



Queensland

Work Health and Safety Amendment Regulation (No. 1) 2012

Explanatory Notes for SL 2012 No. 203

made under the

Work Health and Safety Act 2011

General outline

Short title

Work Health and Safety Amendment Regulation (No. 1) 2012.

Authorising law

Section 276 of the *Work Health and Safety Act 2011*.

Policy objective of the legislation

Implementation of the national model Work Health and Safety (WHS) laws occurred in Queensland with the commencement of the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2011* (WHS Regulation) on 1 January 2012. The WHS Regulation included a number of transitional provisions to delay the commencement of certain parts of the regulation to give duty holders time to comply with new requirements.

During debate of the Queensland WHS Bill in May 2011, the then Opposition raised concerns with certain clauses and advised of possible future amendments if the laws were not well received in Queensland.

On 29 August 2012, the Attorney-General chaired a meeting of employer and worker stakeholders in order to fully understand the impact of the implementation and operation of the WHS laws on business. The views of stakeholders were sought on whether there were any aspects of the legislation that are unworkable or have had unintended consequences, including any unanticipated or inequitable compliance or cost burdens.

While stakeholders were generally supportive of the WHS laws, they raised a number of issues. There is a substantial body of work underway to consider these issues and the recommendations of the review will be considered by Government in the first half of next year. A number of the issues raised by stakeholders relate to provisions of the WHS Regulation that have not yet commenced including:

- Audiometric testing requirements;
- The fitting of protective structures on earthmoving equipment;
- Specific aspects of the asbestos regulations that are new in Queensland; and
- Design registration of concrete placing booms and prefabricated formwork.

In order to provide certainty to industry and to avoid a situation where industry is required to adapt to one change followed by another the regulation further delays the commencement of these provisions until 1 January 2014. This will ensure the provisions do not commence prior to the implementation of any proposed changes to the WHS Regulation.

Further, there are a number of changes to high risk work licences (HRW) in the WHS Regulation that have a delayed commencement of 1 January 2013. For a number of these HRW changes the new national competency units and assessment instruments that support the changes are not yet available. The regulation further delays the commencement of these provisions until 1 January 2014 to allow time for the training packages to become available and be adopted by Registered Training Organisations.

In addition, the regulation:

- extends the current arrangement of annual registration of plant for a further year, until 1 January 2014, to allow time for the completion of the required systems changes and a review of the fee structure;

- delays commencement of the provisions relating to remote and isolated work to allow industry, in particular the rural industry, time to prepare for the new requirements; and
- removes the requirement for lifts in private residences to be registered. This requirement has not yet commenced and the removal of the requirement is a red tape reduction initiative.

Finally there are a number of minor drafting errors that have been identified in the WHS Regulation that need to be corrected. These are minor technical amendments to correct what are largely cross referencing errors.

How policy objectives will be achieved

The Amendment Regulation achieves its objectives by:

- delaying the commencement of the following provisions of the WHS Regulation until 1 January 2014:
 - section 48, remote or isolated work;
 - section 58, audiometric testing
 - section 217, protective structures on earthmoving equipment;
 - section 272, duration of plant registration is for five years;
 - sections 425 and 429 asbestos registers and asbestos management plans, the delayed commencement is only in relation to buildings built from 1 January 1990 and up to 31 December 2003, under transitional provisions in sections 758 and 759;
 - sections 432 and 433, asbestos management plans for naturally occurring asbestos;
 - part 8.5, division 1, health monitoring for those at risk of exposure to asbestos; and
 - design registration of concrete placement booms and prefabricated formwork under section 779.
- extending the transitional arrangements under the WHS Regulation until the end of 31 December 2013 to allow:

- a person who holds a non-slewing crane licence to carry out high risk work (HRW) for the licence class reach stacker;
 - an intermediate boiler operator whose HRW has converted to a standard boiler operation HRW to, while the licence is in force, continue to carry out the HRW of intermediate boiler operator;
 - a person holding an assessment summary or statement of attainment for a unit of competency under the repealed Regulation, under certain circumstances, can apply for a HRW when the VET course for a new competency unit is not available; and
 - a person with a HRW for various slewing mobile crane licence classes to perform HRW for the licence class vehicle loading crane;
- removing the requirement for lifts in private residences to be registered; and
 - making a number of minor technical amendments to correct typographical and cross referencing errors that have been identified since the commencement of the WHS Regulation.

Consistency with authorising Act and other legislation

The objective of the *Work Health and Safety Act 2011* is to protect workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work, plant or substances. This objective is achieved by establishing a framework for preventing or minimising a person's exposure to the risk of death, injury or illness caused by work, plant or substances. The proposed amendments are consistent with the objectives of the *Work Health and Safety Act 2011*.

Possible alternative approach

The policy objective can only be achieved by regulatory amendment.

Benefits and costs of implementing the legislation

This will ensure that sections of the WHS Regulation that are the subject of the LNP Government's review of the WHS laws do not commence prior to

the implementation of any proposed changes to the WHS Regulation. This will provide certainty to industry and avoid a situation where industry is required to adapt to one change followed by another.

Fundamental legislative principles

The regulation raises no fundamental legislative principle issues. The regulation has been drafted with regard to the fundamental legislative principles and is considered to comply with these principles.

Consultation

The Department of Treasury and Trade has been consulted and advised that as the amendments are machinery in nature a Regulatory Assessment Statement is not required.

Notes of Provisions

Short Title

Clause 1 provides the short title of the regulation.

Regulation amended

Clause 2 states that this regulation amends the *Work Health and Safety Regulation 2011*.

Amendment of s 2 (Commencement)

Clause 3 inserts a new section 2A that provides for the commencement of sections 48, 217, 272, 279(2)(d), 432, 433 and part 8.5, division 1 of the WHS Regulation on 1 January 2014.

Amendment of s 44 (Provision to workers and use of personal protective equipment)

Clause 4 corrects a cross referencing error.

Amendment of s 56 (Meaning of *exposure standard for noise*)

Clause 5 removes the references to ‘emission’ in the titles of the Australian Standards referenced in section 56 (2) and replaces them with ‘immission’.

Amendment of s 71 (Specific control – atmosphere)

Clause 6 corrects two cross referencing errors.

Amendment of s 75 (Personal protective equipment in emergencies)

Clause 7 corrects a cross referencing error.

Amendment of s 79 (Specific requirements to minimise risk of fall)

Clause 8 corrects a cross referencing error.

Amendment of s 144C (Application for licence to carry out demolition work)

Clause 9 replaces the note, in section 144C(2)(h)(ii), so that it correctly references sections 103 and 104 of the *Waste Reduction and Recycling Act 2011*.

Amendment of s 144F (Decision on application)

Clause 10 corrects a cross referencing error.

Amendment of s 144H (Matters to be taken into account)

Clause 11 replaces the note, in section 144H(b)(ii), so that it correctly references sections 103 and 104 of the *Waste Reduction and Recycling Act 2011*.

Amendment of s 144ZB (Licence holder to return licence document)

Clause 12 corrects a cross referencing error.

Amendment of s 215 (Powered mobile plant – specific control measures)

Clause 13 corrects a cross referencing error.

Amendment of s 241 (Annual inspection of amusement device)

Clause 14 removes the reference, in section 241(6) to ‘subsection (5)(c)’ and replaces it with a reference to ‘subsection (5), definition *competent person*, paragraph (b)’.

Amendment of s 272A (Duration of registration on commencement)

Clause 15 removes all references, in section 272A, to ‘2013’ and replaces them with ‘2014’ so that registration of items of plant granted before 1 January 2014 are valid until 31 January of the following year. This maintains annual registration of items of plant up until 1 January 2014. This section will now expire on 31 January 2014.

Amendment of s 279A (Duration of renewal on commencement)

Clause 16 removes all references, in section 279A, to ‘2013’ and replaces them with ‘2014’ so that renewals of registration of items of plant granted before 1 January 2014 are valid from 1 February until 31 January of the following year. This section will now expire on 31 January 2014.

Amendment of s 313 (Copy of WHS management plan must be kept)

Clause 17 amends section 313(3) to replace ‘any who’ with ‘any person who’.

Amendment of 315F (Control measures for construction work that is not civil construction work or housing construction work)

Clause 18 corrects a cross referencing error.

Amendment of s 326 (Duties of workers)

Clause 19 corrects a cross referencing error.

Amendment of s 352 (Review of control measures)

Clause 20 corrects a cross referencing error.

Amendment of s 433 (Review of asbestos management plan)

Clause 21 corrects a cross referencing error.

Amendment of s 492 (Application for asbestos removal licence or asbestos assessor licence)

Clause 22 replaces the note, in section 492(2)(i)(ii), so that it correctly references sections 103 and 104 of the *Waste Reduction and Recycling Act 2011*.

Amendment of s 500 (Matters to be taken into account)

Clause 23 replaces the note, in section 500(b)(ii), so that it correctly references sections 103 and 104 of the *Waste Reduction and Recycling Act 2011*.

Amendment of s 557 (Emergency plan)

Clause 24 corrects a cross referencing error.

Amendment of s 578 (Application for major hazard facility)

Clause 25 corrects a cross referencing error.

Amendment of s 581 (Matters to be taken into account)

Clause 26 amends section 581 to make minor editorial changes including to subsection (1)(f) to replace ‘for responsibility’ with ‘with responsibility’.

Amendment of s 598 (Provisions relating to renewal of licence)

Clause 27 corrects a cross referencing error.

Amendment of s 603 (Matters to be taken into account)

Clause 28 corrects a cross referencing error.

Amendment of s 606 (Immediate suspension)

Clause 29 corrects a cross referencing error.

Amendment of s 676 (Which decisions are reviewable)

Clause 30 amends the table of reviewable decisions in section 676 to correct a number of cross referencing errors. Item 82 is omitted as there is no section 739(6) or equivalent in the WHS Regulation.

Amendment of s 704 (Duty of officers)

Clause 31 delete references to ‘(Primary duty of care)’ from section 704(1), (2) and (3)(e).

Amendment of s 710 (Modification of applied provisions)

Clause 32 corrects a cross referencing error.

Amendment of s 724 (Applications for high risk work licence until 31 December 2012 if not VET course available)

Clause 33 removes all references, in section 724, to ‘2012’ and replaces them with references to ‘2013’. This extends, until the end of 31 December 2013, the transitional provision that allows a person holding an assessment

summary or statement of attainment for a unit of competency under the repealed Regulation to apply for a HRW when the VET course for a new competency unit is not available, under particular circumstances.

Amendment of s 726 (Particular licence classes to include other licence classes until 31 December 2012)

Clause 34 removes all references, in section 726, to ‘2012’ and replaces them with references to ‘2013’ in order to allow the transitional arrangements in this section to remain in place until the end of 31 December 2013.

Amendment of s 730 (Existing licence issued before 1 July 2008 – high risk work)

Clause 35 removes the reference, in section 730(4) to ‘2012’ and replace it with a reference to ‘2013’ in order to continue this transitional arrangement until the end of 31 December 2013.

Amendment of s 748 (Existing provisions about certificate process continue to apply for a transitional class A asbestos removal licence)

Clause 36 makes a minor amendment to the wording of section 748 that makes no change to effect of the provision.

Amendment of s 758 (No need for asbestos register in particular transitional circumstances)

Clause 37 amends the reference, in section 758(2), to ‘30 June’ and replaces it with a reference to ‘31 December’ which has the effect of extending this transitional provision until the end of 31 December 2013.

Amendment of s 759 (No need for asbestos management plan in particular transitional circumstances)

Clause 38 amends the reference, in section 759(2), to ‘30 June’ and replaces it with a reference to ‘31 December’ which has the effect of extending this transitional provision until the end of 31 December 2013.

Amendment of s 777 (Particular provision for audiometric testing)

Clause 39 amends the reference, in section 777(3), to ‘12 months’ and replaces it with a reference to ‘2 years’ which has the effect of extending this transitional provision so that audiometric testing of workers is not required until after 1 January 2014.

Amendment of s 779 (Registration of particular item of plant not needed until end of 31 December 2012)

Clause 40 removes all the references, in section 779 to ‘2012’ and replaces them with a reference to ‘2013’ in order to continue this transitional arrangement so that registration of the design of the plant items concrete placement units with delivery booms and prefabricated formwork is not required until the end of 31 December 2013.

Amendment of s 780 (Introductory period for registration of domestic lifts)

Clause 41 deletes section 780 as the registration of lifts in private residences is no longer required see Clause 43 of this regulation.

Amendment of sch 2 (Fees)

Clause 42 corrects a cross referencing error.

Amendment of sch 5 (Registration of plant and plant designs)

Clause 43 amends Schedule 5, part 2 so that lifts installed in a private residence, within the meaning of AS1735.1:2003 are not items of plant requiring registration.

Amendment of sch 19 (Dictionary)

Clause 44 amends Schedule 19 Dictionary to insert ‘section 5’ which is the authorising provision for the schedule. It also corrects various minor typographical and cross referencing errors that have been identified since the commencement of the WHS Regulation.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Justice and Attorney-General.

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