

WORK HEALTH AND SAFETY AMENDMENT (SILICA WORKPLACE EXPOSURE STANDARDS) REGULATIONS 2020

EXPLANATORY STATEMENT

Issued by authority of the Minister for Industrial Relations
under section 276(3)(d) of the *Work Health and Safety Act 2011*

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Work Health and Safety Amendment (Silica Workplace Exposure Standards) Regulations 2020* (the Amendment Regulations) give effect to an agreement between Commonwealth, state and territory Ministers responsible for work health and safety to lower the level of respirable crystalline silica that persons may be exposed to at the workplace.

The *Work Health and Safety Act 2011* (the Act) provides for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces, in part by protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work.

Subsection 276(1) of the Act provides that the Governor-General may make regulations in relation to any matter relating to work health and safety, and any matter or thing required or permitted by the Act to be prescribed or that is necessary or convenient to be prescribed to give effect to the Act.

Paragraph 276(3)(d) of the Act provides that the regulations may apply, adopt or incorporate any matter contained in any document formulated, issued or published by a person or body whether with or without modification, as in force at a particular time or as in force or remade from time to time.

The purpose of the Amendment Regulations is to lower the enforceable exposure standard for crystalline silica in the *Work Health and Safety Regulations 2011* (the Principal Regulations) to align with the exposure standards for crystalline silica set out in the *Workplace Exposure Standards for Airborne Contaminants*, dated 16 December 2019 and published by Safe Work Australia (SWA).

The amendments reflect agreement reached between Commonwealth, state and territory Ministers responsible for work health and safety to align the exposure standards for crystalline silica with those recommended by SWA in the *Workplace Exposure Standards for Airborne Contaminants* as soon as practicable.

The Amendment Regulations specify that:

- a reference to ‘crystalline silica’ in the Principal Regulations is a reference to cristobalite (respirable dust), quartz (respirable dust), tridymite (respirable dust) or tripoli (respirable dust); and
- the exposure standards for crystalline silica enforceable under the Principal Regulations are set at 0.05 mg/m³ (averaged over an eight hour period).

The *Workplace Exposure Standards for Airborne Contaminants* is a document published by SWA regarding hazardous airborne chemicals a person may be exposed to at a workplace. It contains a list of exposure standards for a number of chemicals, expressed as the maximum level of exposure that a person may have to a particular chemical before their health is considered at risk. The *Workplace Exposure Standards for Airborne Contaminants* can be publicly accessed on SWA’s website (www.safeworkaustralia.gov.au), without any cost.

CONSULTATION

Consultation has been undertaken by SWA, as part of a broader review of the exposure standards listed in the *Workplace Exposure Standards for Airborne Contaminants*. On 1 August 2018, SWA published a consultation Regulation Impact Statement (RIS), outlining possible approaches to update the workplace exposure standards framework under the model work health and safety laws. A call for submissions was open to interested parties for a period of six weeks.

In April 2019, SWA publicly released a draft evaluation report outlining the latest toxicological evidence on the safe exposure level for crystalline silica and a new recommended level. Interested parties were invited to provide submissions over a four-week period. Feedback from consultations was considered by SWA members in determining a recommended exposure standard for Commonwealth, state and territory ministers’ consideration.

Additional consultation was undertaken with the work health and safety regulator for the Commonwealth jurisdiction, Comcare.

REGULATION IMPACT STATEMENT

Submissions from the Consultation RIS informed the Decision RIS published by SWA on 11 November 2019 (at **Attachment C**). The majority of Commonwealth, state and territory ministers responsible for work health and safety subsequently agreed to the preferred option outlined in the Decision RIS, to review and update the exposure standards in the *Workplace Exposure Standards for Airborne Contaminants*. The Office of Best Practice Regulation (OBPR) assessed the Decision RIS as compliant with the Council of Australian Governments' best practice regulation requirements (OBPR reference: 19292).

OTHER DETAILS

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Act specifies no conditions which need to be met before the power to make the Amendment Regulations may be exercised.

The Amendment Regulations commence on 1 July 2020.

Details of the Amendment Regulations are at **Attachment A**.

A statement of compatibility under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is at **Attachment B**.

The Decision Regulation Impact Statement is at **Attachment C**.

NOTES ON SECTIONS

Section 1 – Name

This section provides that the title of the instrument is the *Error! Use the Home tab to apply ShortT to the text that you want to appear here.*

Section 2 – Commencement

This section provides for the instrument to commence on 1 July 2020.

Section 3 – Authority

This section provides that the instrument is made under the *Work Health and Safety Act 2011* (the Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the instrument is amended or repealed according to the terms set out in the Schedule, and any other item in a Schedule to the instrument has effect according to its terms.

SCHEDULE 1 – Amendments

Item 1 – Subregulation 5(1)

This item inserts a definition for ‘crystalline silica’ into the general definitions at subregulation 5(1) of the *Work Health and Safety Regulations 2011* (the Principal Regulations).

The term ‘crystalline silica’ means any of the following chemicals: cristobalite (respirable dust), quartz (respirable dust), tridymite (respirable dust) or tripoli (respirable dust).

This definition has the effect of aligning references to crystalline silica in the Principal Regulations with references to crystalline silica in the *Workplace Exposure Standards for Airborne Contaminants*, dated 16 December 2019 and published by Safe Work Australia (SWA).

Item 2 – Subregulation 5(1) (definition of *exposure standard*)

This item repeals the definition for ‘exposure standard’ in the general definitions at subregulation 5(1) of the Principal Regulations, and replaces it with an updated definition.

The updated definition has the effect that, except for in Part 4.1 (which deals with the exposure standard for noise), the term ‘exposure standard’ means:

- (a) the exposure standards for crystalline silica set out in the *Workplace Exposure Standards for Airborne Contaminants*, dated 16 December 2019 and published by SWA; and
- (b) for all other contaminants, the exposure standards set out in the *Workplace Exposure Standards for Airborne Contaminants*, dated 22 December 2011 and published by SWA.

Paragraph (a) of the updated definition incorporates the exposure standards for crystalline silica listed in the *Workplace Exposure Standards for Airborne Contaminants*, as in force at 16 December 2019 and published by SWA.

Paragraph (b) of the updated definition incorporates the exposure standards for all chemicals, except for crystalline silica, listed in the *Workplace Exposure Standards for Airborne Contaminants*, as in force at 22 December 2011 and published by SWA.

The Note to the updated definition indicates to the reader that both versions of the *Workplace Exposure Standards for Airborne Contaminants*, as made on 16 December 2019 and on 22 December 2011, can be accessed on SWA’s website in 2020 (www.safeworkaustralia.gov.au). Both documents are accessible to the public online, without any cost.

Statement of Compatibility with Human Rights

Issued by the Minister for Industrial Relations

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Work Health and Safety Amendment (Silica Workplace Exposure Standards) Regulations 2020

This legislative instrument is compatible with the human rights and freedoms recognised or declared by the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Work Health and Safety Amendment (Silica Workplace Exposure Standards) Regulations 2020* (the Amendment Regulations) give effect to an agreement between Commonwealth, state and territory Ministers responsible for work health and safety to lower the level of respirable crystalline silica that persons may be exposed to at the workplace.

The *Work Health and Safety Act 2011* (the Act) provides for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces, in part by protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work.

The purpose of the Amendment Regulations is to lower the enforceable exposure standard for crystalline silica in the *Work Health and Safety Regulations 2011* (the Principal Regulations) to align with the exposure standards for crystalline silica set out in the *Workplace Exposure Standards for Airborne Contaminants*, dated 16 December 2019 and published by Safe Work Australia (SWA).

The amendments reflect the recent agreement reached between Commonwealth, state and territory Ministers responsible for work health and safety to align the exposure standards for crystalline silica

with those recommended by SWA in the *Workplace Exposure Standards for Airborne Contaminants* as soon as practicable.

The Amendment Regulations specify that:

- a reference to ‘crystalline silica’ in the Principal Regulations is a reference to cristobalite (respirable dust), quartz (respirable dust), tridymite (respirable dust) or tripoli (respirable dust); and
- the exposure standards for crystalline silica enforceable under the Principal Regulations are set at 0.05 mg/m³ (averaged over an eight hour period).

The *Workplace Exposure Standards for Airborne Contaminants* is a document published by SWA regarding hazardous airborne chemicals a person may be exposed to at a workplace. It contains a list of exposure standards for a number of chemicals, expressed as the maximum level of exposure that a person may have to a particular chemical before their health is considered at risk.

Human Rights Implications

Article 7(b) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that everyone has the right to the ‘enjoyment of just and favourable conditions of work, which ensure, in particular... safe and healthy working conditions’.

Australia relevantly complies with its obligation under Article 7(b) of the ICESCR through a system of Commonwealth, state and territory work health and safety laws (including the Act). Exposure standards for certain chemicals, recommended by SWA in the *Workplace Exposure Standards for Airborne Contaminants*, are given force in Commonwealth, state and territory work health and safety jurisdictions, to ensure that people are not exposed to harmful levels of chemicals while at a workplace. On 16 December 2019, SWA updated the *Workplace Exposure Standards for Airborne Contaminants* to reflect that exposure to crystalline silica at levels higher than 0.05 mg/m³ (averaged over eight hours) is harmful.

The Amendment Regulations facilitate the Commonwealth’s adoption of the lowered exposure standards for crystalline silica, as recommended in the *Workplace Exposure Standards for Airborne Contaminants*, promoting the right to enjoyment of just and favourable conditions of work through safe and healthy working conditions.

Conclusion

This legislative instrument is compatible with human rights.