

# Work Health and Safety 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 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 introduce a stronger regulatory framework for working with crystalline silica substances (CSS), which is a material containing at least 1 per cent crystalline silica (by weight). One of the purposes of this Amendment Regulation is to ensure the safety of work environments when undertaking CSS processing. This includes requiring:

- the processing of CSS be controlled;
- a person conducting a business or undertaking (PCBU) limit exposure to respirable crystalline silica (RCS) and take steps to prevent, train and inform workers of RCS's harm to health;
- PCBUs that intend to work with CSS risk assess the work they are conducting, and
- if processes is assessed as high risk, implement control measures and consider whether air monitoring and health monitoring of workers is required under the WHS Regulation.

These new requirements will also apply to work on engineered stone (excluding benchtops, panels and slabs), sintered stone and porcelain, in addition to a range of other processes in industries such as tunnelling and quarrying.

The Amendment Regulation also amends the WHS Regulation to:

- give effect to requirements in the national model Work Health and Safety Regulations regarding passenger ropeways;
- include a requirement for comprehensive inspections 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 Work Health and Safety Regulations regarding the transfer of an amusement device log book upon the device being relinquished to another person.

## Human Rights Issues

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

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);
- the right to privacy and reputation (section 25).

The Amendment Regulation particularly supports and promotes the right to life (section 16, HR Act).

The object of the *Work Health and Safety Act 2011* (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). In doing so, regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work or from particular types of substances or plant as is reasonably practicable (section 3(2), WHS Act). It is also 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 (section 3(1)(h), WHS Act).

The amendments contained in the Amendment Regulation strengthen and enhance the WHS legislative framework, consistent with the objects of the WHS Act.

#### *Right to life (section 16, HR Act)*

The Amendment Regulation supports and promotes the right to life, which is consistent with the object of the WHS Act.

The Amendment Regulation promotes the right to life with the renaming of chapter 8A to *Crystalline Silica* and broadening of the WHS Regulation through the insertion of new sections regarding PCBUs working with CSS. Uncontrolled processing of CSS can expose a worker to serious risks to their health and safety, emanating from an exposure to RCS. Therefore, implementing a stronger regulatory framework for working with CSS protects workers and ensures workplaces do not exceed the RCS workplace exposure standard. These new sections achieve this by incorporating associated definitions, control measures, and offences.

The Amendment Regulation adopts national model WHS Regulation requirements in relation to passenger ropeways to ensure risks from this type of plant are eliminated or minimised so far as is reasonably practicable. The Amendment Regulation provides clear standards in relation to the protection of workers and other persons using passenger ropeways by specifying particular requirements for operation, inspection, testing, maintenance and design registration.

The Amendment Regulation also adopts a national model WHS Regulation requirement in relation to transferring amusement device log books when a device is relinquished to another person. This 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.

For these reasons, it is my opinion that the Amendment Regulation is compatible with the right to life, which is protected by section 16 of the HR Act.

*Privacy and reputation (section 25, HR Act)*

A person has a right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have their reputation unlawfully attacked. The scope of the right to privacy is broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally. An interference with the right to privacy is permissible provided it is not arbitrary or unlawful. Arbitrariness can be defined in a human rights context as meaning capricious, unpredictable, unjust, or unreasonable in the sense of not being proportionate to the legitimate policy objective. The right to reputation protects individuals from unlawful attacks on their reputation.

The Amendment Regulation may engage a person's right to privacy by requiring the transfer of an amusement device log book upon the device being relinquished to another person who will assume management or control of the device.

The WHS Regulation has requirements in relation to keeping amusement device log books which must contain certain information. An amusement device log book is used to keep records relevant to the safety of an amusement device, for example, details about repairing, erecting, storing and maintaining the device as well as annual and major inspections. The requirement in the Amendment Regulation to ensure log books containing relevant records are transferred on relinquishing the amusement device is intended to enable subsequent device owners to be informed about the history of the device and action needed to comply with inspection, testing, maintenance and repair of amusement devices.

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. While most of the information in a log book relates to the device itself and is considered necessary to assist the next owner of the device, there may be personal information about workers of the previous device owner that is not relevant for subsequent owners of the device. Consequently, the Amendment Regulation requires the person with management or control of the amusement device to take all reasonable steps to ensure identifying information about a person 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.

For these reasons, it is my opinion that the requirement for an amusement device log book to be transferred to another person on control of the device being relinquished is compatible with the right to privacy and reputation, which is protected by section 25 of the HR Act.

## **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

Section 24 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 process CSS except in a controlled fashion with the appropriate measures consistent with the risk of the processing activity.

#### (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 working with legacy engineered stone or processing CSS at a workplace. The restrictions, as described above, are limited and of low impact when compared to the significant hazard of RCS inhalation.

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. Introducing offence provisions to require processing of CSS, including engineered stone that is not a benchtop, panel, or slab, be controlled is consistent with the extant engineered stone prohibition and sends a strong message of deterrence.

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

To help mitigate this risk of RCS, Queensland developed two Codes of Practice - *Managing respirable crystalline silica dust exposure in the stone benchtop industry code of practice 2019* and *Managing respirable crystalline silica dust exposure in construction and manufacturing of construction elements Code of Practice 2022*.

Alternative approaches were also explored by Safe Work Australia, including national awareness and behaviour change initiatives; 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 PCBU's continues.

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 introducing a stronger regulatory framework for working with CSS and any limitations on the rights identified above 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 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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