

ASBESTOS SAFETY AND ERADICATION AGENCY RULE 2022

EXPLANATORY STATEMENT

Issued by the authority of the Attorney-General and Minister for Industrial Relations under section 48 of the *Asbestos Safety and Eradication Agency Act 2013* (Cth)

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Asbestos Safety and Eradication Agency Act 2013* (the ASEA Act) provides for the establishment of a national agency, known as the Asbestos Safety and Eradication Agency (the Agency).

Section 48 of the ASEA Act provides that the Minister may, by legislative instrument, make rules prescribing matters required or permitted by the ASEA Act to be prescribed by the rules. Section 8 of the ASEA Act sets out the functions of the Agency, and includes paragraph 8(1)(g) which permits functions to be conferred on the Agency by or under the rules.

The *Asbestos Safety and Eradication Agency Rule 2022* (Cth) (the Rule) clarifies that the Agency may develop awareness-raising materials, undertake data collection, and deliver information campaigns regarding asbestos safety and eradication. The Rule is consistent with the 2019 Review of the Asbestos Safety and Eradication Agency's Role and Functions (the 2019 Review), which made a number of recommendations to improve the operation of the Agency. In particular Recommendation 4 recommended greater clarity about the Agency's permitted functions under section 8 of the ASEA Act to undertake awareness raising and data collection and analysis, and promote nationally consistent messaging, policies and practices.

The Agency was established in 2013 to administer the National Strategic Plan for Asbestos Awareness and Management (NSP), which aims to eliminate asbestos-related diseases in Australia by preventing exposure to asbestos fibres. The Agency oversees the national actions to improve asbestos awareness and the effective and safe management, removal and disposal of asbestos.

CONSULTATION

Consultation was undertaken with a wide range of asbestos victim support groups, unions, business representative groups, Commonwealth agencies, and local and state and territory governments as part of the 2019 Review, which indicated broad support for asbestos awareness raising activities undertaken by the Agency. The Commonwealth Attorney-General's Department has also consulted with the Asbestos Safety and Eradication Council on the Government's in-principle agreement of the Review's recommendation to clarify the Agency's functions, and the Agency itself on the terms set out in the rule.

REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required. The OBPR ID for the Regulation is 26035.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Overview of the Legislative Instrument

The Rule will clarify the role of the Asbestos Safety and Eradication Agency (the Agency) to develop awareness-raising materials, undertake data collection, and deliver information campaigns regarding asbestos safety and eradication.

This clarification is consistent with Recommendation 4 from the 2019 Review of the Asbestos Safety and Eradication Agency's Role and Functions.

Specifically, the Rule clarifies that the Agency has the following functions:

- (a) to raise awareness of asbestos safety, including by developing and promoting materials on asbestos safety;
- (b) to collect and analyse data required for measuring progress on preventing exposure to asbestos fibres and informing evidence-based policies and strategies;
- (c) to promote consistent messages, policies and practices in relation to asbestos safety.

Human rights implications

The Rule engages the following rights:

- The right to work under Article 6(1) of the *International Covenant of Economic, Social and Cultural Rights* (ICESCR);
- The right to safe and healthy working conditions under Article 7 of the ICESCR;
- The right to enjoyment of the highest attainable standard of physical and mental health under Article 12 of the ICESCR.

The definition of 'human rights' in the *Human Rights (Parliamentary Scrutiny) Act 2011* relates to the seven core United Nations human rights treaties. The content of the rights to work and rights in work in the ICESCR may be informed by specific obligations in treaties of the International Labour Organisation (ILO), such as the Right to Organise and Collective Bargaining Convention 1949 (No. 98), which deals with the right of employees to collectively bargain for terms and conditions of employment.

Right to work

Article 6(1) of the ICESCR recognises the right to work and obliges States Parties to take appropriate steps to safeguard this right. The United Nations Committee on Economic, Social and Cultural Rights has stated that the right to work in article 6(1) of ICESCR encompasses the need to provide the worker with just and favourable conditions of work.

Right to safe and healthy working conditions

Article 7 of the ICESCR requires that States Parties to the ICESCR recognise the right of everyone to the enjoyment of just and favourable working conditions, including the right to safe and healthy working conditions.

By implementing the recommendation from the 2019 Review, the Rule will support the Agency's work to reduce the risks posed by the presence of asbestos in workplaces in Australia. This will promote the right to safe and healthy working conditions for workers throughout Australia.

Right to enjoyment of the highest attainable standard of physical and mental health

Article 12 of the ICESCR requires that States Parties to the ICESCR recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This includes taking steps towards the improvement of all aspects of environmental and industrial hygiene, and the prevention and control of occupational and other diseases.

General Comments adopted by the Committee on Economic, Social and Cultural Rights, which monitors implementation of ICESCR, took the view that the improvement in environmental hygiene includes “the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.”

Supporting the Agency to develop awareness-raising materials and deliver information campaigns regarding asbestos safety and eradication will make a significant contribution to the right to the enjoyment of that highest attainable standard of physical and mental health for all Australians.

The Rule will enhance the promotion of that high standard of physical and mental health by ensuring that the Agency has the appropriate powers and functions to carry out its role of eliminating asbestos-related diseases in Australia by preventing exposure to asbestos fibres.

Conclusion

This Rule is compatible with human rights because it advances the protection of human rights.

NOTES ON SECTIONS

PART 1 – Preliminary

Section 1 – Name

This section sets out the name of the Rule as the *Asbestos Safety and Eradication Agency Rule 2022*.

Section 2 – Commencement

This section provides that the whole of the Rule commences on the day after the instrument is registered.

Section 3 – Authority

This section provides that the Rule is made under the *Asbestos Safety and Eradication Agency Act 2013*.

Section 4 – Definitions

This section provides that the *Act* means the *Asbestos Safety and Eradication Agency Act 2013*.

This section also notes that a number of expressions used in the Rule are defined in section 3 of the Act, including ‘Agency’ and ‘asbestos safety’.

Section 5 – Functions of the Agency

This section provides that for the purpose of subparagraph 8(1)(g) of the Act, the Agency has the following functions:

- (a) to raise awareness of asbestos safety, including by developing and promoting materials on asbestos safety;
- (b) to collect and analyse data required for measuring progress on preventing exposure to asbestos fibres and informing evidence-based policies and strategies;
- (c) to promote consistent messages, policies and practices in relation to asbestos safety.