

Electrical Safety (Delegation by Regulator) Amendment Regulation 2019

Explanatory notes for SL 2019 No. 24

made under the

Electrical Safety Act 2002

General Outline

Short title

Electrical Safety (Delegation by Regulator) Amendment Regulation 2019

Authorising law

Sections 122B and 210(1) of the *Electrical Safety Act 2002*

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).

The objective of the *Electrical Safety (Delegation by Regulator) Amendment Regulation 2019* (Amendment Regulation) is to make a regulatory amendment to subordinate legislation under the ES Act, namely the *Electrical Safety Regulation 2013* (ES Regulation).

The objective of the amendment to the ES Regulation is to prescribe the Work Health and Safety Prosecutor (WHS Prosecutor) under the *Work Health and Safety Act 2011* (WHS Act) as a person to whom functions under the ES Act may be delegated.

Considering OIR's centralised function for prosecutions, the reason for this change is to make it possible to ensure that all prosecutions that would have been conducted by the Regulator, will be conducted by an independent office in line with recommendations 31-32 of the *Best Practice Review of Workplace Health and Safety Queensland: Final Report* (2017) (Best Practice Review).

While under the *Work Health and Safety and Other Legislation Amendment Act 2017* (WHSOLA Act), the WHS Prosecutor automatically has the power to conduct prosecutions for offences against the WHS Act, the Amendment Regulation prescribes the WHS Prosecutor as a person to whom the Regulator may delegate a function of power, so that

WHS Prosecutor can be delegated the same functions in relation to offences against the ES Act.

Achievement of policy objectives

The objective of the Amendment Regulation is achieved by making the following amendment to the ES Regulation: adding a section to prescribe the WHS Prosecutor for section 122B of the ES Act.

Alternative ways of achieving policy objectives

The amendments contained in this Amendment Regulation are considered the best way of achieving the policy objectives. A function cannot be delegated administratively to the WHS Prosecutor under the ES Act section 122B(1), as the WHS Prosecutor is neither an inspector, nor a “public service employee” (see WHSOLA Act, section 51, inserting a new section 32).

Benefits and costs of implementation

The Amendment Regulation provides the benefit of delegating functions to the WHS Prosecutor, including enabling the possibility of centralising prosecutorial functions related to work health and safety in the independent WHS prosecutor.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the authorising law.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is consistent with the policy objectives of other legislation. It aides in achieving the intent of the WHSOLA Act, section 51, which establishes an independent WHS Prosecutor to exercise all functions in relation to work health and safety prosecutions.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles; it entails amendments suited to subordinate legislation.

Consultation

In accordance with the Queensland Government Guide to Better Regulation, OIR self-assessed an exclusion from undertaking further regulatory impact analysis based on exclusion category (g) - Regulatory proposals that are of a machinery nature.

The Best Practice Review, which recommended the independent WHS Prosecutor, was supported by a tripartite reference group, and conducted face to face consultations with key worker, employer and industry representative, relevant Queensland Government

agencies, and statutory office holders. Consultations in relation to the Best Practice Review recommendations included the WHS Prosecutor taking on the function of prosecutions under the ES Act.

Notes on provisions

Clause 1 states the short title of the Amendment Regulation.

Clause 2 states that the Amendment Regulation will commence immediately after the commencement of the WHSOLA Act, section 51.

Clause 3 states that this regulation amends the *Electrical Safety Regulation 2013*.

Clause 4 inserts a new section 285B into Part 15, division 3 of the ES Regulation. Sub-section (1) prescribes the WHS Prosecutor for purpose of section 122B(1) of the ES Act. Sub-section (2) defines “WHS Prosecutor” to mean the Work Health and Safety Prosecutor established under the *Work Health and Safety Act 2011*, schedule 2, section 31.

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