

Petroleum and Gas (Safety) (Gas Devices) Amendment Regulation 2021

Explanatory notes for SL 2021 No. 187

made under the

Petroleum and Gas (Production and Safety) Act 2004

General Outline

Short title

Petroleum and Gas (Safety) (Gas Devices) Amendment Regulation 2021

Authorising law

Sections 724, 726, 727 and 859 of the *Petroleum and Gas (Production and Safety) Act 2004* (PG Act)

Policy objectives and the reasons for them

The main purpose of the PG Act is to facilitate and regulate the carrying out of responsible petroleum activities and the development of a safe, efficient and viable petroleum and fuel gas industry.

The *Petroleum and Gas (Safety) Regulation 2018* (PG Regulation) supports these aims and regulates both type A and type B devices.

Biogas Flares

Gas devices (type B) are defined under section 724(3) of the PG Act. Under section 724(3)(b) of the PG Act a gas flare is listed as a Type B device, subject to the definition of a gas flare under section 724(5), namely that it is a gas device that uses combustion to dispose of fuel gas; and is prescribed under a regulation. Currently, no gas device is prescribed to be a gas flare under the PG Regulation and therefore they are not type B devices subject to safety considerations set out under the Australian Standards. However, device ignition systems that utilise fuel gas (fuel gas pilot system) are defined as a gas device (type B) by virtue of section 724(3)(a)(i) of the PG Act. Therefore, in Queensland, only a fuel gas pilot system of a gas flare is defined as a type B device but not the flare itself. To ensure that the flares meet the required safety standards, it is necessary to prescribe gas flares located at biogas facilities as gas devices (type B) under the PG Regulation.

Harmonisation of Gas Devices

The definition of type A gas devices is a fundamental building block of the gas work and gas device regulatory framework. There are different approval processes, authorities, standards and safety requirements for type A and type B gas devices. The recent publication of the *Australian Standards/NZS 5263.1.11:2020 Gas appliances, Part 1.11: Small gas engine driven appliances* means that amendments will now be required to the PG Regulation to ensure that certain devices are regulated in Queensland in alignment with national standards. This is particularly relevant to small gas engine driven appliances which have traditionally been recognised as type B devices, however, with the introduction of AS/NZS 5263.1.11 these devices are now recognised as type A devices and amendments are needed to ensure that where they comply with the Standards, they will be regulated as type A devices in Queensland.

Amendments are also required to the PG Regulation to ensure that there will be no new obligations required for these type A devices at particular petroleum and gas operations that are subject to a safety management system. Small gas engine driven appliances (type A) are anticipated to be used at 'operating plant' that produce, compress, and refine petroleum or fuel gas. Operating plant are regulated operations under the PG Act and are subject to safety management system requirements under section 674 of the Act.

A definition of small gas engine driven appliances will also be included under Schedule 7 Dictionary of the PG Regulation. The definition is aligned with the scope of AS/NZS 5263.1.11 as it relates to small gas engine driven appliances.

Achievement of policy objectives

The *Petroleum and Gas (Safety) (Gas Devices) Amendment Regulation 2021* (the Amendment Regulation) achieves its objective by amending the PG Regulation to ensure that biogas flares are regulated as Type B device; small gas engine driven appliances approved by a gas device approval authority holder (type A) are regulated as type A devices in Queensland and to allow for gas work to be completed where certain conditions are met. These conditions include being subject to a safety management system and competency considerations.

The changes commence on 1 January 2022.

Biogas Flares

The purpose of the amendments is to prescribe biogas flares located at biogas facilities as gas devices (type B) under the PG Regulation to mitigate safety risks by ensuring the flares meet best practice standards. This amendment would, for the purpose of section 724(3)(b) of the PG Act, prescribe a gas flare installed at a biogas facility as a Type B device which would also require such flares to be approved in accordance with the requirements of AS 3814:2018 Industrial and commercial gas-fired appliances, and consideration of the information and guidance provided in Appendix P: Biogas Flares and Treatment Systems.

Harmonisation of Gas Devices

The amendments will ensure that there is a clear framework for operators and stakeholders in how small gas engine driven appliances are regulated that is consistent with other jurisdictions. Safety requirements of these devices will be achieved through the Type A approval process of Queensland's petroleum and gas safety legislation which recognises the national certification process and ensures that the devices comply with Australian Standards. The amendments will also ensure that there are no additional obligations for those operators who have safety management systems for competent employees to work on these type A devices. These amendments are required at the commencement of 2022 to ensure that Queensland is regulating in a synchronised manner with the national standards.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the respective Acts.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of any other jurisdictions.

Benefits and costs of implementation

Biogas Flares

The amendments and therefore subsequent standards requirements will apply to new flare purchases or new modifications to existing flares only from the date the legislation is effective, there will be no retrospective application of the proposed amendments. There will be no cost impact to existing biogas flare owners and no cost impact to Resources Safety and Health Queensland (RSHQ). Regulation of biogas flares will be done through existing resources and funding. Through these amendments there will be an increase in safety requirements and therefore will make for a safer environment for operators and those affected by biogas flares.

Harmonisation of Gas Devices

Under this amendment there will be minimised costs as the requirements are aligned with the national standards. The benefits will ensure that Queensland's small gas engine driven appliances approval legislation aligns with other jurisdictions and the adverse cost and regulatory impacts for related businesses that would result from not changing Queensland's regulatory framework are avoided.

Consistency with fundamental legislative principles

The Amendment Regulation has been drafted to be consistent with fundamental legislative principles, as defined in section 4 of the *Legislative Standards Act 1992*.

Consultation

Biogas Flares

Consultation with industry stakeholders on biogas regulation has been undertaken in recent years. A Terms of Reference and Discussion Paper were prepared in 2017 seeking industry input into the review of biogas regulation. The Discussion Paper sought industry feedback on the definitional issue, the safety and health fee, and the technical issues around the biogas flare and domestic. The Petroleum and Gas Inspectorate within RSHQ undertook an engagement roundtable with industry stakeholders in May 2018.

An updated Discussion Paper was drafted to progress the biogas amendments and was circulated to industry stakeholders in August 2020. A roundtable was held on 19 August 2020 with high attendance by industry stakeholders.

Stakeholders' views on flares as Type B devices were generally supported. Some stakeholders provided support on the basis that the amendments would not be applied retrospectively. RSHQ considered the feedback and determined that there was no need for a retrospective application of the proposed legislation.

The Office of Best Practice Regulation (OBPR) was consulted regarding whether regulatory impact analysis was required under the *Queensland Guide to Better Regulation* (guidelines). OBPR advised that the proposed amendments are unlikely to result in significant adverse impacts, and that no further assessment is required.

Harmonisation of Gas Devices

Consultation to date has been by RSHQ as a jurisdictional member of the national gas safety forum Gas Technical Regulators Committee and as a participant on the Standards Committee for AS/NZS 5263. Queensland and Western Australia are the only jurisdictions where the certified appliance is not a type A device. Through these forums of engagement it has been identified that stakeholders are anticipating that these amendments will be made and that there will be no additional obligations placed on them through these amendments.

Key stakeholders include:

- Holders of a Gas Device Approval Authority (including type A, A2 and type B)
- Gas work licence holders
- Plumbing Union of Queensland
- Gas work authorisation holders
- Operating Plant Operators that are potential purchasers of emerging and innovative type A devices
- Gas Technical Regulators Committee

OBPR was consulted regarding where regulatory impact analysis was required under the guidelines. OBPR advised that the proposed amendments are unlikely to result in significant adverse impacts, and that no further assessment is required.