

Work Health and Safety Amendment Regulation 2023 (No 1)

Subordinate law SL2023–19

made under the

Work Health and Safety Act 2011, section 276 (Regulation-making powers)

EXPLANATORY STATEMENT

OVERVIEW OF THE REGULATION

The Work Health and Safety Amendment Regulation 2023 (No 1) (Amendment Regulation) amends the *Work Health and Safety Regulation 2011* (WHS Regulation) in relation to the management of psychosocial hazards in the workplace.

Minor technical amendments have also been made to update references to superseded Australian Standards and correct typographic errors as provided by Safe Work Australia's model *Work Health and Safety Amendment Regulation 2023*. The Amendment Regulation also reinserts the definition of engineered stone for the purposes of an administrative correction following republication of the WHS Regulation in July 2023.

Psychosocial Hazards

Psychosocial hazards at work are hazards that arise from or in relation to:

- the design or management of work; or
- the working environment; or
- plant at a workplace; or
- workplace interactions or behaviours; and

may cause psychological and physical harm.

Examples of psychosocial hazards that may arise at work include violence and aggression, bullying, lack of role clarity, traumatic events or material, sexual harassment, and poor physical environment.

Psychological harm or injuries from psychosocial hazards include conditions such as anxiety, depression, post-traumatic stress disorder (PTSD), and sleep disorders.

Physical injuries from psychosocial hazards include musculoskeletal injury, chronic disease, and physical injury following fatigue and error related workplace incidents.

Marie Boland's independent review of the model Work Health and Safety (WHS) Laws in 2018 (the Boland Review) made 34 recommendations.

One key action taken by Safe Work Australia (SWA) was to amend the model Work Health and Safety (WHS) Regulations in relation to psychosocial hazards under recommendation two of the Boland Review. Recommendation two sought the amendment of the model WHS Regulations to deal with how to identify psychosocial risks associated with psychological injury and the appropriate control measures to manage those risks. As the ACT is harmonised with the model WHS laws, this amendment regulation progresses adoption of the model WHS Regulation changes dealing with psychosocial hazards.

The ACT Government recognises the fundamental role that persons who conduct a business or undertaking (PCBUs) have in ensuring workplaces are safe for all workers, particularly in terms of workplace culture. This includes the elimination or minimisation of hazards that might contribute to sexual assault. In recognition of the important role that PCBUs have in creating a workplace culture that is healthy and safe, the ACT Government has passed the [Workplace Legislation Amendment Act 2022](#) which expands the incident notification provisions to cover workplace sexual assault incidents.

To assist duty-holders in meeting the obligations of the amendment regulation an ACT *Code of Practice on Managing Psychosocial Hazards at Work* has also been developed.

Hierarchy of Controls

The ACT has retained the application of the hierarchy of controls for psychosocial hazards by making local adjustments to both the model regulation amendments and model code of practice.

The duties set out in section 19 of the *Work Health and Safety Act 2011* (WHS Act) apply to managing both physical and psychosocial hazards to ensure health and safety at work.

Applying the hierarchy of controls allows PCBUs to effectively eliminate or minimise psychosocial risks with control measures that are proportionate to the risks posed.

As such, the ACT amendments adjust the model regulation provision to remove the words “other than regulation 36”.

New provisions at section 55D of the Amendment Regulation reiterate the requirement established by the hierarchy of controls in requiring duty holders to seek to eliminate hazards, and where not reasonably practicable to minimise the risks so far as is reasonably practicable. Section 55D of the Amendment Regulation provides a number of relevant matters which PCBUs must have regard to when determining the most effective control measure using the hierarchy of controls, these are not control measures in and of themselves.

Workplace Interactions and Behaviours

The Amendment Regulation introduces a meaning of *psychosocial hazard* which includes a hazard that arises from or relates to workplace interactions and behaviours.

The ACT *Code of Practice on Managing Psychosocial Hazards at Work* will assist PCBUs in applying this definition in their workplace as a number of factors will need to be considered to determine the risks and appropriate control measures. This code provides PCBUs with guidance on how to identify psychosocial hazards, including those that arise from workplace behaviours. PCBUs must consult with workers when identifying hazards and can use surveys and tools to gather information.

Psychosocial hazards may be identified by observing:

- the workplace (e.g. are workers isolated or exposed to poor conditions);
- the work and how work is performed in practice (e.g. are workers rushed, is work delayed, do certain tasks result in confusion or frequent mistakes); and
- how people interact with each other (e.g. are workers, customers and clients respectful, or are harmful behaviors present).

CONSULTATION ON THE PROPOSED APPROACH

Industry stakeholders, unions and WorkSafe ACT have been consulted in the development of this Amendment Regulation.

CONSISTENCY WITH HUMAN RIGHTS

All amendment regulations must be compatible with the *Human Rights Act 2004* (HRA). The compatibility of this Amendment Regulation with the HRA was considered during its development.

An assessment of the Amendment Regulation against the rights protected by the HRA is provided below.

Rights engaged

The Amendment Regulation engages and promotes the right to work and other work-related rights under section 27B of the HRA.

The Amendment Regulation also engages and promotes the right to life under section 9 of the HRA.

Rights Promoted

The Regulation engages and promotes the right to work and other work-related rights (section 27B), in particular the right to the enjoyment of just and favourable conditions of work.

The amendment regulation promotes section 27B by ensuring clarity around the obligations of duty-holders to manage psychosocial hazards in the workplace and implement control measures according to the hierarchy of controls. This promotes the safety of working conditions as it ensures the elimination or minimisation of psychosocial hazards in the workplace, therefore reducing the risk of injury to workers.

This amendment requires PCBUs to have regard to the design of work including job demands and tasks, when determining control measures to implement in their workplace. When changing the design of work, PCBUs can consider the psychosocial hazards identified and look for opportunities to turn these into controls to mitigate risk. For example, where there is role overload such as excessive time pressure, role conflict, and poor practical support, PCBUs could improve scheduling to minimise overload, clarify roles and responsibilities and provide additional practical support. The elements of good work design promote the human rights of workers by enabling work that protects both physical and psychological wellbeing.

Effectively managing and controlling psychosocial hazards at work according to the hierarchy of controls will ensure they are treated with the same seriousness as physical hazards.

The right to life under section 9 of the HRA includes a duty on government to protect life, including through measures that address the general conditions of society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. This Amendment Regulation upholds safe conditions of work, reducing workplace risks that may jeopardise workers' right to life and dignity of life.

CLAUSE NOTES

Work Health and Safety Amendment Regulation 2022 (No 1)

Clause 1 Name of regulation

Clause 1 provides that the regulation is the *Work Health and Safety Amendment Regulation 2023 (No 1)*.

Clause 2 Commencement

This clause provides for the commencement of the regulation (other than sections 3 and 9) on 27 November 2023.

Sections 3 and 9 commence on the day after this regulation's notification day.

Clause 3 Legislation Amended

This clause provides that the regulation amends the *Work Health and Safety Regulation 2011*.

Clause 4 New division 3.2.11

This clause inserts a new division which defines *psychosocial hazard* and *psychosocial risk* under sections 55A and 55B. Section 55C also provides that a person conducting a business or undertaking must manage psychosocial risks in accordance with part 3.1 of the *Work Health and Safety Regulation 2011*. Part 3.1 requires duty holders to identify foreseeable workplace hazards and eliminate risks to health and safety. If it not reasonably practicable to eliminate risks, then risks must be minimised so far as is reasonably practicable in accordance with the hierarchy of controls.

Section 55D provides that a person conducting a business or undertaking must have regard to all relevant matters in determining control measures to implement, including matters under section 55D(2).

Clause 5 Section 144 (1), definition of *electrical equipment*, paragraph (a) (iv) and note

This clause is a minor technical amendment and updates the reference number to the Australian Standards for *Cathodic protection of metals- Pipes and cables*.

Clause 6 Section 163

This clause is a minor technical amendment and updates the reference number to the Australian Standards for *Electrical installations- Construction and demolition sites*.

Clause 7 Section 221 (2), definition of *harness*

This clause is a minor technical amendment and updates the reference number to the Australian Standards for *Industrial fall-arrest systems- Harnesses and ancillary equipment* as well as *Personal equipment for work at height- Manufacturing requirements for full body combination and lower body harnesses*.

Clause 8 Section 221 (2), note

This clause is a minor technical amendment and updates the reference number to Australian Standards for *Industrial fall-arrest systems and devices- Harnesses and ancillary equipment*.

Clause 9 Section 418A (1), new definition of *engineered stone*

This clause is a minor technical amendment to reinsert the definition of engineered stone for the purposes of administrative correction to realign the republication of the WHS Regulation with intended definitions as signposted for the purposes of *Chapter 7A – Crystalline Silica*.

Clause 10 Schedule 13, section 13.3 (3), definition of *red* and note

This clause is a minor technical amendment and updates the reference number to Australian Standards for *Colour standards for general purposes- signal red*.

Clause 11 Schedule 13, section 13.5, figure 13.3

This clause is a minor technical amendment updating Figure 13.3 which applies if a person conducting a business or undertaking must display a placard at the workplace in relation to unstable explosives, organic peroxides type A or self-reactive substances type A that are stored in bulk. Figure 13.3 has been updated to include correct reference numbers for Australian Standards.

Clause 12 Dictionary definition of *boiler*, paragraph (b) (iii) (C) and note

This clause is a minor technical amendment and updates the reference number to Australian Standards for *Boilers- Safety management and supervision systems*.

Clause 13 Dictionary, new definitions

This clause inserts the new dictionary definitions for psychosocial hazard and psychosocial risk.