Work Health and Safety Amendment Regulation 2024

Explanatory notes for SL 2024 No. 174

made under the

Work Health and Safety Act 2011

General Outline

Short title

Work Health and Safety Amendment Regulation 2024

Authorising law

Section 276 of the *Work Health and Safety Act 2011*

Policy objectives and the reasons for them

The policy objectives of the *Work Health and Safety Amendment Regulation 2024* (Amendment Regulation) are:

- to ensure the safety of work environments for workers processing, or in the vicinity of the processing of, crystalline silica substances (CSS) is being undertaken and to reduce workplace exposure to respirable crystalline silica (RCS), with the ultimate aim to prevent the incidence of silicosis;
- to protect the health and safety of workers and other persons who carry out work on, or use, passenger ropeways by introducing specific requirements regarding the inspection, testing, maintenance, storage, use and plant design registration of passenger ropeways; and
- to protect the health and safety of workers and other persons who carry out work on, or use, amusement devices by introducing a specific requirement about making the log book available to another person to whom the amusement device is relinquished.

<u>Crystalline silica substances</u>

Crystalline silica comprises several common minerals in the earth's crust and is found in many rocks and natural stones like granite, slate and sandstone. It is also present, often at high concentrations, in some manufactured products such as engineered stone, concrete, bricks and tiles. While crystalline silica containing material itself does not present a risk when undisturbed, RCS generated from processing these materials has the potential to cause harm.

The crystalline silica content of common materials used across industries can vary significantly, ranging up to 97 per cent[1]:

Type	Amount of silica (per cent)
Marble	2
Limestone	2
Slate	25 to 40
Shale	22
Granite	20 to 45 (typically 30)
Natural sandstone	70 to 95

Silicosis is a serious, irreversible occupational lung disease caused by inhalation of silica dust. RCS causes inflammation and scarring in lungs and can lead to respiratory failure, disability or death. The uncontrolled cutting, polishing, grinding, sanding and trimming of material with silica content generates RCS. People engaged in these activities have the greatest risk of exposure to crystalline silica and developing silicosis.

In 2022, it was estimated that 584,050 workers in Australia were being exposed to RCS in the workplace.[2]

From the 2019-20 reporting year to the 2022-23 reporting year, Queensland's Notifiable Dust Lung Disease Register was notified of 188 cases of silicosis.[3] It is important to note that, given the lag in silicosis symptoms presenting themselves, further cases of silicosis in Queensland are expected over the coming years.

Between 1 May 2023 and 1 August 2023, Workplace Health and Safety Queensland (WHSQ) conducted an RCS compliance campaign which targeted construction sites and workplaces where building materials are manufactured, and excluded engineered and natural stone benchtops. WHSQ audited 75 workplaces manufacturing construction elements and 93 construction sites using materials that contain 1% or more crystalline silica content or an unknown crystalline silica content.

During these audits, 137 enforcement notices were issued for RCS-related non-compliances consisting of 120 improvement notices, 10 prohibition notices, one electrical safety protection notice and six infringement notices.

Beyond the 2023 RCS compliance campaign mentioned above, WHSQ has undertaken three other state-wide compliance campaigns focused on the stone benchtop industry since 2017. Overall, WHSQ identified positive change in awareness of WHS obligations. While there is evidence to indicate that the Queensland Government's actions to date have been effective at improving regulatory compliance rates in the state, Safe Work Australia's (SWA's) *Decision*

[1] Table 1: Safe Work Australia Managing the risks of respirable crystalline silica from engineered stone in the workplace – Code of Practice

[2] Carey and Fritschi. 2022 "The future burden of lung cancer and silicosis from occupational silica exposure in Australia: A preliminary analysis".

[3] *Queensland's Notifiable Dust Lung Disease Register Annual Report 2022–23*. (link)

Regulation Impact Statement: Managing the risks of respirable crystalline silica at work (the DRIS), dated February 2023, found that compliance nationally was inadequate. [4]

As part of their analysis, SWA pooled relevant jurisdictional compliance data.[5] This data includes activity from 2018 to mid-2021 across jurisdictions (except Victoria) and shows 2691 notices (improvement, infringement, enforcement, prohibition, immediate compliance, and penalty) issued during this time.

In response to the findings and recommendations in the DRIS, Commonwealth, State and Territory WHS Ministers met on 28 February 2023 to agree to new regulatory actions. One of these was to introduce stronger regulation of high-risk crystalline silica processes for all materials across all industries – the subject of this Amendment Regulation.

Another action was to task SWA to undertake analysis and consultation on a prohibition on the use of engineered stone. This prohibition has been addressed by the commencement of the *Work Health and Safety (Engineered Stone) Amendment Regulation 2024* on 1 July 2024.

On 22 March 2024, WHS Ministers agreed to the policy parameters for amendments to the model WHS Regulations to strengthen regulation of crystalline silica processes across all industries. These parameters were to:

- develop a silica risk control plan aimed at identifying hazards associated with crystalline silica processes and measures to control these risks;
- provide additional training for workers or others likely exposed to the risks associated with processing assessed to be high risk crystalline silica processes;
- undertake air monitoring and health monitoring for workers; and
- report workplace exposure standard exceedances to the relevant WHS regulator.

On 10 May 2024, WHS Ministers agreed to amendments to the model WHS Regulations, which included the *Model Work Health and Safety (Crystalline Silica Substances) Amendment 2024.*

The Amendment Regulation gives effect to the *Model Work Health and Safety (Crystalline Silica Substances) Amendment 2024* and introduces a stronger regulatory framework for all CSS processes to protect workers from exposure to RCS across all industries. These regulations will also apply to work on engineered stone products that are not benchtops, panels and slabs, sintered stone and porcelain, in addition to a range of other processes in industries such as tunnelling and quarrying. In conjunction with the engineered stone ban, the Amendment Regulation is intended to prevent occupational injury, premature deaths, illness and healthcare burden from silicosis and silica-related diseases.

Passenger ropeways

Passenger ropeways, also known as cable cars or gondola rides, are used primarily for transporting people, often over difficult or mountainous terrain. In Queensland, there are three passenger ropeways: the Skyrail Rainforest Cableway near Cairns, which provides sightseeing for tourists, and the Mt Bellenden Ker and Kareeya Hydro cable cars which provide transport for workers.

[4] Decision Regulation Impact Statement: Managing the risks of respirable crystalline silica at work (link)
[5] Table 9: Decision Regulation Impact Statement: Managing the risks of respirable crystalline silica at work

Queensland's work health and safety regulatory framework is based on national model work health and safety (WHS) laws which were developed through SWA and adopted in Queensland on 1 January 2012.

The *Work Health and Safety Act 2011* (WHS Act) and *Work Health and Safety Regulation 2011* (WHS Regulation) apply to passenger ropeways generally as a type of plant used at a workplace. In addition to general provisions for plant, the WHS Regulation has specific provisions for particular types of plant, such as amusement devices.

In 2014, the national model WHS Regulations were amended to include specific requirements for passenger ropeways. The amendments addressed a gap created due to passenger ropeways being excluded from the scope of AS 3533.1.2009 *Amusement rides and devices—Design and construction*, which meant the amusement device regulations no longer applied to passenger ropeways. The Amendment Regulation gives effect to passenger ropeway requirements in the national model WHS Regulations, which have also been adopted in other jurisdictions.

The Amendment Regulation also includes a Queensland-specific requirement for a comprehensive inspection of critical components of a passenger ropeway. This is similar to the major inspection requirement for amusement devices in section 241A of the WHS Regulation that was introduced in 2019 following the *Best Practice Review of Workplace Health and Safety Queensland 2017.*

The comprehensive inspection requirement for passenger ropeways in new section 241B reflects the continuous approach to inspections of ropeway components in published technical standards relevant to passenger ropeways, such as AS 4722:2018 *Passenger ropeways and passenger conveyors*. This differs to the amusement device major inspection requirement in section 241A of the WHS Regulation which specifies a default interval for the major inspection of at least every 10 years.

Rather than specify a 'major inspection', AS 4722:2018 has specific inspection, testing and maintenance requirements for various components of the ropeway with different intervals and inspection/testing criteria. Examples of recommended periods or circumstances for comprehensive inspections of a critical component include at least once every 5 years or at least once every 500 hours of operation.

In the Amendment Regulation, new section 241B requires a comprehensive inspection of each critical component of a ropeway at the following times:

(a) at the end of any period, or in any circumstance, recommended by the manufacturer of the ropeway or the critical component;
(b) if, following an earlier inspection under section 241 or new section 241B, a competent person recommends a shorter period or earlier alternative circumstance than what is mentioned in (a) – at the end of the period or in the circumstance recommended by the competent person; or
(c) if there is no recommendation under (a) or (b), at the end of any period, or in any circumstance, for which a comprehensive inspection of a critical component is recommended in a published technical standard relevant to the ropeway or critical component.

Amusement device log books

An amusement device log book is used to keep records relevant to the safety of an amusement device (e.g., details about repairing, erecting, storing and maintaining the device as well as annual and major inspections). The WHS Regulation has requirements in relation to keeping amusement device log books and the information that must be contained in the log book. An amusement device log book includes personal information relating to the identity and competency of workers who operate and perform other tasks associated with the amusement device.

The national model WHS Regulations were amended in April 2022 to include additional requirements regarding log books for amusement devices. These amendments implemented Recommendation 28 from the *2018 Review of the National Model Work Health and Safety Laws*, which recommended ensuring details of statutory notices issued by any WHS regulator and evidence of operator training and instruction are included in the log book for an amusement device. The national model WHS Regulations were also amended to explicitly require making the log book available to the new device owner when relinquishing control of the amusement device. This complements the requirement in section 237 of the WHS Regulation for certain records of plant to be made available to another person when control of the plant is relinquished.

The Amendment Regulation gives effect to the requirement in the national model WHS Regulations to make the log book available on relinquishing an amusement device to another person. An additional safeguard has been included to require the person with management or control of the amusement device to take all reasonable steps to ensure identifying information about a person who operated the device is removed from the log book before it is provided to another person when control of the device is being relinquished. Examples of identifying information include a person's photograph or record of their training or qualifications. However, removal of identifying information does not extend to removing a person's name or signature if that information is required to be recorded in a log book to verify that an activity has been completed.

The Amendment Regulation will enable subsequent owners to be properly informed about the history of the device and ensure inspection, maintenance, testing and repairs are carried out as needed without unnecessarily obtaining personal information about workers who operated the device for a former owner.

Requirements in Recommendation 28 of the *2018 Review of the National Model Work Health and safety Laws* about recording details of operator competency and statutory notices in amusement device log books were included in the WHS Regulation in 2019.

Achievement of policy objectives

The policy objectives will be achieved by amending the *Work Health and Safety Regulation 2011* to:

- give effect to requirements in the national model WHS Regulations regarding a stronger regulatory framework for all CSS processing to protect workers across all industries from exposure to RCS including:
  - a duty for processing CSS to be controlled;
  - a requirement for PCBUs intending to carry out processing of CSS to undertake a risk assessment;
  - where the risk is assessed as high, to develop a silica risk control plan; provide additional training for workers and determine if air monitoring and health monitoring is required for workers under the WHS Regulation; and
  - a requirement to report recorded exceedances of the workplace exposure standard for crystalline silica to the regulator.
- give effect to requirements in the national model WHS Regulations regarding passenger ropeways including:
  - operation
  - storage
  - maintenance, inspection and testing
  - annual inspections
  - plant design registration for any new passenger ropeway built after 1 January 2025; and
  - plant design registration for alterations to the design of existing passenger ropeways where the alteration may affect health or safety, with this requirement coming into effect on 1 January 2027.
- include a requirement for comprehensive inspections of critical components of passenger ropeways, which is comparable with the major inspection requirement for amusement devices in the WHS Regulation; and
- give effect to a requirement in the national model WHS Regulations regarding making an amusement device log book available to another person upon the device being relinquished, with the addition of a safeguard to prevent unnecessary disclosure of personal information that identifies workers.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the object of the WHS Act to secure the health and safety of workers and workplaces 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. The Amendment Regulation is also consistent with the object of the WHS Act to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in Queensland.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

Crystalline silica substances

Introducing a stronger regulation on CSS will complement the engineered stone ban and will provide many benefits including—

- reduced rates of premature death from, and reduced numbers of people living with, silicosis and silica-related diseases;
- reduced health expenditure related to hospitalisations, outpatient care and care in the home, due to a reduced number of cases of silicosis and silica-related diseases;
- reduced mental health and life impacts for affected workers, family, and friends;
- improved worker productivity from reduced ill health and extended work life; and
- reduced workers' compensation claims (and associated insurance) due to the reduced number of cases of silicosis and silica-related diseases.

While the monetised cost to industry (nationally) of the stronger CSS regulations is estimated to be $168.7 million, the benefits in terms of illnesses prevented and lives saved are highly likely to exceed the cost impact.

Costs to government associated with implementing the CSS requirements in the Amendment Regulation will be minimal and met from existing resources.

Further information, including cost and benefit analysis can be found in SWA's *Decision Regulation Impact Statement: Managing the risks of respirable crystalline silica at work*.[6]

Passenger ropeways and amusement device log books

The Amendment Regulation will provide greater clarity for PCBUs with management or control of a passenger ropeway by setting out clear work health and safety standards for this type of plant. The proposed regulatory requirements generally align with the operational practices of the existing ropeways and codify what would reasonably be expected in discharging a health and safety duty under the WHS Act. Financial costs associated with plant design registration will only be incurred for existing ropeways where a design alteration that would affect health or safety is proposed. A two-year transitional period has been provided in relation to the plant design registration requirement for existing ropeways.

A national regulatory impact statement was not prepared for the passenger ropeway amendments in 2014 as SWA considered it was an unintended omission from the original model WHS laws and could be resolved with other technical amendments being made to the national model WHS regulations at that time.

The requirement in the Amendment Regulation regarding amusement device log books being made available when the device is relinquished to another person is a minimal administrative

[6] *Decision Regulation Impact Statement: Managing the risks of respirable crystalline silica at work* (link).

burden. Nonetheless, it provides benefits by ensuring the new owner of the amusement device has a comprehensive history of the device and can make informed decisions about scheduling future inspections, maintenance, testing and repairs.

Compliance with the Amendment Regulation will provide benefits to workers and others who use passenger ropeways and amusement devices by minimising risks to their health and safety.

Costs to government associated with implementing the passenger ropeway and amusement device log book requirements in the Amendment Regulation will be minimal and met from existing resources.

A Summary Impact Assessment Statement for the Amendment Regulation was prepared as required under the *Queensland Government Guide to Better Regulation* and is published on the department's website.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

Crystalline silica substances

Preliminary consultation was undertaken by SWA with 23 stakeholders. These stakeholders included WHS Regulators, industry peak bodies, employee representatives, employer representatives, and health organisations. These consultations consisted of three workshops and four discussions with individual organisations and informed the drafting of the Consultation Regulatory Impact Statement (CRIS), including development of the problem statement, evidence bases, and the options.

From 30 June 2022 to 15 August 2022, SWA conducted a round of public consultation on the CRIS. Submissions were accepted via SWA's consultation platform, Engage, with late submissions also accepted where requested. SWA received 67 submissions from a range of stakeholders, including:

- commercial enterprises, including engineered stone suppliers;
- lawyers;
- industry groups;
- peak health bodies;
- commonwealth, state, and territory government departments and agencies;
- unions;
- academics; and
- individuals.

Overall, there was strong support for further government intervention to reduce workplace exposure to RCS.

There was broad support for the problem statement, which was developed through the preliminary consultations.

Only a small number of businesses and industry groups argued the existing regulations were adequate to address the need. Stakeholders were supportive of the objectives of government intervention. However, unions, professional organisations (such as the Australian Institute of Occupational Hygienists) and peak health bodies consider the primary objective of government intervention should be the reduction of RCS exposure at work and elimination of silicosis, in line with the All of Governments response to the National Dust Disease Taskforce final report.

Of the regulatory and non-regulatory options put forward, there was a marked lack of support for maintaining the status quo. There was significant stakeholder support for further regulation, with relatively evenly distributed support for each of the proposed regulatory options.

The non-regulatory option supporting awareness and behaviour change initiatives (option 2) received consistent support amongst all stakeholder groups. Many of these stakeholders expressed support for a combination of option 2 with other regulatory options to address the problem, such as option 5a. Options 2 and 5a combined is the subject of the CSS element of this Amendment Regulation.

Passenger ropeways and amusement device log books

Consultation on the passenger ropeway and amusement device log book provisions in the Amendment Regulation was undertaken with representatives from:

- the three existing passenger ropeways in Queensland;
- the Australian Workers' Union; and
- amusement device industry representatives involved in development of the *Amusement Devices Code of Practice 2023*, including amusement device owners.

Consultation on the amendments was also undertaken with the Department of the Premier and Cabinet, Queensland Treasury (including the Office of Best Practice Regulation), the Department of Transport and Main Roads, Department of Tourism and Sport, and the Department of Housing, Local Government, Planning and Public Works.

Organisations consulted either supported, or did not oppose, the amendments.

Notes on provisions

Part 1 Preliminary

1 Short title

This section sets out the short title of the Amendment Regulation.

2 Commencement

This section provides that Part 2 of the Amendment Regulation commences on 1 September 2024 and Part 3 commences on 1 January 2025.

3 Regulation amended

This section states that the Amendment Regulation amends the *Work Health and Safety Amendment Regulation 2011*.

Part 2 Amendments relating to crystalline silica

4 Replacement of ch 8A, hdg (Engineered stone, porcelain products and sintered stone)

The heading for this chapter replaces the Chapter 8A heading 'Engineered Stone, Porcelain Products and Sintered Stone' with the heading 'Crystalline Silica'.

5 Replacement of ss 529A-529C

Former sections 529A-529C are omitted as these dealt with processing in relation to engineered stone products and sintered stone products. As these products now fall within the broader definition of CSS, these former provisions are obsolete.

529A Definitions for chapter

New section 529A inserts new definitions for terms under this chapter. This includes definitions for—

- *controlled* to have the meaning under section 529B, in relation to processing a CSS;
- *crystalline silica* to mean a crystalline polymorphs of silica including cristobalite, quartz tridymite and tripoli;
- *crystalline silica substance* to mean any material that contains 1% or more crystalline silica determined by weight/weight concentration;
- *engineered stone* which has been amended from its former definition to reflect that engineered stone is a type of CSS;
- *high risk* in relation to processing a CSS to have the meaning under 529BA;
- *processing* in relation to CSS to mean:
  - the use of a power tool or mechanical plant to abrasively polish, crush, cut drill, grind, sand or a trim; or
  - the use of a roadheader to excavate; or
  - quarrying, or
  - tunnelling through; or
  - a process that exposes, or would be reasonably likely to expose, a person to RCS; and

- *Silica risk control plan* to have the meaning under section 529CB(1).

529B When processing of crystalline silica substance is *controlled*

New section 529B sets out the minimum requirements for the processing of a CSS to be considered controlled.

Subsections 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 1 of the following measures under 529B(1)(b):

- 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;
- an effective local exhaust ventilation system.

Under paragraph 529B(1)(c), if a person is still at risk of being exposed to RCS after 1 or more of the measures in 529B(1)(b) are used, the person must be provided with and wear Respiratory Protective Equipment (RPE) while the processing is being carried out, in order for the processing to be controlled.

The note to subsection 529B(1) refers to section 351. This requires a PCBU to manage, in accordance with Part 3.1 of the Regulation, 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.

Subsection 529B(2) provides that despite subsection 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, and wears, RPE while the work is carried out.

This subsection provides 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.

Subsection 529B(3) defines RPE to mean personal protective equipment that is designed to prevent a person from inhaling airborne contaminants; and complies with the following Australian standards:

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

The note to subsection 529B(3) sets out that sections 44-46 apply to the provision and use of personal protective equipment, including the RPE provided under subsections 529B(1)(c) and (2). These sections deal with the provision by a PCBU of personal protective equipment to workers and other persons (including in relation to its suitability, maintenance and use) and the duties of workers who are provided with personal protective equipment.

529BA When processing of crystalline silica substance is *high risk*

New section 529BA defines when the processing of a CSS is *high risk* to be when it is determined under section 529CA(1), that the processing is reasonably likely to result in a risk to the health of a person at the workplace; or is taken, under section 529CA(5), to be reasonably likely to result in a risk to the health of a person at the workplace.

6 Omission of pts 8A.4 and 8A.5

Former parts 8A.4 and 8A.5 are omitted. These parts required that work with sintered stone and porcelain, and engineered stone products that are not benchtops, panels and slabs, must be controlled. As these products fall within the broader definition of CSS, the obligation that their processing must be controlled is now dealt with by 529C.

7 Renumbering of pts 8A.2 and 8A.3

Parts 8A.2 and 8A.3 are renumbered to parts 8.A3 and 8.A4 to provide for the insertion of a new part 8A.2.

8 Insertion of new pt 8A.2

Part 8.2 Requirements for processing crystalline silica substances

529C Processing of crystalline silica substance must be controlled

New section 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.

The maximum penalty for contravening section 529C is 60 penalty units.

The note to section 529C sets out that sections 529D and 529F apply to the processing of a CSS that is engineered stone. Section 529D prohibits the processing of engineered stone benchtops, panels and slabs. Section 529F sets out limited exceptions to this prohibition, and requires that any permitted processing is controlled.

529CA Identifying processing of crystalline silica substance that is high risk

New section 529CA sets out the process for determining if the processing of a CSS is high risk.

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

The maximum penalty for contravening subsection 529CA(1) is a 60 penalty units.

In assessing whether the processing of a CSS is high risk, subsection 529CA(2) requires the person to have regard to the following matters:

- the specific processing that will be undertaken;
- the 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 carrying out the processing, including the likely frequency and duration of a person's exposure to RCS;
- whether the airborne concentration of RCS that is present at the workplace is reasonably likely to be more than half the workplace exposure standard;
- any relevant air and health monitoring results previously conducted at the workplace; and
- any previous incidents, illnesses or diseases associated with exposure to RCS at the workplace.

Subsection 529CA(3) 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), the use of personal protective equipment, or administrative controls to control the risks of associated with RCS. This is because the implementation of control measures under 529B(1)(b) will not necessarily mean that the processing is not high risk, and that RPE and administrative controls provide the lowest level of protection and reliability.

Subsection 529CA(4) provides that the person must ensure an assessment conducted under subsection 529CA(1) is recorded in writing.

The maximum penalty for contravening subsection 529CA(4) is 12½ penalty units for an individual, and 60 penalty units for a body corporate.

Subsection 529CA(5) provides that if the person is unable to make a determination mentioned in subsection 529CA(1), the processing of the CSS at the workplace is taken to be reasonably likely to result in a risk to the health of a person at the workplace until a determination to the contrary is made under subsection (1).

The maximum penalty for contravening subsection 529CA(4) is 12½ penalty units for an individual, and 60 penalty units for a body corporate.

<u>529CB Silica risk control plan must be prepared for processing that is high risk</u>

New section 529CB sets out the requirements for when a silica risk control plan must be prepared.

Subsection 529CB(1) requires that where a PCBU is carrying out the processing of a CSS that is high risk, the PCBU must, before the processing commences, ensure a silica risk control plan for the processing is prepared, or has already been prepared by another person.

The maximum penalty for contravening section 529CB(1) is a 60 penalty units.

Paragraphs 529CB(2)(a)-(d) set out the requirements for a silica risk control plan.

Subsection 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 before the processing starts, and
- the safe work method statement satisfies the requirements in subsection 529CB(2).

Subsection 529CB(4) provides that, in this section, high risk construction work has the meaning given by section 291.

529CC Compliance with, and review of, silica risk control plan

New section 529CC sets out the requirements for how a silica risk control plan must be used and complied with and reviewed.

Subsection 529CC(1) requires a PCBU, carrying out the processing of a CSS that is high risk to ensure processing is carried out in accordance with the silica risk control plan, including by ensuring its availability to all workers at the work place and its provision to all workers before they start the processing.

The maximum penalty for contravening subsection 529CC(1) is 60 penalty units.

Subsection 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 under sub section529CC(1), the PCBU must ensure that the processing is stopped immediately or as soon as it is safe to do so and resumed only in accordance with the silica risk control plan.

The maximum penalty for contravening subsection 529CC(2) is 60 penalty units.

Subsection 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 section 38. Section 38 (Review of control measures) provides for the general requirement for a duty holder to review and, as necessary, revise control measures.

The maximum penalty for contravening subsection 529CC(3) is 36 penalty units.

Subsection 529CC(4) provides that relevant control measure, in this section, means a control measure in relation to the processing of a crystalline silica substance that is high risk.

529CD Duty to train workers about risks of crystalline silica

New section 529CD provides for the requirements for a PCBU to provide training, to keep a record of the training and to have the record available for inspection.

Subsection 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 note to regulation 529CD(1)(b) makes clear that Division 1 of Part 3.2 (Information, training and instruction) also applies to a PCBU involving processing of a CSS.

The maximum penalty for contravening subsection 529CD(1) is 60 penalty units.

Under subsection 529CD(2), a PCBU must keep a record 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 stops being a worker for the person.

The maximum penalty for contravening subsection 529CD(2) is 12½ penalty units for an individual, and 60 penalty units for a body corporate.

Subsection 529CD(3) requires the PCBU to keep the record available for inspection under the Act.

The maximum penalty for contravening subsection 529CD(3) is 12½ penalty units for an individual, and 60 penalty units for a body corporate..

Subsection 529CD(4) provides that, for the purpose of this section, crystalline silica training means a VET accredited course, or training approved by the regulator, in relation to the health risks associated with exposure to RCS; or the need for, and proper use of, control measures required under the regulation; and that a VET accredited course refers to the meaning under the *National Vocational Education and Training Regulator Act 2011* (Cwlth), section 3.

529CE Duty to give results of particular air monitoring to regulator

New section 529CE sets out when the section is applicable. This is where a PCBU is carrying out, or directing or allowing a worker to carry out, processing of a CSS that is high risk, and has undertaken air monitoring which has shown the concentration of RCS to have exceeded the workplace exposure standard for crystalline silica.

Subsection 529CE(2) requires that the air monitoring results must be provided in a form approved by the regulator as soon as reasonably practicable, but no more than 14 days after the PCBU received them.

The maximum penalty for contravening regulation 529CE is 60 penalty units.

Note 1 to section 529CE refers to section 50 for when the PCBU must undertake air monitoring for RCS.

Note 2 to section 529CE refers to part 7.1, division 6 for when the PCBU must provide health monitoring to workers carrying out the processing of a CSS that is high risk.

9 Insertion of new s 689AA

689AA definition for division

New section 689AA clarifies that engineered stone has the meaning given by section 529A.

10 Amendment of sch 19 (Dictionary)

The definitions of ‘controlled’, ‘engineered stone’ and ‘processing’ at Schedule 19 are omitted as these terms now fall within the broader usage related to CSS, and so are superseded.

Included in Schedule 19, are the terms:

- ‘controlled’ with a reference to the definition located in new section 529B;
- ‘crystalline silica’ and ‘crystalline silica substance’ with references to the definitions located in new section 529A;
- ‘engineered stone’ with reference to the definition located in sections 529A and 689AA;
- ‘high risk’ with a reference to the definition located in new section 529BA;
- ‘processing’ with a reference to the definition located in new section 529A; and
- ‘silica risk control plan’ with a reference to the definition located in new section 529CB(1).

Part 3 Amendments relating to passenger ropeways

11 Amendment of pt 5.2, div 4, sdiv 2, hdg (Control measures for amusement devices)

The heading for this subdivision is amended to include passenger ropeways. This subdivision sets out requirements in relation to certain amusement devices and, from 1 January 2025, will include requirements for passenger ropeways.

12 Insertion of new s 237A

237A Meaning of *passenger ropeway*

New section 237A inserts a new definition for the term 'passenger ropeway'. This aligns with the definition of 'passenger ropeway' in the national model Work Health and Safety Regulations with an additional element to make it clear the definition of 'passenger ropeway' does not include an amusement device.

13 Amendment of s 238 (Operation of amusement devices)

Section 238 is amended to include references to passenger ropeways.

14 Amendment of s 239 (Storage of amusement devices)

Section 239 is amended to include references to passenger ropeways.

15 Amendment of s 240 (Maintenance, inspection and testing of amusement device)

Section 240 is amended to include references to passenger ropeways.

16 Amendment of s 241 (Annual inspection of amusement device)

Section 241 is amended to include references to passenger ropeways. Section 241 is also amended to state that the annual inspection for a passenger ropeway must also include a check that a comprehensive inspection of any critical components required under new section 241B in the previous 12 months has been carried out. New section 798 contains a transitional provision which clarifies that new section 241(2)(f) applies 1 year after commencement.

17 Insertion of new s241B

241B Comprehensive inspection of critical components of passenger ropeways

New section 241B sets out the requirements for a comprehensive inspection of a critical component of a passenger ropeway.

The maximum penalty for non-compliance is 60 penalty units. The penalty is consistent with the maximum penalty for non-compliance with section 241A regarding major inspections of amusement devices.

18 Amendment of s 242 (Log book and manuals for amusement device)

Section 242 is amended to include new section 242(3A) which requires the person with management or control of an amusement device at a workplace to make the log book for the

device available when they relinquish control of the device to another person. Further, the person with management or control of the device must take all reasonable steps to ensure identifying information about a person who operated the device is removed from the log book before making it available on relinquishing the device to another person. However, this does not extend to a name or signature if that information is required to be recorded in a log book to verify that an activity has been completed.

The term 'identifying information' is defined for this section and means information that identifies a person, or from which a person can be reasonably identified. Examples of identifying information that must be removed from a log book include a person's photograph or a record of a person's training or qualifications. New section 242(3A)(b) has been included to protect the personal information of workers when that information is not relevant to the history of the device and unnecessary for the new person assuming management or control of the device.

The maximum penalty for non-compliance for an individual is 12½ penalty units and 60 penalty units for a body corporate. The penalty is consistent with a comparable provision in relation to making records of plant available on relinquishing the plant (see section 237, WHS Regulation).

Other minor amendments to section 242 are of an editorial nature for consistency.

19 Amendment of s 709 (Application of provisions)

Section 709 is amended to clarify section 241B is not an applied provision for the purpose of Chapter 12 Public health and safety – Schedule 1, Part 1 of the WHS Act. This is due to passenger ropeways not being prescribed as 'high risk plant' for the purpose of Schedule 1, Part 1 of the WHS Act.

20 Insertion of new pt 13.10

Part 13.10 Transitional provision for Work Health and Safety Amendment Regulation 2024

798 Application of new pts 5.2 and 5.3 to existing passenger ropeways

New section 798 is a transitional provision relating to passenger ropeways built before 1 January 2025. New section 798 provides that the following provisions apply to existing ropeways:

- section 237 (Records of plant);
- section 238 (Operation of amusement devices and passenger ropeways);
- section 239 (Storage of amusement devices and passenger ropeways);
- section 240 (Maintenance, inspection and testing of amusement devices and passenger ropeways);
- section 241 (Annual inspection of amusement devices and passenger ropeways), with the exception of new section 241(2)(f) which does not apply until 1 year after commencement; and
- section 241B (Comprehensive inspection of passenger ropeway).

Section 243 (Plant design to be registered) does not apply to an existing ropeway, however, section 244 (Altered plant designs to be registered) applies to an existing ropeway if an

alteration to the plant design is made after the end of the transitional period. The transitional period ends on 1 January 2027.

Part 5.2, division 2 (Duties of a person conducting a business or undertaking who designs plant to record plant design) applies to the designer of the item of plant as if the design were required to be registered under Part 5.3. This means that from commencement (1 January 2025), a designer must comply with sections 228 – 230 in relation to records relating to an alteration to the design of an existing ropeway where that alteration is required to be registered under Part 5.3. For example, a design alteration for an existing ropeway is developed 18 months after commencement. If this design alteration will require registration under Part 5.3 because it will be implemented after the end of the two-year transitional period, the designer must comply with the requirements for records in relation to that design alteration.

21 Amendment of sch 5 (Registration of plant and plant designs)

Schedule 5 of the WHS Regulation is amended to include passenger ropeways in the list of plant requiring plant design registration. A note is included to draw attention to section 798 which clarifies that the design of a passenger ropeway built before 1 January 2025 does not need to be registered under Chapter 5, Part 5.3 of the WHS Regulation. However, section 798 should be referred to regarding plant design registration requirements to alterations that would affect health or safety.

22 Amendment of sch 19 (Dictionary)

The term ‘competent person’ is amended to include a reference to passenger ropeways and a reference to section 241A which clarifies who is a competent person for a major inspection of an amusement device. The term ‘passenger ropeway’ is included in Schedule 19 with a reference to the definition located in new section 237A.