

Work Health and Safety and Other Legislation Amendment Regulation 2018

Explanatory notes for SL 2018 No. 216

made under the

Electrical Safety Act 2002
Work Health and Safety Act 2011

General Outline

Short title

Work Health and Safety and Other Legislation Amendment Regulation 2018

Authorising law

Section 210(1) of the *Electrical Safety Act 2002*
Section 276(1) of the *Work Health and Safety Act 2011*

Policy objectives and the reasons for them

The Office of Industrial Relations (OIR) in the Department of Education is responsible for administering the *Electrical Safety Act 2002* (ES Act) and the *Work Health and Safety Act 2011* (WHS Act).

The objective of the *Work Health and Safety and Other Legislation Amendment Regulation 2018* (Amendment Regulation) is to make the following minor regulatory amendments to subordinate legislation under the ES Act and WHS Act.

Changes to the *Electrical Safety Regulation 2013* (ES Regulation)

The objective of amendments to the ES Regulation is to provide clearer and higher educational and work experience requirements for the positions of ‘qualified business person’ (QBP) and ‘qualified technical person’ (QTP) (*QBP and QTP definitions*). The reason for these changes is to ensure that suitably qualified individuals occupy the positions and exercise the associated functions competently.

Changes to the *Work Health and Safety Regulation 2011* (WHS Regulation)

Amendments to the WHS Regulation fall into the following areas:

- The objective of amendments concerning Health and Safety Representative (HSR) training (*HSR training*) is to ensure that training is completed in a timely manner so that HSRs are equipped to perform the functions of the role adequately.
- The objective of amendments concerning plant item registration renewals (*renewing plant registration*) is to delay the commencement of a five yearly timeframe for renewals and retain annual renewal timeframes until 1 January 2021. The reason for this amendment is that existing IT system capacity precludes commencement as originally intended from 1 January 2019.
- The objective of amendments concerning cancelling plant item or design registration (*cancelling plant registration*) is to enable the Regulator to cancel registration for non-compliance with a condition of registration. This will make the Regulator's power explicit, bringing it into line with other registration schemes under the WHS Regulation that explicitly provide for cancellation. This, in turn, will enable audits of plant item registration to ensure that registered plant, particularly cranes and amusement devices, are being appropriately maintained, inspected and tested for safety.
- The objective of amendments to update Schedule 18A will enable sharing information that is necessary for the administration of relevant Acts listed in the schedule (*information sharing*). The reason for the amendment is to better protect workers and members of the public through facilitation of relevant information.
- Further, a minor change is proposed to the reference to the Australian Standard for Occupational diving operations (under sections 183 and 184), to maintain automatic currency as standards are updated without the need for regulatory amendment.
- Finally, a number of very minor miscellaneous amendments are made, including to correct typographical errors and out of date references.

Achievement of policy objectives

The objective of the Amendment Regulation is achieved by making the following amendments.

Changes to the *Electrical Safety Regulation 2013* (ES Regulation)

- Section 7—amendments to the definitions of ‘qualified business person’ and ‘qualified technical person’ (to take effect on 1 January 2019). Specifically:
 - Section 7(1)(c)—amendment to increase the education requirement.
 - Section 7(2)(b)(i) and (ii)—amendment to increase the experience requirement from ‘a year’ to ‘2 years’.
- Sections 89 and 273—amending reference to the wiring rules by omitting references to out of date website addresses.
- Sections 302 and 303 (new pt 16, div 3)—amendments involving the addition of a division to clarify the application of the new section 7 (transitional provisions). Specifically:

- Section 302—if a person has applied for an electrical contractor licence before commencement and on commencement that application has not been decided, then section 7 as in force immediately before commencement applies to the application.
- Section 303—if a person applies for renewal or reinstatement of an electrical contractor licence that was obtained under section 7 as in force immediately before commencement, then the application is assessed by section 7 as in force immediately before commencement.

Changes to the *Work Health and Safety Regulation 2011* (WHS Regulation)

- Sections 2(C)—amending the date of commencement of a five yearly timeframe for renewals of plant item registration from 2019 to 2021, by omitting ‘2019’ and inserting ‘2021’.
- Section 21(2)—amending the requirement for HSRs to complete an initial course of training within 6 months of being elected, to within 3 months of being elected, subject to course availability (to take effect on 1 February 2019).
- Section 144W—amending the introductory words that set the standard by which suspensions or cancellations of licences are determined under the section.
- Sections 183 and 184—removing reference to the year of the Australian Standard for Occupational diving operations, but maintaining the generic reference number.
- Section 272A and 279A—amending the date of commencement of a five yearly timeframe for renewals of plant item registration from 1 January 2019 to 31 January 2021, by omitting ‘1 January 2019’ and inserting ‘31 January 2021’, and also omitting ‘2019’ and inserting ‘2021’.
- Section 288B—enabling the Regulator to cancel plant item or design registration for non-compliance with conditions of registration, which will be a reviewable decision (to take effect on 1 January 2019).
- Section 590—correcting a typographical error by omitting ‘he’ and inserting ‘the’.
- Section 791 (new ch 13, pt 13.6) — amendments involving the addition of a part to clarify the application of the new section 21(2) (transitional provisions). Specifically, section 21(2) as in force immediately before the commencement applies to HSRs who held office before commencement, until they complete initial training.
- Schedule 18A— adding references to relevant Acts not currently listed Schedule 18A of the WHS Regulation (to take effect on the date of notification).
- Schedule 19—consistent with amendments to section 183 and 184, removing reference to the year of the Australian Standard for Occupational diving operations, but maintaining the generic reference number.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the main objects of the *Electrical Safety Act 2002* — preventing persons from being killed or injury by electricity; and preventing property from being destroyed or damaged by electricity.

The Amendment Regulation is also consistent with the main objects of the *Work Health and Safety Act 2011* — to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The Amendment Regulation provides the following benefits:

- the qualifications required for the positions of ‘qualified business person’ and ‘qualified technical person’ are more proportionate to the responsibilities of the positions;
- Health and Safety Representatives are trained in a more timely manner, improving their capability to carry out the responsibilities of the position;
- plant item registration renewals are administered as they have been immediately prior to the amendment regulation (annually), to enable time to adapt systems to a different timeframe for renewals (five yearly).
- the Regulator can adequately audit plant items or designs for safety compliance with certainty as to enforcement powers; and
- the Regulator can administer relevant legislation with powers to share necessary information.
- currency of the Australian Standard for Occupational diving operations can be maintained through iterations without the need for regulatory amendment.

The Amendment Regulation will not substantially increase the financial burden on the community or industry.

There are no anticipated implementation costs associated with the amendments.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

The Amendment Regulation entails a number of minor amendments that are suited to subordinate legislation.

Consultation

In accordance with the Queensland Government Guide to Better Regulation, the Office of Best Practice Regulation (OBPR) was consulted in relation to the regulatory proposals. OBPR approved excluding further regulatory impact analysis for the three of the amendments, namely the amendments concerning:

- *QBP and QTP definitions*, which fall into exclusion category (l) - Regulatory proposals that have already undergone an extensive impact assessment process.
- *HSR Training*, which falls into exclusion category (k) - Regulatory proposals designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear there are no significant adverse impacts.
- *Cancelling plant registration*, which also falls into exclusion category (k).

The remaining two regulatory proposals were assessed by OIR as attracting a self-assessable exclusion from undertaking further regulatory impact analysis. Specifically:

- *Renewing plant registration* falls into exclusion category (g) - Regulatory proposals that are of a machinery nature.
- *Information sharing* also falls into exclusion category (g).

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