

## EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment and Workplace Relations  
*Work Health and Safety Act 2011*

### Notice of a Disallowable Instrument

#### ***Work Health and Safety (Managing the Risks of Respirable Crystalline Silica from Engineered Stone in the Workplace) Code of Practice 2022***

The *Work Health and Safety Act 2011* (the WHS Act) and accompanying *Work Health and Safety Regulations 2011* (the WHS Regulations) provide the primary work health and safety legislation for the Commonwealth jurisdiction. They are based on model laws developed by Safe Work Australia under the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*.

Section 274 of the WHS Act provides that the Minister may approve codes of practice for the purposes of the WHS Act. Section 275 of the WHS Act provides that an approved code of practice is admissible in proceedings under the WHS Act as evidence of whether or not a duty or obligation under the WHS Act has been complied with. A court may have regard to the code of practice as evidence of what is known about a hazard or risk, risk assessment or risk control to which the code of practice relates, and may rely on the code of practice in determining what is reasonably practicable in the circumstances to which the code of practice relates.

The purpose of this instrument is to approve the new *Work Health and Safety (Managing the Risks of Respirable Crystalline Silica from Engineered Stone in the Workplace) Code of Practice 2022* (the Code). The Code provides practical guidance to duty holders on meeting their obligations under the WHS Act and the WHS Regulations.

In accordance with paragraph 273B(1)(d) of the WHS Act, this instrument is a legislative instrument within the meaning of the *Legislation Act 2003* (Legislation Act).

#### **Consultation**

Prior to approving a code of practice, the Minister must be satisfied that the Code has been developed in consultation with the Commonwealth, State and Territory governments, unions and employer organisations (WHS Act s 274(2)). The model Code was developed through Safe Work Australia's tripartite consultation process. Safe Work Australia is comprised of representatives from the Commonwealth, each State and Territory, the Australian Council of Trade Unions, Australian Industry Group and the Australian Chamber of Commerce and Industry.

#### **Incorporated documents**

Subsection 274(3) of the WHS Act provides that approved codes of practice made under the WHS Act may apply, adopt or incorporate material from other documents in force at a particular point-in-time or from time-to-time. This displaces the presumption under s 14(2) of the Legislation Act in relation to documents incorporated from time-to-time. The Code references a number of other documents to provide guidance to readers about where to find additional information on particular hazards and risks. These include other codes of practice, and guidance material developed by Safe Work Australia.

#### *Codes of Practice*

The Code references a number of other codes of practice, which under s 273B(1)(d) of the WHS Act are legislative instruments and available on the Federal Register of Legislation. As legislative instruments, these codes of practice are incorporated from time-to-time.

### *Safe Work Australia Guidance Materials*

The Code also refers to a number of guides published by Safe Work Australia. These documents provide detailed practical guidance to duty holders about how to manage specific hazards and risks. These materials are subject to ongoing review, are incorporated from time-to-time, and are available on the Safe Work Australia website

<https://www.safeworkaustralia.gov.au/resources-publications/guidance-materials>

### **Regulation Impact Statement and other matters**

The Office of Best Practice Regulation (OBPR) advised that a Regulation Impact Statement (RIS) was not required to implement the Code in the Commonwealth jurisdiction (OBPR ID: OBPR22-02928). OBPR confirmed with Safe Work Australia that a RIS was also not required during the development of the model Code of Practice: Managing the Risks of Respirable Crystalline Silica from Engineered Stone in the Workplace (OPBR ID: 26432).

A Statement of Compatibility with Human Rights has been completed for this Legislative Instrument, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement's assessment is that the instrument is compatible with human rights. A copy of the Statement is attached.

In accordance with the WHS Act, the Minister has notified the approval of the Code in newspapers and copies of the Code (and applied, adopted and incorporated documents) are available for inspection, without charge, at Comcare offices during normal business hours. Copies are also published on the Comcare website [www.comcare.gov.au](http://www.comcare.gov.au).

The Code commences on the day after it is registered on the Federal Register of Legislation.

## **Statement of Compatibility with Human Rights**

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

### ***Work Health and Safety (Managing the Risks of Respirable Crystalline Silica from Engineered Stone in the Workplace) Code of Practice 2022***

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

#### **Overview**

The Legislative Instrument, to which this Human Rights Compatibility Statement relates, approves the *Work Health and Safety (Managing the Risks of Respirable Crystalline Silica from Engineered Stone in the Workplace) Code of Practice 2022* (the Code). The Code provides practical guidance to duty holders on meeting their obligations under the *Work Health and Safety Act 2011* (the WHS Act) and the *Work Health and Safety Regulations 2011* (the WHS Regulations).

The WHS Act and accompanying WHS Regulations provide the primary work health and safety legislation for the Commonwealth jurisdiction. They are based on model laws developed by Safe Work Australia under the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*.

Section 274 of the WHS Act provides that the Minister may approve codes of practice for the purposes of the WHS Act. Section 275 of the WHS Act provides that an approved code of practice is admissible in proceedings under the WHS Act as evidence of whether or not a duty or obligation under the WHS Act has been complied with. A court may have regard to a code of practice as evidence of what is known about a hazard or risk, risk assessment or risk control to which the code of practice relates, and may rely on a code of practice in determining what is reasonably practicable in the circumstances to which the code of practice relates.

#### **Human rights implications**

Article 7 of the International Covenant on Economic, Social and Cultural Rights provides that everyone has the right to the ‘enjoyment of just and favourable conditions of work, which ensure, in particular...[s]afe and healthy working conditions’. The instrument promotes the right to safe and healthy working conditions by providing duty holders with practical guidance for working with engineered stone. The guidance will assist them to meet their obligations under the WHS Act and the WHS Regulations.

#### **Conclusion**

The instrument is compatible with human rights because it promotes the protection of human rights.

**Minister for Employment and Workplace Relations, the Hon Tony Burke MP**