

# Work Health and Safety and Another Regulation Amendment Regulation (No. 1) 2014

Explanatory notes for SL 2014 No. 60

made under the

*Electrical Safety Act 2002*  
*Work Health and Safety Act 2011*

## General Outline

### Short title

*Work Health and Safety and Another Regulation Amendment Regulation (No. 1) 2014.*

### Authorising law

Section 210 of the *Electrical Safety Act 2002*  
Section 276 of the *Work Health and Safety Act 2011*

### Policy objectives and the reasons for them

#### Review of Work Health and Safety Laws

The Queensland Government has reviewed the national model Work Health and Safety (WHS) laws which commenced in Queensland on 1 January 2012. The review considered the impact of the WHS laws on business, including unanticipated or inequitable compliance costs.

The *Work Health and Safety and Other Legislation Amendment Act 2014* implements findings from the review of the WHS laws that deal with matters covered in the principal legislation. However, some issues raised in the review related to matters dealt with in the *Work Health and Safety Regulation 2011*.

This amendment regulation also amends the *Electrical Safety Regulation 2013* to provide for consistency in penalties for offences in that regulation which give effect to national model WHS provisions for electrical safety.

## Achievement of policy objectives

The policy objectives are achieved by amending the *Work Health and Safety Regulation 2011* to –

- specify what information is to be provided when giving notice of entry for a person assisting a health and safety representative;
- remove mandatory audiometric testing requirements and provide guidance on this issue in the noise code of practice to be consistent with previous arrangements in Queensland;
- adopt the Safe Work Australia proposal to remove the mandatory requirement to fit protective structures to earthmoving machinery since there are existing provisions which effectively control the risks from falling objects or rolling over for operators of earthmoving machinery;
- streamline requirements for Class B asbestos removal licences by removing the requirement to nominate a supervisor to the regulator and removing the requirement for additional certification in training for the supervisor;
- provide greater flexibility in relation to who can carry out a clearance inspection following Class B asbestos removal work;
- provide for an inspector to take action to direct the clean up of a site in circumstances where a clearance certificate has been issued when the site was not free of visible asbestos contamination;
- amend the date nominated to trigger asbestos register requirements for workplace buildings so it aligns with the date under Queensland's former WHS laws;
- clarify that asbestos register requirements do not apply to domestic premises;
- reduce red tape requirements by replacing 'written notice' with 'notify' when licence holders must inform the regulator of a change of address or when a licence document is lost, stolen or destroyed; and
- enable the regulator to publish an online register of high risk work licence holders and accredited assessors.

The *Electrical Safety Regulation 2013* is amended to increase specific maximum penalties in relation to incident notification, preservation of incident sites, live electrical work and working near power lines to align with penalties for equivalent offences in nationally agreed WHS laws. There are no increases to penalties for corresponding infringement notice offences prescribed in the *State Penalties Enforcement Regulation 2000* because existing infringement notice offences already align with the equivalent nationally agreed model WHS amounts.

## Consistency with policy objectives of authorising laws

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*.

The objective of the *Electrical Safety Act 2002* is to prevent the death and injury of persons by electricity and to prevent property from being destroyed or damaged by electricity. This objective is achieved by establishing a framework for preventing or minimising a person's exposure to risk of death or injury from electricity by maintaining the package of regulations that target high-risk electrical hazards. The proposed amendments are consistent with the objectives of the *Electrical Safety Act 2002*.

## **Inconsistency with policy objectives of other legislation**

No inconsistencies with policy objectives of other legislation have been identified.

## **Alternative ways of achieving policy objectives**

The policy objectives can only be achieved by regulatory amendment.

## **Benefits and costs of implementation**

The amendment regulation implements findings from the Government's review of the WHS laws to reduce red tape and costs on business. Some of the benefits to business include:

- removing the costs associated with mandatory audiometric testing and instead providing guidance in the noise code of practice;
- removing the cost of retrofitting protective structures to all existing earthmoving machinery and instead applying a risk based approach;
- removing the cost to business of preparing asbestos registers and management plans for workplaces built between 1 December 1989 and 1 December 2003 where no asbestos has been identified;
- saving business time spent on calls to the department's call centre by providing an online public register of licence holders which can be accessed at any time with no waiting period.

Since these proposed amendments are new to Queensland and have not yet commenced, there will be no cost to the community in terms of a reduction in safety benefits. The IT up-front investment cost to government for the public register will be met from existing resources. However there will be savings to government of call centre resources if the majority of clients access the online public register.

## **Consistency with fundamental legislative principles**

The amendment regulation is consistent with fundamental legislative principles.

## **Consultation**

There has been extensive consultation with key stakeholders throughout the review of the WHS laws, including industry roundtables held by the Attorney-General on 29 August 2012 and 11 July 2013, which sought the views of key industry stakeholders on the workability of the national model WHS laws.

In attendance at the industry roundtables were representatives from AiGroup, Agforce, Civil Contractors Federation, Australian Workers Union (AWU), Chamber of Commerce and Industry Queensland, Growcom, Housing Industry Association (HIA), Local Government Association of Queensland, Master Builders Queensland, National Retailers Association, Queensland Council of Unions (QCU), the Construction Forestry Mining Energy Union of Queensland, Queensland Farmers Federation, Queensland Law Society, Queensland Trucking Association, Sugar Milling Council, Timber Queensland, Major Contractors' Association and Canegrowers Queensland.

In formulating the amendment regulation, the Government has taken into account a range of views expressed by stakeholders through the following processes:

- a number of working groups established with key industry stakeholders to further examine specific issues raised, particularly with regulations regarding asbestos, confined spaces and workplace bullying;
- a survey of 195 Queensland businesses (including 94 small businesses) conducted in February and March 2013 by the Department of Justice and Attorney-General, in conjunction with the Chamber of Commerce and Industry Queensland and the Queensland Treasury and Trade. The survey aimed to address the lack of data on the financial impacts of new WHS legislation on small business;
- a series of focus groups held across Queensland throughout March 2013 to examine the issues raised in the survey in more detail; and
- a meeting with stakeholders on the Red Tape Reduction Board held at the Office of Fair and Safe Work Queensland on 25 February 2014.

The Office of Best Practice Regulation in the Queensland Competition Authority has been consulted. As the amendment regulation is not considered likely to result in significant adverse impacts and extensive consultation has been carried out during the review of the WHS laws, a Regulatory Impact Statement has not been prepared.

## Notes of Provisions

### Part 1 Preliminary

#### Short Title

Clause 1 provides the short title of the regulation.

#### Commencement

Clause 2 provides that the amendment regulation commences immediately after the commencement of the *Work Health and Safety and Other Legislation Amendment Act 2014*.

### Part 2 Amendment of *Electrical Safety Regulation 2013*

#### Regulation amended

Clause 3 provides that this part amends the *Electrical Safety Regulation 2013*.

**Amendment of s 14 (Electrical work on energised electrical equipment is prohibited)**

Clause 4 increases the maximum penalty for a breach of section 14 to 60 penalty units.

**Amendment of s 15 (Duty to determine whether equipment is energised)**

Clause 5 increases the maximum penalty for a breach of section 15(1) and (2) to 60 penalty units.

**Amendment of s 16 (De-energised equipment must not be inadvertently re-energised)**

Clause 6 increases the maximum penalty for a breach of section 16 to 60 penalty units.

**Amendment of s 18 (Electrical work on energised electrical equipment permitted in particular circumstances)**

Clause 7 increases the maximum penalty for a breach of section 18(1) to 60 penalty units.

**Amendment of s 19 (Preliminary steps)**

Clause 8 increases the maximum penalty for a breach of section 19(1) to 60 penalty units.

**Amendment of s 20 (Unauthorised access to equipment being worked on)**

Clause 9 increases the maximum penalty for a breach of section 20 to 60 penalty units.

**Amendment of s 21 (Contact with equipment being worked on)**

Clause 10 increases the maximum penalty for a breach of section 21 to 60 penalty units.

**Amendment of s 22 (How work is to be carried out)**

Clause 11 increases the maximum penalty for a breach of section 22(1) and (2) to 60 penalty units.

**Amendment of s 23 (Record keeping)**

Clause 12 increases the maximum penalty for a breach of section 23(2), (3) or (5) by a body corporate to 60 penalty units.

**Amendment of s 68 (Duty of person conducting a business or undertaking)**

Clause 13 increases the maximum penalty for a breach of section 68(1) and (2) to 60 penalty units.

**Amendment of s 265 (Duty of person conducting a business or undertaking to notify of serious electrical incident or dangerous electrical event); and  
Amendment of s 269 (Duty to preserve incident or event sites)**

Clauses 14 and 15 increases the maximum penalty for a breach of sections 265(1) and 269(2) to 100 penalty units and the maximum penalty for a breach of section 265(6) to 50 penalty units.

**Part 3 Amendment of *Work Health and Safety Regulation 2011***

**Regulation amended**

Clause 16 provides that this part amends the *Work Health and Safety Regulation 2011*.

**Amendment of s 2 (Commencement)**

Clause 17 amends section 2 to omit the reference to section 217 which is no longer required.

**Insertion of new s 20A (Notice of entry for persons assisting the health and safety representative – Act, s 68)**

Clause 18 inserts a new section 20A as a consequential amendment to the amendment to section 68 in the *Work Health and Safety Act 2011* that requires a health and safety representative to give written notice of the proposed entry to the workplace of a person assisting them. The new section prescribes the information that is required to be given in the notice of entry.

**Omission of s 58 (Audiometric testing)**

Clause 19 omits section 58 which mandates audiometric testing. Guidance on this issue will be provided in the noise code of practice to be consistent with previous arrangements in Queensland.

**Amendment of s 96 (Notice of change of address); and  
Amendment of s 98 (Replacement licence document); and  
Amendment of s 127 (Replacement accreditation document)**

Clauses 20 to 22 amend sections 96, 98 and 127 by replacing 'written notice' with 'notify' when a high risk work licence holder or an accredited assessor must inform the regulator of a change of address or when a licence document is lost, stolen or destroyed. This amendment allows the licence holder more flexibility in how notice is given to the regulator.

**Insertion of new pt 4.5, div 3 (Licence and Accreditation Register); and  
Insertion of new section 141A (Regulator may keep register)**

Clause 23 inserts a new section 141A which provides a head of power to enable the regulator to publish an online register of licence holders containing information about any or all of the following types of licences:

- (a) high risk work licences; and
- (b) accreditations to conduct assessments.

Section 141A(3)(b) will enable the regulator to publish details of the holder of the licence, the type of licence held, the status of the licence and any suspension or cancellation of the licence.

#### **Amendment of s 144U (Replacement licence document)**

Clause 24 amends section 144U(1) by replacing 'written notice' with 'notify' when a licence holder for demolition work must inform the regulator if a licence document is lost, stolen or destroyed. This amendment allows the licence holder more flexibility in how notice is given to the regulator.

#### **Omission of s 217 (Protective structures on earthmoving machinery)**

Clause 25 removes section 217 which mandates the fitting of protective structures on earthmoving machinery since there are existing provisions which effectively control the risks from falling objects or rolling over for operators of earthmoving machinery. The removal of this provision is one of the amendments to the model Work Health and Safety Regulation proposed by Safe Work Australia.

#### **Amendment of s 288 (Replacement registration document)**

Clause 26 amends section 288(1) by replacing 'written notice' with 'notify' when a registration holder must inform the regulator if the licence document is lost, stolen or destroyed. This amendment allows the registration holder more flexibility in how notice is given to the regulator.

#### **Amendment of s 421 (Application of part 8.3)**

Clause 27 amends section 421 to clarify that requirements relating to asbestos registers and asbestos management plans in sections 425 to 430 do not apply to workplaces at domestic premises. Domestic premises can become workplaces from time to time, for example, when a plumber attends a house to carry out plumbing work. Domestic premises may also be used by the occupant as part of carrying out work for a business or undertaking, for example, a person using a home-based office. This provision makes it clear that requirements regarding asbestos registers and asbestos management plans do not apply to these domestic premises.

#### **Amendment of s 425 (Asbestos register)**

Clause 28(1) inserts a note in section 425(1) stating that section 425 does not apply to domestic premises. Clause 28(2) replaces '2003' in section 425(6)(a) with '1989' so that the amended provision states that section 425 does not apply to a workplace if the building was constructed after 31 December 1989, and no asbestos has been identified at the workplace, and no asbestos is likely to be present from time to time.

#### **Amendment of s 447 (Application of part 8.6)**

Clause 29 replaces section 447(1) by inserting a new subsection which specifies the application of part 8.6 to certain structures and plant at workplaces. The scope now applies to buildings constructed before 31 December 1989, which aligns with the



amendment made to asbestos register requirements in section 425. It also applies to non-building structures and plant constructed or installed before 31 December 2003 if there are reasonable grounds to believe asbestos or asbestos containing material is installed in the plant or non-building structure.

**Replacement of s 459 (Asbestos removal supervisor must be present or readily available)**

Clause 30 amends section 459 to specify the circumstances when a licensed asbestos removalist is required to ensure a person is supervising class B asbestos removal work. When class B asbestos removal work is being carried out by more than one person, the licensed asbestos removalist must ensure a person specified under section 529 is readily available to workers carrying out the asbestos removal work. Section 529 has been amended by this amendment regulation to require the licensed removalist to be satisfied the person supervising the class B asbestos removal work being carried out by more than one person is at least 18 years of age, and holds a certificate for the specified VET course for either class A or class B asbestos removal work, and has at least one year of relevant industry experience.

These amendments reduce the regulatory burden for licensed asbestos removalists who are sole operators carrying out class B asbestos removal work. In these circumstances, it is an artificial construct to have a requirement for supervision as the sole operator is effectively the worker and the supervisor at the same time. This amendment clarifies that for class B asbestos removal work, a supervisor must be readily available to a worker only if the asbestos removal work is being carried out by more than one person.

**Amendment of s 466 (Regulator must be notified of asbestos removal)**

Clause 31 amends section 466(4)(b) by specifying when the name and business contact details of a person supervising licensed asbestos removal work must be included when notifying the regulator of proposed licensed asbestos removal work. The supervisor's details must be included for any class A asbestos removal work. A supervisor's details must be included for any class B asbestos removal work to be carried out by more than one person.

**Insertion of new s 474A (Obligations of licensed asbestos removalist in particular circumstances)**

Clause 32 inserts a new section 474A which provides for the circumstance when a clearance certificate has been issued by a competent person in contravention of their obligations under section 474, due to the site not being free of visible asbestos contamination when the person issued the certificate. Inspectors may issue an improvement notice or prohibition notice under the *Work Health and Safety Act 2011*. The notice may require or direct the licensed asbestos removalist who carried out the relevant asbestos removal work to take the necessary steps to ensure the asbestos removal area, and the area immediately surrounding it, are free from visible asbestos contamination. Section 474A(2) provides the licensed asbestos removalist must ensure a subsequent clearance inspection is carried out by a new independent competent person who has not been involved in the removal of the asbestos and is independent of the business or undertaking which conducted the asbestos removal



work to which the clearance certificate relates. A maximum penalty of 60 penalty units applies to a contravention of this subsection. The new independent competent person carrying out the clearance inspection still needs to meet the definition of a 'competent person' for clearance inspections in Schedule 19. In addition, this provision specifies the licensed removalist must not seek to recover the costs associated with any subsequent clean up and clearance inspection from the owner or occupier of the asbestos removal area. Visible asbestos contamination would include any visible asbestos-contaminated dust and debris or asbestos waste that has not been properly contained and labelled for disposal in accordance with the regulation.

### **Replacement of s 494 (Content of application – class B asbestos removal licence)**

Clause 33 replaces section 494 with a new provision stating what additional information is required to be included in an application for a class B asbestos removal licence. This amendment reduces the regulatory burden for class B asbestos removal licence applicants by no longer requiring the applicant to provide the name of an asbestos removal supervisor who satisfies certain criteria, including additional supervisor training provided by registered training organisations as a two day course for asbestos removal supervisors. Instead, the amendment provides that if the applicant is an individual who proposes personally to carry out the class B asbestos removal work, the application must include their own name and a copy of their certification for the specified VET course for either class A or class B asbestos removal work. If the applicant does not propose to personally carry out the class B asbestos removal work, the application must include the name of a person who the applicant proposes will carry out the asbestos removal work and a copy of that person's certification for the specified VET course for either class A or class B asbestos removal work.

The specified VET courses for class A (friable) and class B (non-friable) asbestos removal work are offered by registered training organisations generally as two day courses. The non-friable asbestos removal course is a nationally accredited unit of competency which provides a higher level of training than the former requirements for class B asbestos removal work under the repealed *Workplace Health and Safety Regulation 2008*.

### **Amendment of s 499 (Class B asbestos removal licence – regulator to be satisfied about additional matters)**

Clause 34 amends section 499 as a consequence of the amendment to section 494 in clause 33. The amended section 499 requires the regulator to be satisfied that the person named by the applicant to carry out asbestos removal work under the class B asbestos removal licence holds a certification for the specified VET course for either class A asbestos removal work or class B asbestos removal work.

### **Amendment of s 502 (Conditions of licence)**

Clause 35 makes a consequential amendment to section 502(2)(c) by clarifying the reference to a nominated supervisor is connected to a class A asbestos removal licence.

### **Amendment of s 507 (Change to nominated supervisor)**

Clause 36 amends section 507(1) by inserting 'a class A asbestos removal licence' into this section. The intention is to confine the application of section 507(1) to a class A asbestos removal licence holder.

### **Amendment of s 513 (Replacement licence document)**

Clause 37 amends section 513(1) by replacing 'written notice' with 'notify' when an asbestos removal licence holder or an asbestos assessor licence holder must inform the regulator if the licence document is lost, stolen or destroyed. This amendment allows the licence holder more flexibility in how notice is given to the regulator.

### **Replacement of s 518 (Renewal of asbestos removal licence – regulator to be satisfied about particular matters)**

Clause 38 makes a consequential amendment to section 518 to reflect changes to asbestos removal supervisor requirements in this amendment regulation.

### **Amendment of s 520 (Suspension or cancellation of licence)**

Clause 39 makes consequential amendments to section 520 to reflect that references to nominated supervisors in this provision are connected to class A asbestos removal licences.

### **Amendment of s 527 (Asbestos removal licence register)**

Clause 40 amends section 527(b) to provide that the register kept by the regulator under section 527 contains the named supervisors of class A asbestos removal licence holders.

### **Amendment of s 529 (Work must be supervised by named supervisor)**

Clause 41 amends section 529 by providing that the asbestos removal licence holder must ensure the asbestos removal work authorised by the licence is supervised as specified by the amended section 529. For class A asbestos removal work, there must be supervision by the nominated supervisor of the licence holder. For class B asbestos removal work carried out by more than one person, supervision must be by a person whom the licence holder is satisfied is at least 18 years of age, and holds a certificate for the specified VET course for either class A or class B asbestos removal work, and has at least one year of relevant industry experience.

### **Omission of s 754 (Application of references to nominated asbestos removal supervisor to transitional class B asbestos removal licence holders for particular sections)**

Clause 42 omits section 754 which provided a transitional arrangement for nominated asbestos removal supervisors for class B asbestos removal licence holders that is no longer required. The new transitional provision in section 786B allows the holder of a transitional class B asbestos removal licence to supervise class B asbestos removal work carried out by more than one person.

**Amendment of s 777 (Particular provision for audiometric testing)**

Clause 43 amends section 777(1) by inserting a note to explain that section 58 has been repealed. Section 777 is a transitional provision regarding audiometric testing requirements in section 58. Section 58 is being repealed through this amendment regulation.

**Amendment of s 779 (Registration of design of particular item of plant not needed until end of 31 December 2014)**

Clause 44 amends section 779(b) by inserting a note to explain the requirement to register the design of prefabricated formwork has been repealed. The removal of this provision is one of the amendments to the model Work Health and Safety Regulation made by Safe Work Australia.

**Insertion of new ss 786A and 786B**

Clause 45 inserts two new transitional provisions regarding class B asbestos removal licence holders. Section 786A relates to applications for class B asbestos removal licences which were made but not decided immediately before the commencement of the amendment regulation. Section 786B allows the holder of a transitional class B asbestos removal licence to supervise class B asbestos removal work carried out by more than one person.

**Amendment of sch 19 (Dictionary)**

Clause 46 amends Schedule 19 by inserting amendments to definitions for '*competent person*', '*independent*' and '*specified VET course*'.