



Queensland

Workplace Health and Safety and Another Regulation Amendment Regulation (No. 1) 2009

Explanatory Notes for SL 2009 No. 128

made under the

State Penalties Enforcement Act 1999

Workplace Health and Safety Act 1995

General outline

1 Authorising law

Section 38 of the *Workplace Health and Safety Act 1995*.

Section 165 of the *State Penalties Enforcement Act 1999*.

2 Policy objective of the legislation

The *Workplace Health and Safety Regulation 1997* expired on 31 August 2008 and was replaced with the *Workplace Health and Safety Regulation 2008* (the Regulation) which commenced on 1 September 2008. Since the commencement of the Regulation, the Department of Justice and Attorney-General has identified a number of minor issues that need to be addressed to ensure the continued efficient and effective operation of Queensland's health and safety arrangements.

3 How policy objectives will be achieved

The Amendment Regulation achieves its objectives by—

- adopting the new nationally agreed unit of competency CPCCOHS1001A—Work safely in the construction industry for construction induction training to replace the existing Queensland accredited course 30215QLD—Course in general safety induction (construction industry);
- extending the transition period for adoption of the national units of competency for high risk work for an additional 12 months to allow registered training organisations adequate time to apply for scope of registration to delivery the new units;
- importing the approved national units of competency for high risk work into the Regulation;
- clarifying circumstances in which a dogging licence (high risk work) is not required in accordance with the exemption provided by the *National Standard for Licensing Persons Performing High Risk Work* (the National Standard);
- inserting the definition of ‘turbine’ from the National Standard to clarify that licensing requirements for turbine operators do not extend to non-steam turbines;
- clarifying the standard of competency required to obtain recognition of evidence of competency in relation to earthmoving and particular crane competencies regulated in other States/Territories;
- prescribing that the holder of a certificate to perform a prescribed activity (asbestos removal work or demolition work) must notify the chief executive of a change in competent person;
- amending regulatory fees by the Brisbane All-Groups Consumer Price Index;
- clarifying the application of the *National Code of Practice for the Safe Removal of Asbestos 2nd Edition [NOHSC:2002(2005)]* (asbestos removal code) when removing asbestos from a place that is not necessarily a ‘structure’; and
- re-inserting an infringement notice offence for allowing a worker to remove asbestos other than in accordance with the asbestos removal code that was inadvertently omitted during making of the *Workplace Health and Safety Regulation 2008*.

4 Consistency with authorising Act and other legislation

The objective of the *Workplace Health and Safety Act 1995* is to prevent a person's death, injury or illness being caused by a workplace, by workplace activities or by plant or substances. This objective is achieved by establishing a framework for preventing or minimising a person's exposure to the risk of death, injury or illness caused by a workplace, by workplace activities or by plant or substances. The proposed amendments are consistent with the objective of the *Workplace Health and Safety Act 1995*.

5 Possible alternative approach

The policy objective can only be achieved by regulatory amendment.

6 Benefits and costs of implementing the legislation

Queensland has had requirements for construction induction training since early 2000. This amendment aligns training in Queensland to the agreed national unit of competency and will further enhance mutual recognition of construction induction cards for Queensland workers working interstate. Further in March 2007 the then Australian Safety and Compensation Council consulted with the community through the release of a National Regulatory Impact Statement on the implementation of the *National Code of Practice for Induction for Construction Work*.

In relation to the amendments regarding high risk work, the changes clarify existing provisions within the *Workplace Health and Safety Regulation 2008* and align with the *National Standard for Licensing Persons Performing High Risk Work*. Further in March 2006 the then Australian Safety and Compensation Council consulted with the community through the release of a National Regulatory Impact Statement on the implementation of the *National Standard for Licensing Persons Performing High Risk Work*.

7 Fundamental legislative principles

The Amendment Regulation raises no fundamental legislative principle issues. The Amendment Regulation has been drafted with regard to the fundamental legislative principles and is considered to comply with these principles.

8 Consultation

The following stakeholders were consulted and support the package of proposed amendments—

Unions

Queensland Council of Unions

Australian Workers' Union (Queensland)

Construction, Forestry, Mining and Energy Union (Queensland)

Builders' Labourers Federation

Civil Contractors Federation

Employer Associations

Australian Industry Group

Commerce Queensland

Housing Industry Association

Queensland Master Builders Association

Others

Local Government Association of Queensland

Notes of provisions

Part 1 Preliminary

Short Title

Clause 1 provides the short title of the regulation.

recognition of both the Queensland units of competency (in Schedule 5) and the new national units of competency (in Schedule 5A). However from 1 July 2010 only a statement of attainment against the units of competency in Schedule 5A will be recognised by Workplace Health and Safety Queensland for issuing of a high risk work licence for that class of high risk work.

As the national units of competency were only endorsed by the National Quality Council in February 2009, this amendment provides registered training organisations with the necessary time to apply for scope of registration to commence delivery the new units. These documents are available on the National Training Information System. The units stipulate that assessment against the units must use the mandated assessment instruments.

Amendment of s 18 (Authority to perform high risk work)

Clause 6 amends section 18 that provides that a person must not employ or otherwise allow another person to perform high risk work, unless the person has appropriate authority to perform the work. The clause clarifies the exemptions to holding a high risk work licence for dogging as provided in section 18(8).

A person who holds a high risk work licence for a vehicle loading crane with a capacity of 10 metre tonnes or more, mounted on a vehicle to move a load between the vehicle and the ground (i.e. not contributing to the construction of plant or a building) is not required to also hold a high risk work licence for dogging if the load is within the operator's view.

A person who holds an earthmoving or particular crane certificate for a bridge and gantry crane (if the load being lifted by remote controlled is more than 5 tonnes; and the crane has the ability to perform 3 or less powered operations) is not required to also hold a high risk work licence for dogging if the load is within the operator's view.

In all other circumstances i.e. where a person is required to use techniques, including the selection or inspection of lifting gear, to safely sling a load; or directs a crane or hoist operator in the movement of a load when the load is out of the operator's view, a high risk work licence for dogging is required.

Amendment of s 25 (Authority to perform work in an earthmoving or particular crane operation)

Clause 7 amends section 25 that provides that an employer must not employ or otherwise allow a worker to perform work in an earthmoving or particular crane occupation unless the worker has appropriate authority to perform work in the occupation.

The clause amends section 25(3)(h) to clarify that a person holds evidence of competency that is attained in another state where the person has been assessed by a recognised official or registered training organisation as being competent to operate this equipment in accordance with the standard of competency in the *National Guidelines for Occupational Health and Safety Competency Standards for the Operation of Loadshifting Equipment and Other Types of Specified Equipment [NOHSC: 7019 (1992)]*.

For clarity purposes the clause merges sections 25(6) and 25(7) that provide an exemption for a person from holding an authority to work for the operation of a bridge and gantry crane (remote controlled) if they hold a current high risk work licence for the operation of a bridge and gantry crane (open).

Amendment of s 50 (Supervision of performance of prescribed activity)

Clause 8 amends section 50 that requires the holder of a certificate to perform a prescribed activity to ensure the performance of the activity is directly supervised by a competent person. The clause prescribes that the holder of a certificate to perform a prescribed activity must notify the chief executive in writing of a change in competent person within 14 days of the change.

Amendment of s 62 (Registered training organisation's duty for assessing competency)

Clause 9 amends section 62 that prescribes the requirements on registered training organisations for assessing competency. The clause inserts a new sub-section to clarify the requirements for training and assessing competency also apply to general (construction) induction training and any license agreement entered into by registered training organisations to deliver general (construction) induction training.

Amendment of s 66, s71, 72, 73, 74, 75, 76, 77 and Division 5 heading

Clauses 10 to 18 amend various sections in relation to training and assessment services provided by registered training organisations. The clause amends references to ‘training approval’ by inserting ‘assessment’ to clarify that this approval includes approval for assessment.

Amendment of s 146 (Removing ACM)

Clause 19 amends section 146 that requires a relevant person to comply with the asbestos removal code when removing asbestos containing material (ACM). The clause replaces the term ‘structure’ with ‘place’. The definition of ‘place’ is defined in the *Workplace Health and Safety Act 1995* as ‘includes land, a building, another structure or installation, a road, a vehicle, a tent or marquee, or any other place (even if the place is in a natural or undeveloped state) whether the place is on, under or on the bed of any waters’. Including the reference to ‘place’ clarifies the asbestos removal code applies to these areas and captures the removal of ACM on land, for example, where ACM debris is found in the ground adjacent to where buildings may have been demolished.

Insertion of new pt 28, div 9

Clause 20 inserts a transitional provision to provide that an existing general induction card issued under the Queensland accredited course 30215QLD—Course in general safety induction (construction industry) is valid despite the commencement of the new national unit of competency.

Replacement of sch 1 (Fees)

Clause 21 replaces the schedule of regulatory fees and increases fees by the Brisbane All-Groups Consumer Price Index. The new schedule of fees will commence on 1 September 2009.

Amendment of sch 2 (Accredited courses)

Clause 22 omits the reference to ‘30215QLD—Course in general safety induction (construction industry)’ as this accredited course expires 30 June 2009. From 1 July 2009 Queensland will transition to the new nationally

agreed unit of competency CPCCOHS1001A—Work safely in the construction industry from the CPC08 Construction, Plumbing and Services Integrated Framework Training Package—only CPCCOHS1001A will meet the regulatory requirements from this date.

Amendment of sch 5 (Classes of high risk work and units of competency for the classes)

Clause 23 amends schedule 5 that states the classes of high risk work and units of competency for the classes.

The clause clarifies the class of high risk work for operator bridge and gantry crane (open) only applies to those cranes with three or more powered operations as per the definition provided in the National Standard.

In addition, the clause corrects an anomaly in the title of the unit of competency for the non-slewing mobile crane with a capacity of more than three tonnes.

Further the clause inserts the definition of ‘turbine’ from the National Standard to clarify that high risk work of a turbine operator under schedule 5, part 5, section 28 only applies to steam turbines with a power output of 500kW or more.

Insertion of new sch 5A

Clause 24 inserts a new schedule 5A that imports the classes of high risk work and the corresponding national units of competency as provided under the National Standard. Units of competency set out the necessary knowledge and skills to be competent to hold a licence. These documents are available on the National Training Information System. The units stipulate that assessment against the units must use the mandated assessment instruments.

National units of competency for high risk work of basic, intermediate and advanced boilers are yet to be finalised and endorsed at the national level, therefore the Queensland units of competency will continue to apply for these classes of work.

Amendment of sch 6 (Earthmoving or particular crane occupations and units of competency for the occupations)

Clause 25 amends schedule 6 that states the earthmoving or particular crane work certificates and units of competency for the occupations. The clause inserts a new sub-section for bridge and gantry crane (remote control only) that clarifies what is a single powered operation.

Amendment of sch 18 (Dictionary)

Clause 26 amends a number of definitions provided in the dictionary.

The definition of ‘general induction card’ is amended to reflect the format and details required on the new nationally agreed construction induction card. As of 1 July 2009 Queensland will transition general induction evidence cards from the current ‘blue card’ format to the nationally agreed construction induction card format.

The definition of ‘general induction evidence’ is amended to provide that a person may only work on a statement of attainment issued for the national unit of competency for general construction induction within 14 days of issue, otherwise a person must hold a general induction card.

The definition of ‘general induction training course’ is amended to reflect the new national unit of competency for construction induction training and remove reference to the Queensland accredited course 30215QLD—Course in general safety induction (construction industry) which expires on 30 June 2009.

The definition of ‘training approval’ is amended to clarify that approval also includes approval for assessment.

The definition of ‘class of high risk work’ is amended to include reference to the new schedule 5A that imports the national units of competency for classes of high risk work.

The clause inserts a definition of ‘national standard’ that is the national standard for licensing persons performing high risk work.

Part 3 **Amendment of State Penalties Enforcement Regulation 2000**

Regulation amended in pt 3

Clause 27 states that part 3 amends the *State Penalties Enforcement Regulation 2000*.

Amendment of sch 5 (Other legislation)

Clause 28 amends entries in schedule 5 for the *Workplace Health and Safety Act 1995* to make a minor amendment.

It re-inserts an infringement notice offence for allowing a worker to remove asbestos containing material other than in accordance with the asbestos removal code that existed under the former *Workplace Health and Safety Regulation 1997* and was inadvertently omitted during the making of the *Workplace Health and Safety Regulation 2008*.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Justice and Attorney-General.

© State of Queensland 2009