

# Work Health and Safety (Codes of Practice) Amendment Notice 2022

## 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, Grace Grace, Minister for Education, Minister for Industrial Relations and Minister for Racing, provide this human rights certificate with respect to the *Work Health and Safety (Codes of Practice) Amendment Notice 2022* (WHS Amendment Notice) made under the *Work Health and Safety Act 2011* (WHS Act).

In my opinion, the WHS Amendment Notice 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

Making the WHS Amendment Notice fulfils a requirement under section 274 of the WHS Act for the Minister to give notice of the approval, variation or revocation of a code of practice.

The WHS Amendment Notice amends the *Work Health and Safety (Codes of Practice) Notice 2022* (WHS Notice) by adding two new codes of practice, specifically, the:

1. *Managing respirable crystalline silica dust exposure in construction and manufacturing of construction elements Code of Practice 2022* (Silica code); and
2. *Managing the risk of psychosocial hazards at work Code of Practice 2022* (Psychosocial hazards code).

The Silica code provides clarity and certainty for duty holders about their obligations to eliminate or minimise risks associated with respirable crystalline silica (RCS). The code provides users with two approaches to ensure they are meeting their legislative duties: using recommended controls outlined in a controls table, or applying the hierarchy of controls to tasks that generate or disturb RCS. This ensures higher order control measures are implemented in the first instance unless it is not reasonably practicable to do so. The two approaches provide clear guidance on when air monitoring needs to be conducted and when health monitoring needs to be provided, in accordance with the relevant provisions of the WHS Act and *Work Health and Safety Regulation 2011*.

The Psychosocial hazards code provides clarity and certainty for duty holders about their obligations to eliminate or minimise risks to psychological health and safety under the WHS Act. The Psychosocial hazards code applies the hierarchy of controls to psychosocial hazards. This ensures higher order control measures are implemented in the first instance unless it is not reasonably practicable to do so.

Applying the hierarchy of controls is a fundamental element of work health and safety risk management and is consistent with existing legislative requirements for how psychosocial risks should be managed.

## Human Rights Issues

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

The right of workers to be free from exposure to silica dust and psychosocial hazards at work are not explicitly identified as human rights under the HR Act. However, the human right to equal and effective protection against discrimination (section 15, HR Act) and the right not to be arbitrarily deprived of life (section 16, HR Act) are consistent with the general principles of the Silica code and Psychosocial hazards code.

The Silica code includes requirements under section 26A of the WHS Act for a) when workers are required to wear respiratory protective equipment (RPE), b) fit-testing of tight-fitting respirators and c) that workers who undergo fit-testing or wear tight-fitting respirators are either clean-shaven or have no hair between their face and the seal of the respirator face piece. These requirements may have implications in relation to the HR Act, specifically, *section 20 - Freedom of thought, conscience, religion and belief* and *section 27 - Cultural rights - generally*, as a requirement to be clean-shaven would impact on workers for whom maintaining facial hair is an observance of their religion or belief (for example, a worker who belongs to the Sikh community).

However, the Silica code does not require the use of tight-fitting respirators. The Silica code instead requires a minimum protection factor for RPE as part of a combination of controls for a specific task. The Silica code also advises the person conducting a business or undertaking (PCBU) to consider the worker when choosing the appropriate RPE, including whether the worker has facial hair. A head covering air-hose, or a head covering air-line respirator, will provide the same or higher protection factor, and does not require the user to be clean-shaven. As such, the Silica code provides that a PCBU will always be able to meet their legislative requirements whilst respecting a worker for whom maintaining facial hair is an observance of their religion or belief.

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

Notwithstanding that the Silica code may have implications relevant to the HR Act, the introduction of the WHS Amendment Notice does not limit human rights under the HR Act. Therefore, it is not necessary to consider section 13 of the HR Act.

## Conclusion

I consider that the WHS Amendment Notice is compatible with the HR Act because it does not limit human rights.

**GRACE GRACE MP**  
MINISTER FOR EDUCATION  
MINISTER FOR INDUSTRIAL RELATIONS AND  
MINISTER FOR RACING

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