

Work Health and Safety (Codes of Practice) Notice 2022

Explanatory Notes for SL 2022 No. 96

made under the

Work Health and Safety Act 2011

General outline

Short title

Work Health and Safety (Codes of Practice) Notice 2022

Authorising law

Section 274 of the *Work Health and Safety Act 2011*

Policy objectives and the reason for them

Making the Work Health and Safety (Codes of Practice) Notice 2022

The Work Health and Safety (Codes of Practice) Notice 2011 (the existing notice) automatically expires on 1 September 2022 under section 54 of the *Statutory Instruments Act 1992*. The existing notice is being repealed and replaced to retain a record of notification of approved codes of practice under the *Work Health and Safety Act 2011* (the Act). Repealing the existing notice prior to its expiry on 1 September 2022 enables the Work Health and Safety (Codes of Practice) Notice 2022 (WHS Notice) to commence on 1 August 2022.

The WHS Notice includes past notifications given by the Minister for the approval or variation of codes under section 274 of the Act. The WHS Notice also includes codes of practice made under the repealed *Workplace Health and Safety Act 1995* that are preserved under section 284 of the Act.

Varying the Work Health and Safety Consultation, Cooperation and Coordination Code of Practice 2021

The Work Health and Safety Consultation, Cooperation and Coordination Code of Practice 2021 is one of a number of model codes of practice adopted in Queensland. Model codes of practice are developed by Safe Work Australia (SWA) in consultation with jurisdictions. Following the completion of a code of practice by SWA, jurisdictions are invited to adopt the code under their work health and safety (WHS) legislation to contribute to national harmonisation in the WHS regulatory scheme.

In 2018, SWA engaged Marie Boland to conduct a review of the model WHS laws. The Boland Review examined how the model WHS laws were operating in practice and made

recommendations to provide clarity and to drive greater consistency in their application and enforcement across jurisdictions.

Recommendations 6, 7a and 11 of the Boland Review required amendments to the Work Health and Safety Consultation, Co-operation and Co-ordination Model Code of Practice to provide practical examples and greater clarity about how businesses can meet their duties under the WHS Act in relation to consultation on work health and safety issues. SWA has updated the model code of practice to implement the recommendations, and the Minister has approved varying the Work Health and Safety Consultation, Cooperation and Coordination Code of Practice 2021 in line with the revised model code of practice.

Achievement of policy objectives

The WHS Notice achieves the policy objective of making new subordinate legislation to enable the Minister to give notice in relation to approving, varying or revoking approved codes of practice under the Act.

The WHS Notice also achieves the policy objective of giving notice that the Minister has varied the Work Health and Safety Consultation, Cooperation and Coordination Code of Practice 2021 under the Act.

Consistency with policy objectives of authorising laws

Varying the Work Health and Safety Consultation, Cooperation and Coordination Code of Practice 2021 under the Act and making the WHS Notice is consistent with the policy objectives to provide a framework for continuous improvement and progressively higher work health and safety standards.

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 varying the Work Health and Safety Consultation, Cooperation and Coordination Code of Practice 2021 and making the WHS Notice.

Benefits and costs on implementation

Making the Work Health and Safety (Codes of Practice) Notice 2022

The making of the WHS Notice fulfils a requirement under section 274 of the Act for the Minister to give notice of approving, varying or revoking a code of practice. The WHS Notice serves as a public record of decisions the Minister is authorised to make in relation to codes of practice and does not directly impose any requirements or regulatory burden.

The WHS Notice does not impose costs on industry or the community. There are minimal costs to government associated with drafting and making the new WHS Notice.

Varying the Work Health and Safety Consultation Cooperation and Coordination Code of Practice 2021

Varying the Work Health and Safety Consultation Cooperation and Coordination Code of Practice 2021 will ensure Queensland is consistent with the national model code of practice, which contributes to maintaining harmonisation across jurisdictions that have adopted the national model WHS laws. Given the changes to the code of practice do not impose any additional requirements and instead are intended to provide additional examples and resources for industry, implementation is not anticipated to impose any costs on government, industry or the community.

Consistency with fundamental legislative principles

The WHS Notice does not conflict with fundamental legislative principles.

Consultation

Making the Work Health and Safety (Codes of Practice) Notice 2022

The Office of Best Practice Regulation (OBPR) was consulted about the WHS Notice. Given the administrative nature of the WHS Notice and its purpose under section 274 of the Act, OBPR agreed no further regulatory impact analysis under the *Queensland Government Guide to Better Regulation* was required.

Varying the Work Health and Safety Consultation, Cooperation and Coordination Code of Practice 2021

Recommendations from the Boland Review were subject to a regulatory impact assessment process. This process involved a consultation regulation impact statement (Consultation RIS) that was open for public comment for 6 weeks (24 June 2019 - 5 August 2019). Following the Consultation RIS, a decision regulation impact statement (Decision RIS) was prepared reflecting the feedback and evidence received during consultation.

In accordance with the *Queensland Government Guide to Better Regulation*, the OBPR was not consulted in relation to the varying the code of practice. As no substantive policy changes have been made, the department applied a self-assessable exclusion from undertaking further regulatory impact analysis as it falls into the agency-assessed exclusion category (g): Regulatory proposals that are of a machinery nature.

Notes on Provisions

Short title

Clause 1 sets out the short title of the notice.

Commencement

Clause 2 states that the notice commences on 1 August 2022.

Dictionary

Clause 3 states that the dictionary in schedule 2 defines particular words used in the notice.

Approved codes of practice

Clause 4 explains that an entry in schedule 1 is an approved code of practice. The clause explains that where an entry for a code of practice states it is a preserved code of practice, the code of practice is an old code of practice under section 284 (2) of the Act, made under section 274 of the Act.

Further, the clause notes if the entry for the code of practice in schedule 1 states it has been approved as a code of practice by a ministerial instrument stated in the entry, the code of practice was approved by the ministerial instrument stated in the entry.

Finally, the clause provides that a code of practice mentioned in schedule 1 commenced on the date stated in schedule 1 for the code of practice.

Variation of approved codes of practice

Clause 5 provides that if an entry for a code of practice in schedule 1 states that it has been varied by a ministerial instrument stated in the entry, the code of practice was varied by the ministerial instrument stated in the entry. Additionally, it provides if the ministerial instrument was made on or after 1 August 2022, the inclusion of the variation in schedule 1 is notice for the purposes of section 274(4) of the Act that the ministerial instrument stated in the entry varying the code of practice has been made by the Minister.

Repeal

Clause 6 repeals the Work Health and Safety (Codes of Practice) Notice 2011, SL No 260.

Schedule 1 Approved codes of practice

Schedule 1 is arranged in two parts. Part 1 Codes of practice approved before 23 October 2017 and Part 2 Codes of practice approved on or after 23 October 2017.

Part 1 provides details about codes of practice that have been approved by the Minister under section 274(4) of the Act before 23 October 2017. Part 1 also provides details of variations of the codes of practice that have been approved by the Minister under section 274(4) of the Act.

Part 2 provides details about codes of practice that have been approved by the Minister under section 274(4) of the Act on or after 23 October 2017. Part 2 also provides details of variations of the codes of practice that have been approved by the Minister under section 274(4) of the Act. Part 2 includes the notification of the variation of the Work Health and Safety

Consultation, Cooperation and Coordination Code of Practice 2021 by MI 2022 No.1 on 1 August 2022.

Schedule 2

Schedule 2 defines particular words used in the notice.