

# Work Health and Safety and Other Legislation Amendment Regulation 2024

Explanatory notes for SL 2024 No. 128

made under the

*Industrial Relations Act 2016*  
*Work Health and Safety Act 2011*

## General Outline

### Short title

*Work Health and Safety and Other Legislation Amendment Regulation 2024.*

### Authorising law

Section 276(1) and (2) of the *Work Health and Safety Act 2011*.

Section 551(1) of the *Industrial Relations Act 2016*.

### Policy objectives and the reasons for them

The objective of the *Work Health and Safety and Other Legislation Amendment Regulation 2024* (Amendment Regulation) is to give effect to four recommendations from the *2022 Review of the Work Health and Safety Act 2011* (WHS Act Review). Amendments to the *Work Health and Safety Regulation 2011* (WHS Regulation) focus on supporting the role of health and safety representatives (HSRs) and work groups.

In addition, the Amendment Regulation addresses consequential amendments resulting from the *Work Health and Safety and Other Legislation Act 2024* (WHSOLA Act).

The Amendment Regulation also reintroduces audiometric testing requirements to ensure that workers have increased protections against hearing loss in the workplace in line with other work health and safety jurisdictions in Australia.

## Achievement of policy objectives

To achieve its policy objectives, the Amendment Regulation will amend the WHS Regulation to:

- implement four recommendations from the WHS Act Review to support the role of HSRs and work groups;
- make consequential amendments resulting from the WHSOLA Act; and
- reintroduce audiometric testing requirements.

### WHS Act Review

The Amendment Regulation clarifies the concept of an HSR being ‘reasonably accessible’ when negotiating or determining a work group. The WHS Act Review identified that the meaning of ‘reasonably accessible’ is ambiguous, with its broad interpretation causing disputation about the number of work groups and HSRs (Recommendation 2B).

To ensure that HSRs are equipped to perform their role, the Amendment Regulation prescribes a list of types of resources, facilities and assistance that should be made available to them by a PCBU (Recommendation 3E).

Further, the Amendment Regulation amends the timeframe for completing both initial and refresher training for HSRs. This is intended to ensure that HSRs are properly empowered and informed to perform their role, particularly given the rapid pace of change in modern workplaces (Recommendation 4B & 4C).

### WHSOLA Act consequential amendments

The Amendment Regulation gives effect to consequential amendments arising from the WHSOLA Act, which includes amendments to:

- the *Industrial Relations (Tribunals) Rules 2011* to provide a scale of costs for external reviews under section 229EA of the WHS Act by the Queensland Industrial Relations Commissioner;
- the *Work Health and Safety (Codes of Practice) Notice 2022* to reflect changes to the code expiry provisions;
- update terminology and section references to provide for consistency with amendments in the WHSOLA Act; and
- update corresponding laws under the WHS Act to reflect the *Rail Safety National Law (Queensland) Act 2017*.

### Audiometric testing

The Amendment Regulation inserts a requirement for persons conducting a business or undertaking to provide audiometric testing for workers who use personal protective equipment to protect them from the risk of hearing loss associated with noise that exceeds the exposure standard. The re-introduction of audiometric testing requirements aligns

Queensland with the model work health and safety laws, as well as all other Australian jurisdictions. This affords Queensland workers the same protections as their interstate counterparts. The Amendment Regulation requires persons conducting a business or undertaking to address risks to workers hearing and evaluate the effectiveness of control measures used (e.g., personal protective equipment).

## **Consistency with policy objectives of authorising law**

The Amendment Regulation is consistent with the objectives of the *Work Health and Safety Act 2011*, that is to ensure:

- workers and others are protected against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work;
- the provision of fair and effective workplace representation in relation to work health and safety;
- providing a framework for continuous improvement and progressively higher standards of work health and safety; and
- where applicable, maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in Queensland.

The amendment to the *Industrial Relations (Tribunals) Rules 2011* is consistent with the main purpose of the *Industrial Relations Act 2016* and the policy objectives of the WHSOLA Act.

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

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

## **Benefits and costs of implementation**

The Amendment Regulation will ensure that the WHS Regulation supports the role of HSRs and workgroups and reflects the current legislation under the WHS Act. Another benefit of the Amendment Regulation is that Queensland workers will receive greater protection from the risk of occupation hearing loss from the requirement to conduct audiometric testing.

The implementation of the Amendment Regulation is not expected to impose a significant financial burden on industry or the community.

### **Audiometric testing**

It is anticipated that a significant number of industries operating in Queensland already conduct audiometric testing. Businesses who currently undertake audiometric testing likely do so because it is best practice to manage the risk of hearing loss (and subsequent workers' compensation claims) or because they are national companies so already do it elsewhere in Australia as is required by all other Australian jurisdictions.

Since the repeal of this provision in 2014, audiometric testing has become much more accessible and affordable, including for small business and businesses in regional and remote areas of Queensland.

In addition, the demand generated by the requirement to conduct audiometric testing is also likely to encourage the opening of new businesses in the audiometric testing industry which will further encourage competitive pricing and deliver better accessibility. Costs will also reduce where workplaces conduct bulk testing across a number of employees on the same day.

The commencement of audiometric testing provisions is delayed by a year to allow businesses to adapt to the new requirements.

## **Consistency with fundamental legislative principles**

The Amendment Regulation has been drafted with regard for fundamental legislative principles (FLPs) under the *Legislative Standards Act 1992* and is consistent with the FLPs.

The use of the Amendment Regulation is justified as it amends existing provisions in the WHS Regulation, reintroduces a previously repealed regulation which will bring the audiometric testing requirements into line with the model WHS laws, and makes consequential amendments to the *Industrial Relations (Tribunals) Rules 2011* and the *Work Health and Safety (Codes of Practice) Notice 2022* as a result of the WHSOLA Act.

## **Consultation**

The WHS Act Review was informed by public and targeted consultation with key stakeholders, including employer and industry groups, registered unions, academics and other bodies. Occurring between August and November 2022, a total of 51 submissions were received. Recommendations made by the WHS Act Review for regulatory change are implemented in this Amendment Regulation.

The proposed amendments were also subject to consultation undertaken when developing the WHSOLA Act.

On 4 March 2024, a consultation draft of the Amendment Regulation was circulated to key stakeholders, including government agencies that are large employers, and those that provided feedback on amendments relating to health and safety representatives during the WHSOLA Act consultation, unions and industry, including:

- Department of Transport and Main Roads, Youth Justice, Queensland Corrective Services, Queensland Health, the Department of Education, Queensland Fire and Emergency Services and the Queensland Police Service.
- Local Government Association of Queensland, Master Builders Queensland, Business Chamber Queensland, and the Australian Industry Group.
- Queensland Council of Unions, Shop Distributive and Allied Employees, Union of Employees (Queensland Branch), Australian Workers' Union, Construction, Forestry,

Mining and Energy Union, Electrical Trades Union, and the Plumbing and Pipe Trade Employees Union.

Feedback has been considered and incorporated where appropriate. The Office of Industrial Relations will develop guidance material to support the Amendment Regulation.

As required by section 551(2) of the *Industrial Relations Act 2016*, the Rules Committee has been consulted on the amendments to the *Industrial Relations (Tribunals) Rules 2011*. The Rules Committee has consented to the proposed amendment.

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