 529E and 529F permit the installation, supply and controlled processing of engineered stone benchtops, panels or slabs for the purposes of:

- genuine research and analysis, and
- to sample and identify engineered stone.

See Part 4 for the requirements for controlled processing of engineered stone.

### Scenario 1. Examples of genuine research and analysis

- A university-based researcher is studying the ability of various materials commonly found in homes to resist the impact of the spread of fire. A business is permitted to supply a legacy engineered stone benchtop from their stockpile to the researcher for this study. In turn, the researcher, who is trained and proficient in using hand and power tools and who understands the risks of RCS, may process the engineered stone such as by cutting the benchtop to suit the needs of their research. Any processing of the engineered stone must be controlled.
- A PCBU provides a laboratory with product samples to be tested for crystalline silica content. Although the product was labelled as crystalline silica-free, the test results return levels 1% or greater. The work undertaken by the lab is classified as genuine research and analysis.



## 2.5 Permitted work for repair, removal, minor modification and disposal of legacy engineered stone

### WHS Regulation 529F

Exception to process legacy engineered stone for repair, removal, minor modification and disposal.

Engineered stone benchtops, panels and slabs are currently installed in many homes and other settings throughout Australia. There may also be stock of uninstalled engineered stone held by PCBU's (e.g., suppliers and distributors) after the commencement of the prohibition. These installed products and uninstalled stock are referred to as legacy engineered stone.

Regulation 529F permits the controlled processing of legacy engineered stone benchtops, panels or slabs for the limited purposes of:

- removal, repair and minor modification to previously installed engineered stone, or
- disposal of engineered stone (i.e. after removal or disposal of uninstalled stock)

Uninstalled stock may only be processed for the purposes of disposal. Therefore, it is not permitted to process uninstalled stock for the purposes of, for example, repairing or making minor modifications to an installed benchtop. Additionally, once any legacy engineered stone is removed (uninstalled), it can only be further processed for the purpose of disposal and not for other purposes such as reinstallation.

This means that PCBU's are permitted to carry out, or direct workers to carry out, the repair, minor modification, removal or disposal of legacy engineered stone involving processing provided that processing is controlled (see Part 4). The WHS regulator must also be notified of the work (see Part 3).

**Processing must be controlled** when undertaking permitted work with legacy engineered stone. See Part 4.

### Meaning of minor modification

Due to the diverse types of PCBU's expected to work with legacy engineered stone, including tradespersons such as builders, electricians, tilers and carpenters, the phrase **minor modification** is not defined and has its ordinary meaning.

Making a minor modification to an installed engineered stone product involves a change or alteration to the product that is limited in scope and where the relevant features and purpose of the product remain. For example, drilling a larger diameter hole in a kitchen benchtop to allow the installation of a new mixer tap would be a minor modification.

### Disposal of legacy engineered stone

The prohibition of engineered stone allows for the processing of installed and uninstalled engineered stone benchtops, panels and slabs for the purposes of disposal, provided the processing is controlled.

Processing of legacy engineered stone for disposal (for example, crushing engineered stone off-cuts) must be controlled and the disposal must comply with any applicable jurisdictional waste management requirements (such as quantity or dust level limits of the load or watering prior to tipping).

The exception for disposal does not permit repurposing or reusing of processed legacy engineered stone, including crushed stone.

### **Scenario 2. Examples of permitted work with legacy engineered stone**

The following examples of work with legacy engineered stone are permitted, provided the PCBU provides prior notice of the work to the WHS regulator and ensures any processing of the engineered stone is controlled.

- A worker repairs a crack in an engineered stone benchtop installed in a kitchen. To repair the engineered stone, a worker needs to fill the crack with liquid resin and use power tools to level and re-polish the engineered stone.
- A worker makes a minor modification by creating a hole in splashback to install a new power point. The worker uses a power drill to create the hole.
- A worker replaces the stovetop in an engineered stone benchtop. The replacement stovetop is the same dimensions as the existing one but has slightly different installation specifications. To install it, the worker uses a power tool to trim one side of the existing hole in the engineered stone benchtop to make the minor modification to fit the replacement stovetop correctly.
- A worker uses power tools to remove an engineered stone benchtop and splashback as part of a kitchen renovation. The worker then uses a mechanical plant with wet dust suppression methods to crush the engineered stone to facilitate easier disposal. The crushed stone is then taken to a local waste management site.

If the PCBU carries out work involving processing of a stone product for removal, disposal, repair or minor modification which is subsequently identified as engineered stone, the PCBU must, as soon as practicable after they become so aware, notify the WHS regulator.

## 3. Notification of work with legacy engineered stone

### 3.1 Notification of work with legacy engineered stone

#### WHS Regulation 529G

Notification of particular processing of legacy engineered stone.

#### Initial notification of work

PCBUs must provide a written notice to the WHS regulator if they intend to carry out permitted work with legacy engineered stone – i.e., work that involves processing to:

- repair, make minor modification to, or remove an engineered stone benchtop, panel or slab that is already installed, or
- dispose of an engineered stone benchtop, panel or slab, whether it is installed or not.

The notification may be relied on for up to 12-months. It is not a task or project-based notification. Rather, it is expected that the PCBU considers the work likely to be carried out involving the processing of engineered stone during the 12-months from the date of notification.

The notification:

- is current for a 12-month period, and
- is not required for every new job with legacy engineered stone.

The PCBU must describe the types of work that will be carried out on engineered stone during the 12-months from the date of notification.

If the PCBU intends to carry out permitted work with legacy engineered stone in more than one jurisdiction, notification must be provided to the WHS regulator for each jurisdiction in which the work is carried out using the form approved by the relevant regulator.

**When multiple PCBUs have a duty to notify** the WHS regulator about the same permitted work, section 46 of the model WHS Act requires the PCBUs to consult, co-operate and co-ordinate activities to ensure the WHS regulator is notified about that work.

A PCBU must notify the WHS regulator *before* any permitted work with legacy engineered stone is carried out.

However, if a PCBU carries out work that they do not know was permitted work with legacy engineered stone (e.g., due to misidentifying the engineered stone as another type of product), the PCBU must notify the WHS regulator *as soon as practicable* after becoming aware that the work involved processing of engineered stone.

Once the PCBU submits the notification to the WHS regulator, they do not have to wait for a receipt of notification from the WHS regulator to begin the permitted work.

PCBUs must use the notification form published by the WHS regulator. WHS regulators will, at a minimum, require the following information:

- the type of work being carried out (i.e., repair, minor modification, removal or disposal),
- a description of the work (e.g., repairing kitchen benchtops), and
- the estimated frequency and duration of the work to be conducted, (e.g., approximately one repair per week, and less than 30 minutes per repair).

For further information on the notification process, including the approved notification form, **refer to the WHS regulator** in the [jurisdiction](#) where the permitted work is to be carried out.

Please note, Victoria does not require PCBUs to submit a notification for permitted work with legacy engineered stone. If you are a PCBU who works in Victoria, please refer to [WorkSafe Victoria](#).

The information provided to the WHS regulator in the notification will enable the regulator to have oversight of the PCBUs in their jurisdiction whose workers may be exposed to RCS while working with legacy engineered stone.

WHS regulators have powers to investigate and enforce WHS laws. The WHS regulator may rely on those powers to obtain further information from the PCBU about work with legacy engineered stone, and the PCBU's compliance with relevant duties under the WHS laws.

## Re-notification

### **WHS Regulation 529H**

Notification because of a change in information previously provided to the WHS regulator.

### **WHS Regulation 529I**

Re-notification 12 months after the previous notification for continuing work with legacy engineered stone.

A PCBU must re-notify the WHS regulator within 30 calendar days of the following occurring:

- The PCBU becomes aware of a change to the information provided in the previous notification. In this case, the re-notification must state and describe the information that has changed (e.g., an increase or decrease in the frequency and/or duration of the work or a change in the type of work with legacy engineered stone). A re-notification is not required if the PCBU ceases to carry out work with legacy engineered stone.
- The 12-month anniversary of the most recent notification made to the WHS regulator, unless the PCBU has ceased to carry out work with legacy engineered stone.

Once the PCBU submits the re-notification to the WHS regulator, they do not have to wait for a receipt of notification from the WHS regulator to continue the permitted work.

## Evidence of notification

### **WHS Regulation 529J**

Duty to keep notice given under Part 8A.3

Each time a PCBU notifies the WHS regulator, the PCBU must be given an acknowledgement from the WHS regulator.

A PCBU must keep a copy of their notification form for a period of 5 years, and ensure it is readily accessible and allow a person (e.g., a worker, health and safety representative or member of the public) to access a copy upon request.

For best practice, a PCBU should also keep their acknowledgment of notification from the WHS regulator as evidence of the date the notice was submitted.

## **3.2 Summary of notification obligations**

A flowchart summary of the notification obligations for permitted work with legacy engineered stone can be found in Appendix B.

## 4. Controlled Processing

### 4.1 Engineered stone, sintered stone and porcelain products

#### **WHS Regulation 529B**

Requirements for the processing of engineered stone, porcelain products and sintered stone benchtops, panels and slabs to be controlled.

#### **WHS Regulation 529K**

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

#### **WHS Regulation 529L**

Duty to prevent uncontrolled processing of porcelain products and sintered stone.

A PCBU must not process, or direct or allow a worker to process, the following products, unless the processing of the stone or product is controlled:

- porcelain products,
- sintered stone,
- engineered stone products that are not prohibited (i.e., products that are not in benchtop, panel or slab form), and
- engineered stone benchtops, panels, and slabs in the limited circumstances where processing is permitted— (Parts 2.4 and 2.5 relating to legacy engineered stone).

Any work with other materials containing crystalline silica must be undertaken in a way that eliminates or minimises risks so far as is reasonably practicable.

**From 1 September 2024**, the regulations will include specific control measures for processing of all crystalline silica substances containing 1% or more crystalline silica (weight/weight concentration) that must be implemented to ensure the processing is controlled. It is recommended that PCBUs visit Safe Work Australia's [website](#) to ensure the latest version of this guidance is used.

Processing in relation to these products means crushing, cutting, grinding, trimming, sanding, abrasive polishing and drilling using power tools or other mechanical plant.

For processing to be controlled:

- control measures to eliminate or minimise risks arising from the processing of the stone or product must be implemented so far as is reasonably practicable; and
- at least one of the following systems must be used:
  - an effective water delivery system that supplies a continuous feed of water over the stone being processed to suppress the generation of dust,
  - an effective on-tool dust extraction system,
  - an effective local exhaust ventilation (LEV) system, and

- each person who is at risk of exposure to RCS from processing the product must be provided with respiratory protective equipment (RPE) and must wear the RPE while work is being carried out. The RPE must comply with:
  - AS/NZS 1716:2012 (Respiratory protective devices), and
  - AS/NZS 1715:2009 (Selection, use and maintenance of respiratory protective equipment).

More than one control method will normally be required to adequately protect workers.

## 4.2 Respiratory Protective Equipment

RPE is personal protective equipment (PPE) that is designed to prevent a person wearing the equipment from inhaling airborne contaminants, and

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

### **WHS Regulation 44**

Provision to workers and use of personal protective equipment

### **WHS Regulation 45**

Personal protective equipment used by other persons

### **WHS Regulation 46**

Duties of worker

PCBUs who direct the carrying out of work must:

- provide PPE, including RPE to workers at the workplace, unless PPE has been provided by another PCBU,
- ensure that PPE is selected to minimise risk to health and safety, maintained, repaired or replaced and used or worn by the worker, so far as is reasonably practicable,
- provide the worker with information, training and instruction in the proper use, wearing, storage and maintenance of PPE, and
- ensure, so far as is reasonably practicable, that PPE to be used or worn by any person other than a worker at the workplace is capable of minimising risk to the person's health and safety; and the person uses or wears the equipment.

Workers must also, so far as reasonably able, use or wear PPE, including RPE, in accordance with any information, training or reasonable instruction provided by the PCBU. The worker must not intentionally misuse or damage the equipment, and must inform the PCBU of any damage to, defect in or need to clean or decontaminate the equipment.

**Please refer to Parts 3 to 5 of the [National guide for working with crystalline silica and crystalline silica containing products](#) for further information about the control measures.**

Under AS/NZS 1715:2009, the RPE must incorporate a particulate filter (P1, P2 or P3 - dependent on the type of RPE selected and the level of airborne contamination present). Where tight fitting RPE is used:

- the RPE needs to be successfully fit-tested to the wearer before use and annually thereafter, and
- there can be no facial hair where the mask seals to the face during fit testing or when wearing RPE.

Refer to your [WHS regulator](#) for information about the correct use of RPE.



## 5. Exemptions from the prohibition

### 5.1 Exemption from the engineered stone prohibition

#### WHS Regulation 689A

Exemption from the engineered stone prohibition

The WHS Regulations allow a WHS regulator to exempt a type of engineered stone from the prohibition. If an exemption is granted, the engineered stone prohibition will not apply if a PCBU carries out work involving the type of engineered stone that has been exempted.

An exemption from the engineered stone prohibition may only be granted if the WHS regulator is 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.

An exemption granted by the WHS regulator of one jurisdiction will also apply in all jurisdictions except Victoria.<sup>4</sup>

**Note:** The exemption applies to a type of engineered stone. Once a type of engineered stone is exempted, any PCBU will be able to work with that type of engineered stone so long as they can satisfy any conditions imposed on the exemption.

### 5.2 Application for an exemption

#### WHS Regulations 689B and 690

Application for exemption

A person may apply to a WHS regulator to exempt a type of engineered stone from the prohibition.

Before applying for an exemption, the person must consult with the Safe Work Australia Members who represent the interests of employers and workers (social partners).

**For further information** about Safe Work Australia's social partners, see Safe Work Australia's [website](#).

The person must provide written notice to each social partner:

- stating that they intend to apply to a WHS regulator for an exemption
- inviting the social partner to make a submission for the regulator (within a reasonable period), and
- informing the social partner that the submission must be provided to the regulator as part of the application.

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<sup>4</sup> Victoria is the only jurisdiction that does not have a corresponding WHS law for the mutual recognition of an exemption from the prohibition granted by another WHS regulator with respect to a type of engineered stone. A person would need to separately apply for an exemption in Victoria.

The person must also provide a copy of the proposed exemption application to each social partner together with the written notice.

When applying to the WHS regulator for an exemption, the applicant must provide the following:

- a written application in the manner and form required by the WHS regulator
- the written notice that was provided to each of the social partners, and
- any submissions made to the applicant by the social partners.

**For further information** on the application process, see the Guide for exemption applicants in the [National Exemption Framework](#).

## 5.3 How WHS regulators make decisions

### **WHS Regulation 689C**

Notifying persons of application for exemption

### **WHS Regulation 689D**

Regulator to be satisfied of certain matters

### **WHS Regulation 689E**

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

Upon receiving an exemption application, a WHS regulator must provide the application documents to each corresponding WHS regulator.

Additionally, the WHS regulator may choose to provide the application documents to the following classes of persons, and invite them to make a submission in respect of the exemption application:

- employer organisations that include employers who engage in work involving engineered stone,
- unions representing employees whose work includes work involving engineered stone, or
- persons who have qualifications, knowledge, skills and experience relating to engineered stone.

The WHS regulator must not grant an exemption unless it is satisfied that granting the exemption would result in a standard of health and safety that is at least equivalent to the standard that would have been achieved without that exemption.

When deciding this matter, the WHS regulator must have regard to:

- any submissions received by the WHS regulator from the above parties (i.e., corresponding WHS regulators, employee groups, employer groups and technical experts)
- any submission made by social partners and provided by the applicant with the application and
- the Engineered Stone Prohibition exemption common decision-making criteria published on the Safe Work Australia website under the [National Exemption Framework](#).

## 5.4 Outcome of an application

### **WHS Regulation 676**

Reviewable decisions

### **WHS Regulation 694**

Notice of decision in relation to exemption

### **WHS Regulation 695**

Publication of exemption

The WHS regulator will inform the applicant of the outcome of the exemption application.

If the exemption is granted, the WHS regulator must additionally:

- publish its reasons for granting the exemption within 14 days, and
- notify each corresponding regulator that the exemption is granted.

Once granted, exemptions will be recognised automatically in all jurisdictions with a corresponding WHS law for granting an exemption from the engineered stone prohibition; PCBUs should not apply for the same exemption in multiple jurisdictions.

**Please note** that Victoria's Occupational Health and Safety laws do not provide for automatic mutual recognition of exemptions granted by other jurisdictions. If you are a PCBU who works in Victoria, please refer to [WorkSafe Victoria](#) for more information about the recognition of exemptions.

If an application for an exemption is refused by the WHS regulator, the applicant may apply to the [relevant external review body] for review of the decision. Unless a longer period is allowed by the [external review body], the application for external review must be made within 28 days after the day on which the decision to refuse the exemption first came to the applicant's attention.

## 5.5 Summary of the exemption process

A flowchart summary of the exemption process for engineered stone can be found in Appendix C.

## 5.6 Duties for PCBUs working with exempt engineered stone

### **WHS Regulation 691**

Conditions of exemption

The WHS regulator may impose any condition it considers appropriate on an exemption from the engineered stone prohibition. This may include, for example, control measures for the manufacture, supply, processing or installation of an exempt engineered stone product, and/or requirements to undertake air monitoring, and monitor the health of persons at the workplace who may be exposed to RCS. A PCBU granted an exemption must comply with the conditions imposed on the exemption.

If an exemption is granted, PCBUs that are designers, manufacturers, importers or suppliers of an exempt type of engineered stone must still comply with the existing 'upstream' duties<sup>5</sup> in the WHS Act (sections 22-26) to ensure, so far as is reasonably practicable, that the design, manufacture, importation and supply of the exempt type of engineered stone is without risks to health and safety.

Discharging these upstream duties may require the designers, manufacturers, importers or suppliers of the exempt type of engineered stone to carry out, or arrange for, calculations, analysis, testing or examination of the product.

Further, designers, manufacturers, importers and suppliers must, so far as reasonably practicable, give current relevant information to downstream users of the stone (including to PCBUs who will install the stone) about:

- the purpose for which the type of engineered stone was designed or manufactured,
- the results of any calculations, analysis, testing or examination in relation to the type of engineered stone, including any hazardous properties identified by testing, and
- any conditions necessary to ensure that the type of engineered stone is without risks to health and safety when used for a purpose for which it was designed or manufactured, including any conditions placed on the use of the type of engineered stone as part of the exemption granted by the WHS regulator.

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<sup>5</sup> These are referred to as 'upstream' duties because they apply to PCBUs who, as designers, manufacturers, importers and suppliers, are higher up in the supply chain and can therefore potentially impact those who use, in this case, engineered stone products 'downstream' in the supply chain or later in the lifecycle of the products.

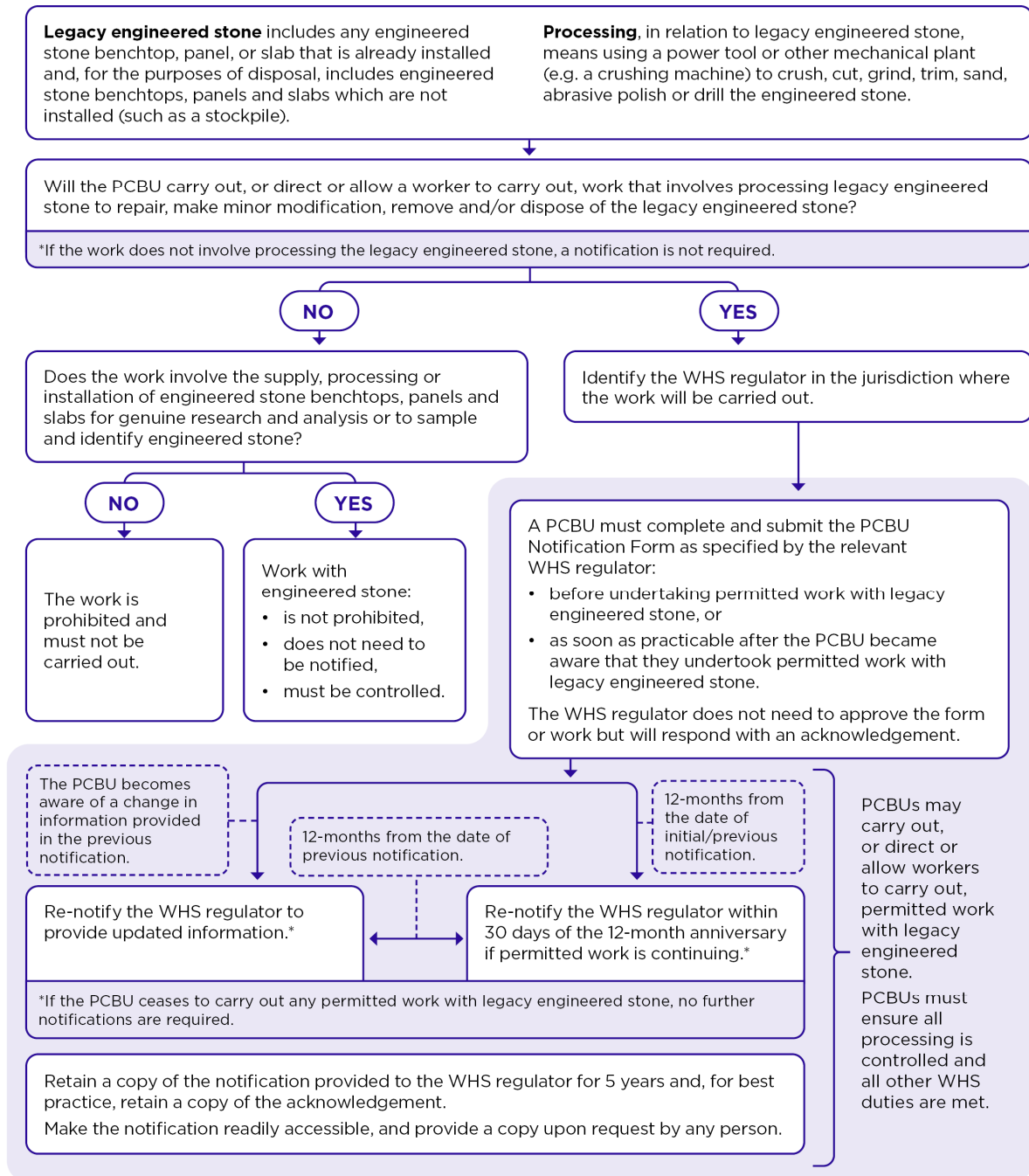
# Appendix A – Glossary

Key terms	Meaning
<b>Controlled processing</b>	<p>Processing of engineered stone where:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• at least one of the following systems is used:               <ul style="list-style-type: none"> <li>○ an effective water delivery system that supplies a continuous feed of water over the stone being processed to suppress the generation of dust,</li> <li>○ an effective on-tool extraction system,</li> <li>○ an effective local exhaust vacuum (LEV) system, and</li> </ul>               each person who is at risk from processing the product is provided with <i>respiratory protective equipment</i> (RPE) and wears said RPE while work is being carried out.             </li> </ul>
<b>Crystalline silica</b>	<p>The crystalline form of the abundant naturally occurring mineral silica or silicon dioxide (SiO<sub>2</sub>). It includes cristobalite, quartz, tridymite and tripoli and is present in almost all types of rocks, sand, clay, shale and gravel and in construction materials such as concrete, tiles and bricks.</p>
<b>Engineered stone</b>	<p>Engineered stone:</p> <p>a) is an artificial product that:</p> <ol style="list-style-type: none"> <li>i. contains 1% or more crystalline silica determined as a weight/weight (w/w) concentration; and</li> <li>ii. is created by combining natural stone materials with other chemical constituents such as water, resins or pigments; and</li> <li>iii. becomes hardened; but</li> </ol> <p>b) does not include the following:</p> <ol style="list-style-type: none"> <li>i. concrete and cement products;</li> <li>ii. bricks, pavers and other similar blocks;</li> <li>iii. ceramic wall and floor tiles;</li> <li>iv. porcelain, where it does not contain resin;</li> <li>v. sintered stone, where it does not contain resin;</li> <li>vi. roof tiles;</li> <li>vii. grout, mortar and render;</li> <li>viii. plasterboard.</li> </ol>
<b>Hazard</b>	<p>A situation or thing that has the potential to harm a person. Hazards at work may include, noisy machinery, a moving forklift, chemicals (including respirable crystalline silica), electricity, working at heights, a repetitive job, bullying and violence at the workplace.</p>
<b>Legacy engineered stone</b>	<p>Any previously installed engineered stone or stock of engineered stone that was not installed prior to the commencement of the engineered stone prohibition.</p>

<b>May</b>	'May' indicates an optional course of action.
<b>Must</b>	'Must' indicates a legal requirement exists that must be complied with.
<b>Person Conducting a Business or Undertaking (PCBU)</b>	<p>A PCBU is an umbrella concept which intends to capture all types of working arrangements or relationships.</p> <p>A PCBU includes a:</p> <ul style="list-style-type: none"> <li>• company,</li> <li>• unincorporated body or association, and</li> <li>• sole trader or self-employed person.</li> </ul> <p>Each individual who is in a partnership that is conducting a business or undertaking will individually be a PCBU.</p> <p>A volunteer association or elected members of a local authority will not be a PCBU.</p>
<b>Personal protective equipment (PPE)</b>	Anything used or worn by a person to minimise risk to the person's health and safety.
<b>Processing</b>	Processing, in relation to engineered stone, porcelain products or sintered stone, means using power tools or other mechanical plant to crush, cut, grind, trim, sand, abrasive polish or drill the engineered stone.
<b>Respiratory protective equipment (RPE)</b>	<p>PPE that:</p> <ol style="list-style-type: none"> <li>a) is designed to prevent a person wearing the equipment from inhaling airborne contaminants; and</li> <li>b) complies with AS/NZS 1716:2012 (Respiratory protective devices) and with AS/NZS 1715:2009 (Selection, use and maintenance of respiratory protective equipment).</li> </ol>
<b>Risk</b>	The possibility harm (death, injury or illness) might occur when exposed to a hazard.
<b>Should</b>	'Should' indicates a recommended course of action.
<b>Worker</b>	Any person who carries out work for a person conducting a business or undertaking, including work as an employee, contractor or subcontractor (or their employee), self-employed person, outworker, apprentice or trainee, work experience student, employee of a labour hire company placed with a 'host employer' or a volunteer.
<b>Workplace</b>	Any place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work. This may include offices, factories, shops, construction sites, vehicles, ships, aircraft or other mobile structures on land or water.

# Appendix B – Notification flowchart

## When does a PCBU need to notify the WHS regulator of their plan to process legacy engineered stone?



# Appendix C – Exemption flowchart

## Exemption from the engineered stone ban

