

Work Health and Safety Amendment Regulation (No. 1) 2015

Explanatory notes for SL 2015 No. 169

made under the

Work Health and Safety Act 2011

General Outline

Short title

Work Health and Safety Amendment Regulation (No. 1) 2015

Authorising law

Section 276 of the *Work Health and Safety Act 2011*

Policy objectives and the reasons for them

The national model Work Health and Safety (WHS) laws were implemented in Queensland through the commencement of the *Work Health and Safety Act 2011* (WHS Act) and *Work Health and Safety Regulation 2011* (WHS Regulation) on 1 January 2012. The WHS Regulation included some transitional arrangements and delayed the commencement of certain provisions to give duty holders time to make the transition to new requirements. It is necessary to update certain commencement and transitional provisions and make a number of other minor amendments to ensure the continued efficient and effective operation of Queensland's work health and safety arrangements.

Consequential amendment – person assisting a health and safety representative

On 14 October 2014, Parliament passed the *Work Health and Safety and Other Legislation Amendment Act 2015* which repealed certain provisions regarding notice of entry requirements for a person assisting a health and safety representative. The repeal of these provisions, which took effect from 22 October 2015, requires a consequential amendment to omit section 20A of the WHS Regulation which prescribed the notice requirements.

Reach stacker transitional arrangement

A transitional arrangement was included in the WHS Regulation on its commencement to assist with the introduction of a new high risk work licence class for reach stackers. The transitional provision allowed existing non-slewing mobile crane high risk work licence holders to operate a reach stacker, until such time the relevant national unit of competency and assessment instrument were developed. The *Work Health and Safety Amendment Regulation (No. 1) 2015* (Amendment Regulation) extends this transitional

arrangement for a further 12 months, until 31 December 2016, as there is currently a national process being undertaken to review all classes of high risk work. It is prudent to extend this transitional provision until the outcomes of this national process are known.

Plant registration renewal

Certain items of plant, including lifts and tower cranes, must be registered under the WHS Regulation. When Queensland adopted the model WHS laws in January 2012, it delayed commencement of the five yearly registration cycle and preserved the existing annual registration cycle due to operational considerations. The removal of plant item registration is being considered as part of the Council of Australian Governments (COAG) review of the model WHS laws. The Amendment Regulation maintains the annual registration cycle for a further 12 months, so there is minimal disruption for business until the Government considers the recommendations arising from the COAG review.

Demolition work licence renewal

The WHS Regulation requires a person to obtain a licence before carrying out certain demolition work. Renewal provisions for demolition work licences were not originally included in the WHS Regulation due to work being done at that time to implement a National Occupational Licensing System (NOLS). The NOLS process has now been discontinued by COAG. Currently, for demolition work licence holders seeking to renew a licence, each renewal must be treated as a new application. As this is not consistent with the approach for other licences in the WHS Regulation, such as asbestos and high risk work licences, the Amendment Regulation introduces renewal provisions for demolition work licences, to reduce the administrative compliance burden for persons seeking to renew their licence.

In addition, the Amendment Regulation makes minor and technical amendments to ensure consistency and rectify outdated references to repealed legislation.

Achievement of policy objectives

The policy objectives are achieved by amending the WHS Regulation to:

- make a consequential amendment to remove the provision which prescribes the entry notice details for a person assisting a health and safety representative as the requirement to provide notice was removed by the *Work Health and Safety and Other Legislation Amendment Act 2015*;
- extend the transitional arrangement permitting holders of a high risk work licence for the non-slewing mobile crane class to carry out the reach stacker class of work until 31 December 2016;
- extend the commencement date for provisions for a five yearly renewal period for plant item registration until 1 January 2017;
- include provisions to allow licences to carry out demolition work to be renewed; and
- make minor amendments that are machinery in nature to ensure consistency and rectify incorrect or outdated references.

Consistency with policy objectives of authorising laws

The objective of the WHS Act is to protect workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work, 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 work, plant or substances. The proposed amendments are consistent with the objectives of the WHS Act.

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 regulatory amendment.

Benefits and costs of implementation

The Amendment Regulation is beneficial as it:

- ensures consistency between the WHS Act and WHS Regulation by removing a provision in the WHS Regulation made redundant;
- provides continuity of current arrangements regarding operators of reach stackers and plant registration renewal, which provides stability until these matters are resolved at a national level. This avoids a situation where business is required to adapt to one regulatory change when more changes are under consideration; and
- provides a more streamlined renewal process for holders of a licence to carry out demolition work.

There are no costs to implement the Amendment Regulation.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

Industry stakeholder consultation has not occurred for the Amendment Regulation as:

- the removal of section 20A of the WHS Regulation is a consequential amendment arising from the passage of the *Work Health and Safety and Other Legislation Amendment Act 2015* which had already been subject to industry stakeholder consultation;
- the amendments regarding the reach stacker transitional arrangement and plant registration renewal preserve current arrangements to avoid disruption for industry;
- the inclusion of renewal provisions for demolition work licences is beneficial for licence holders at the time their licences are due to expire and does not impact on the way they carry out their business; and
- the machinery amendments to update references to legislation are minor in nature.

The Office of Best Practice Regulation in the Queensland Productivity Commission has been consulted. As the Amendment Regulation is not considered likely to result in significant adverse impacts a regulatory impact statement is not required.

Notes of Provisions

Short title

Clause 1 provides the short title of the regulation.

Regulation amended

Clause 2 provides that this regulation amends the *Work Health and Safety Regulation 2011*.

Amendment of s 2 (Commencement)

Clause 3 amends the commencement section to update the commencement date for provisions regarding the duration of plant item registration (s272, s279) to 1 January 2017.

Omission of s 20A (Notice of entry for person assisting health and safety representative – Act, s68)

Clause 4 removes section 20A which is redundant due to amendments made by the *Work Health and Safety and Other Legislation Amendment Act 2015*.

Amendment of s 98 (Replacement licence document)

Clause 5 amends section 98(3) to replace the phrase 'form and manner required' with 'way and in the form approved' to be consistent with provisions about applying for the replacement of other licence documents in the WHS Regulation.

Amendment of s 110 (Immediate suspension)

Clause 6 amends section 110 to rectify incorrect cross references.

Amendment of s 127 (Replacement accreditation document)

Clause 7 amends section 127(3) to replace the phrase 'form and manner required' with 'way and in the form approved' to be consistent with provisions about applying for the replacement of other licence documents in the WHS Regulation.

Insertion of new Chapter 4, Part 4.6, Division 4A (renewal provisions for licence to carry out demolition work)

Clause 8 inserts new provisions (ss144VA-144VE) to allow the regulator to renew a licence to carry out demolition work on application by the licence holder.

Amendment of s 272A (Duration of registration on commencement)

Clause 9 amends section 272A to extend for a further twelve months the transitional duration period relating to granting registration for items of plant. The expiry date for section 272A is also delayed for a further twelve months until 31 January 2017. This is necessary as a consequence of section 272 now not commencing until 1 January 2017.

Amendment of s 279A (Duration of renewal on commencement)

Clause 10 amends section 279A to extend for a further twelve months the transitional duration period for renewing the registration of items of plant. The expiry date for section 279A is also delayed for a further twelve months until 31 January 2017. This is necessary as a consequence of section 279(2)(d) now not commencing until 1 January 2017.

Amendment of s 466 (Regulator must be notified of asbestos removal)

Clause 11 amends section 466 to require written notice of licensed asbestos removal work to be in the 'way and in the form approved' by the regulator. This is necessary to ensure consistency in the way notifications are provided by licensed asbestos removalists to the regulator.

Amendment of s 508 (Amendment imposed by regulator)

Clause 12 amends section 508 to make a minor grammatical correction.

Amendment of s 676 (Which decisions are reviewable)

Clause 13 amends section 676(1) to include a decision by the regulator to refuse to renew a licence to carry out demolition work as a reviewable decision under section 676. This change is consequential due to amendments in clause 8.

Amendment of s 726 (Particular licence classes to include other licence classes)

Clause 14 amends section 726(2) by extending this transitional arrangement to enable holders of high risk work licences for operating a non-slewing mobile crane to also carry out the reach stacker class of work until 31 December 2016.

Amendment of ch 14 (Amendment of State Penalties Enforcement Regulation 2000)

Clause 15 amends the title of Chapter 14 to replace the reference to the repealed *State Penalties Enforcement Regulation 2000* with the *State Penalties Enforcement Regulation 2014*.

Amendment of s 787 (Regulation amended)

Clause 16 amends section 787 to replace the reference to the repealed *State Penalties Enforcement Regulation 2000* with the *State Penalties Enforcement Regulation 2014*.

Amendment of s 788 (Amendment of sch 5 (Other legislation))

Clause 17 amends section 788 to replace references to Schedule 5 in the repealed *State Penalties Enforcement Regulation 2000* with references to Schedule 1 in the new *State Penalties Enforcement Regulation 2014*.

Amendment of sch 2 (Fees)

Clause 18 amends Schedule 2, clause 1, table 2.1 to prescribe the relevant fee for an application to renew a licence to carry out demolition work.

Amendment of sch 19 (Dictionary)

Clause 19 amends the definition of *registered training organisation* to adopt the definition in the national model Work Health and Safety Regulation. This is necessary as the previous definition referred to the repealed *Vocational, Education Training and Employment Act 2000* (Qld).

The definition of *licence holder* is also amended to provide a definition for a licence to carry out demolition work.