

Work Health and Safety (Engineered Stone) Amendment Regulation 2024

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, the Honourable Grace Grace MP, Minister for State Development and Infrastructure, Minister for Industrial Relations and Minister for Racing, provide this human rights certificate with respect to the *Work Health and Safety (Engineered Stone) Amendment Regulation 2024* (Amendment Regulation) made under the *Work Health and Safety Act 2011*.

In my opinion, the Amendment Regulation is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Amendment Regulation amends the *Work Health and Safety Regulation 2011* (WHS Regulation) to improve the safety of workers and others when processing benchtops, panels and slabs at a workplace. The Amendment Regulation—

- prohibits a person conducting a business or undertaking (PCBU) to, or direct others to—
 - carry out work that involves manufacturing, supplying, processing or installing engineered stone benchtop, panels or slabs;
 - process legacy engineered stone unless the processing of the stone is controlled;
 - process porcelain products and sintered stone unless the processing of the stone is controlled;
- requires that a PCBU must notify the regulator when carrying out processing of legacy engineered stone benchtops, panels or slabs; and
- provides an exemption framework for engineered stone, where the regulator is satisfied that exempting the type of engineered stone will result in a standard of health and safety at least equivalent to the standard that would be achieved without the exemption.

The Amendment Regulation also contains minor consequential and technical amendments to the *Work Health and Safety Regulation 2011* to support the above amendments.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

I have considered the rights protected by Part 2 of the HR Act. In my opinion, the human rights under the HR Act that are relevant to the Amendment Regulation are:

- right to life (section 16);
- property rights (section 24).

Promoting and enhancing human rights

The Amendment Regulation generally supports and promotes human rights, in particular the right to life (section 16, HR Act).

The object of the WHS Act is to secure the health and safety of workers and workplaces, including by protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from particular types of substances or plant (section 3(1)(a), WHS Act). The amendments contained in the Amendment Regulation strengthen and enhance the WHS legislative framework, consistent with the object of the WHS Act.

In particular, the Amendment Regulation promotes the right to life with the insertion of new part 8A.2 to the WHS Regulation which prohibits a PCBU to process, or to allow a worker to process, engineered stone benchtops, panels and slabs. Processing engineered stone benchtops, panels and slabs exposes a worker to serious risks to the worker's health and safety, emanating from an exposure to a respirable crystalline silica (RCS).

Consequently, prohibiting work on engineered stone benchtop panels and slabs, prevents workers from being exposed to RCS when they or others process new engineered stone benchtops, panels, and slabs, while also preventing additional product from entering the market and being processed by a person potentially unaware of the presence or danger of engineered stone.

The insertion of new parts 8A.4 and 8A.5 in the WHS Regulation, which require that the processing of engineered stone (excepting benchtops, panels, and slabs), and porcelain and sintered stone must be controlled, promotes the right to life by providing that a PCBU must ensure workers' lives are not put at risk by the unsafe work from the uncontrolled processing of engineered stone, porcelain and sintered stone.

Consideration of reasonable limitations on human rights (section 13 Human Rights Act 2019)

The Amendment Regulation potentially limits and interferes with property rights (section 24).

Property rights (section 24)

(a) The nature of the Rights

Property rights (Section 24 of the Human Rights Act 2019)

The *right to property* protects the right of all persons to own property (alone or with others) and provides that people have a right not to be arbitrarily deprived of their property. Deprivation in this sense has been held to include the substantial restriction on a person's use or enjoyment of their property.

A person's right to freedom to property may be limited by restricting what they may do with their property. The Amendment regulation requires that a person must process these materials in a particular way. The Amendment Regulation may accordingly limit a person's property rights as they will no longer be able to freely modify and process existing engineered stone benchtops, panels, and slabs without notifying the regulator of the proposed work.

PCBUs with engineered stone benchtop, panel and slab stock may be restricted as they will no longer be able to process but also manufacture, supply, or install their stock. Consequently, these PCBUs may need to dispose of these products, and the products used to make them.

(b) The nature of the purpose of the limitations, including whether they are consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitations is to improve the health and safety outcomes of workers and others when processing engineered stone products at a workplace. The restrictions, as described above, are limited and of low impact when compared to the significant hazard of RCS inhalation.

The Amendment Regulation does not interfere with any other materials that may be processed by workers at a workplace. These include, but are not limited to, natural stone, laminate, wood, and concrete.

The nature of the purpose of the limitations is consistent with a free and democratic society based on human dignity, equality and freedom, as described above.

(c) The relationship between the limitations and their purpose, including whether the limitations help to achieve the purpose

There is a direct relationship between the limitations and achieving the purpose of lower occurrences of injuries or death from the silicosis caused by the processing of engineered stone, sintered stone and porcelain. Introducing offence provisions to prohibit work on engineered stone benchtops, panels, and slabs, and enshrine controlled processing of other engineered stone products, sintered stone and porcelain sends a strong message of deterrence.

(d) Whether there are any less restrictive and reasonably available ways to achieve the purpose

Alternative approaches were explored by Safe Work Australia; this included:

- National awareness and behaviour change initiatives were assessed; however, despite significant education and awareness-raising activities as well as compliance and enforcement action by WHS regulators, significant and pervasive non-compliance with WHS laws by PCBUs and workers in the engineered stone industry continues. Consequently, improving awareness is expected to substantially improve compliance, meaning workers and others will continue to be put at risk from exposure to RCS.
- A prohibition on high silica content (>40%) engineered stone was investigated. No evidence, however, is available on how engineered stone of different crystalline silica content impacts health outcomes for workers. Consequently, this option may have a significant regulatory burden for an unknown effect.
- Licencing schemes may only have incremental benefits over the status quo, as any permitted work with engineered stone will still be subject to the prohibition on uncontrolled processing and the additional requirements for high-risk crystalline silica processes. Additionally, the administrative cost, for both PCBUs and governments, of managing and complying with a licence scheme may outweigh the benefits.

On these grounds, there are no other less restrictive and reasonably available ways to achieve the purpose.

(e) The balance between the importance of the purpose of the limitations and the importance of preserving the human right, taking into account the nature and extent of the limitations

I am satisfied the proposed Amendment Regulation strikes a fair balance between the health and safety benefits gained by prescribing controls and prohibition on engineered stone, sintered stone and porcelain and any limitations on the rights to property that may result from the commencement of the Amendment Regulation.

(f) Any other relevant factors

There are no other factors considered relevant.

Conclusion

I consider that the *Work Health and Safety (Engineered Stone) Amendment Regulation 2024* is compatible with human rights under the HR Act because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

GRACE GRACE MP
Minister for State Development and Infrastructure
Minister for Industrial Relations and
Minister for Racing

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