

Work Health and Safety and Other Legislation Amendment Regulation (No. 1) 2016

Explanatory notes for SL 2016 No. 229

made under the

Electrical Safety Act 2002

Safety in Recreational Water Activities Act 2011

State Penalties Enforcement Act 1999

Work Health and Safety Act 2011

General Outline

Short title

Work Health and Safety and Other Legislation Amendment Regulation (No. 1) 2016

Authorising law

Section 210 of the *Electrical Safety Act 2002*

Section 45 of the *Safety in Recreational Water Activities Act 2011*

Section 165 of the *State Penalties Enforcement Act 1999*

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

Policy objectives and the reasons for them

Implementation of the Globally Harmonised System of Classification and Labelling of Chemicals

From 1 January 2017 Queensland and the majority of other jurisdictions will require manufacturers, importers and suppliers of hazardous workplace chemicals to classify and label their chemicals in accordance with the Globally Harmonised System of Classification and Labelling of Chemicals (GHS). A five year period was provided to allow manufacturers and importers to transition to the new labelling system GHS. The previous labelling requirements are outlined in the National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)] (NOHSC Code).

The amendment regulation clarifies that a person who is an end user of a hazardous chemical is not required to relabel existing chemicals in their workplace with GHS compliant labels if they were supplied to the workplace before 1 January 2017. This is because in order to correctly label a hazardous chemical the end user must have a high level of understanding about the classification and labelling requirements of hazardous chemicals which may be beyond their level of knowledge. Further, requiring the end user to relabel an existing chemical introduces the risk that the correct NOHSC labelling for the chemical will be replaced with an incomplete or incorrect GHS label.

Additional amendments clarify that it is not necessary to include duplicate information on a label where it is required by other labelling laws. This is on the basis it does not reduce the level of protection or information in relation to the hazards of the chemical. For example, where the precautionary statements ‘Wear face protection’ and ‘Wear gloves and face protection’ are specified, then only the latter statement should appear on the label as it relates to the more stringent protective measures. This approach provides clarity for manufacturers, importers and suppliers of hazardous chemicals and prevents end-users such as workers being misguided and confused by two different sets of safety directions.

Further amendments also exempt WHS labelling requirements from applying to veterinary chemicals listed in Schedule 4 and 8 of the Standard for the Uniform Scheduling of Medicines and Poisons when they are in a form intended for direct administration to animals for therapeutic purposes. Schedule 4 medicines are prescription only medicines and animal remedies and Schedule 8 medicines are controlled drugs and poisons. Schedule 4 and 8 veterinary medicines are akin to therapeutic goods which are exempt from WHS labelling requirements and therefore should be dealt with consistently under the WHS Regulation. In addition, veterinarians handling them have extensive training and qualifications or animal owners are administering these medicines under the direction of veterinarians.

Infringement notice offences

A review of existing offences under the *Work Health and Safety Regulation 2011* (WHS Regulation) identified a further 18 offences which are eligible to become infringement notice offences, commonly known as “on the spot fines” under *the State Penalties Enforcement Regulation 2014*. The new infringement offences relate to high risk areas such as asbestos, hazardous chemicals and construction work and provide a cost-effective method of enforcement which can be immediately applied to the alleged offender.

Information sharing arrangements

Inspectors are given broad powers to investigate non-compliance, to issue statutory notices and to take other prescribed actions under the *Electrical Safety Act 2002* (ES Act), the *Safety in Recreational Water Activities Act 2011* (SRWA Act) and the *Work Health and Safety Act 2011* (WHS Act). In order to balance these broad powers, a duty of confidentiality exists to ensure inspectors and other officers are accountable and credible when they perform functions and exercise powers.

Under section 193 of the ES Act, section 41 of the SRWA Act and section 271 of the WHS Act, confidentiality provisions prohibit disclosing information or the contents of a document to another person; giving another person access to a document, or using the information or document for any purpose, unless an exception applies. One exception is where the release of information is necessary for the administration or enforcement of another Act prescribed under the regulation.

The amendment regulation prescribes a list of Acts, enabling sharing of information to another Queensland Government enforcement agency where it is necessary for the administration or enforcement of that legislation. For example, inspectors may need to share information with Queensland Building and Construction Commission about the actions of a licensed builder which may have contributed to a serious incident.

Plant item registration

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 two additional years, so there is minimal disruption for business until the Government considers the recommendations arising from the COAG review.

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

Achievement of policy objectives

The policy objectives are achieved by:

- ensuring a smooth transition to the GHS by clarifying requirements on end users of hazardous chemicals at a workplace;
- clarifying that it is not necessary to include duplicate label elements required by other labelling laws providing it does not decrease the level of protection or information in relation to the hazards of the chemical;
- exempting Schedule 4 and 8 veterinary medicines from WHS labelling requirements;
- implementing 18 new infringement notice offences for certain work health and safety offences in key risk areas such as asbestos, hazardous chemicals and construction work;
- providing certainty when disclosure of information is considered necessary for the administration or enforcement of another Act;
- retaining the existing plant item registration and renewal arrangements until 1 January 2019; and
- making 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 ES Act, the SRWA Act and 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, substances, recreational water activities or electricity. 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, recreational water activities or electricity. The proposed amendments are consistent with these objectives.

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:

- end users will not be required to relabel existing NOHSC labelled chemicals supplied to the workplace prior to 1 January 2017. If relabelling by end users was required this introduces the risk that the correct NOHSC labelling for the chemical could be replaced with an incomplete or incorrect GHS label;
- the new infringement offences relate to priority risk areas and will provide a cost-effective method of enforcement which can be immediately applied to the alleged offender as an alternative to prosecution. In addition, it does not add any new regulatory burden to industry since it relates to existing offences only;
- it provides certainty for parties that information can be shared in a manner permitted under law and is administrative in nature;
- provides continuity of current arrangements for plant item registration renewal; and
- provides certainty as the minor and technical amendments correct a number of drafting, technical and grammatical errors across a range of provisions.

As noted in the 2009 National Decision Regulatory Impact Statement (Harmonisation of WHS Regulations and Codes), manufacturers and importers will achieve cost savings by moving to the new GHS labelling system (i.e. because there are increasing costs to Australia in maintaining its own unique classification system once the GHS had been adopted internationally) and it also maximises trade benefits that will be foregone if Australia does not implement the GHS.

There are no costs to implement the amendment regulation.

Consistency with fundamental legislative principles

The amendment regulation is consistent with fundamental legislative principles.

Consultation

Consultation with various industry stakeholders was undertaken and included:

- Master Builders Queensland;
- Housing Industry Association;
- Australian Industry Group.
- Construction Forestry Mining Energy Union of Queensland; and
- Queensland Council of Unions

The Department of Justice and Attorney General and SPER were also consulted on the infringement notice offences.

Consultation was undertaken with the Electrical Safety Commissioner on the minor amendments to the *Electrical Safety Regulation 2013* (ES Regulation).

In addition, consultation was also undertaken with the Chairperson of the Interim Consultative Committee for Work-related Fatalities and Serious Injuries.

Consultation has taken place through Safe Work Australia with respect to the amendments to smooth the transition to the GHS with respect to the labelling provisions for hazardous chemicals.

Consultation has not occurred on the amendments regarding plant item registration renewal as they preserve existing arrangements.

In accordance with the Queensland Government Guide to Better Regulation (the guidelines), the department applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category e - Regulatory proposals that are of a transitional nature; Category f - Regulatory proposals that correct technical errors or amend legislation to take account of current Queensland drafting practice and Category g - Regulatory proposals that are of a machinery nature). OBPR was consulted and confirmed the department self-assessment is correct.

In addition, OBPR assessed certain proposals under Category k - Regulatory proposals designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear there are no significant adverse impacts. OBPR confirmed these proposals were excluded from further assessment under the guidelines.

Notes of Provisions

Short title

Clause 1 provides the short title of the regulation.

Regulation amended

Clause 2 provides that this regulation amends the ES Regulation.

Amendment of s24 (Performance of high voltage live line work)

Clause 3 amends the definition of *high voltage live line work management plan* in section 24 as it incorrectly refers to 'guidelines' rather than 'standards'.

Amendment of s 25 (Testing of electrical equipment after electrical work)

Clause 4 amends section 25 to correct a drafting error.

Amendment of s 64 (Operation of trade contractor's licence)

Clause 5 amends section 64 by updating the legislative reference.

Amendment of s 69 (Meaning of unsafe distance for persons, operating plant and vehicles for overhead electric lines)

Clause 6 amends section 69 to correct a drafting error.

Insertion of new s 285A

Clause 7 inserts a new section which refers to a new schedule for the purposes of sharing information in accordance with the confidentiality of information requirements in section 193(3)(c)(ii) of the ES Act.

Insertion of new sch 8A

Clause 8 inserts a new schedule that prescribes a list of Acts for the purposes of sharing information with relevant Queensland Government agencies.

Regulation amended

Clause 9 provides that this regulation amends the *Safety in Recreational Water Activities Regulation 2011*.

Amendment of s 6 (Count of all persons on board to be made and recorded)

Clause 10 amends section 6 to correct a drafting error.

Amendment of s 12 (Count of all persons on board to be made and recorded)

Clause 11 amends section 12 to correct a drafting error.

Insertion of new pt 4

Clause 12 inserts a new part and section which refers to a new schedule for the purposes of sharing information in accordance with the confidentiality of information requirements in section 41(3)(c)(ii) of the SRWA Act.

Insertion of new sch 1A

Clause 13 inserts a new schedule that prescribes a list of Acts for the purposes of sharing information with relevant Queensland Government agencies.

Amendment of schedule (Dictionary)

Clause 14 amends the definition of *recreational dive training organisation* to reflect current drafting practices i.e. to include the title of the standards in the text of the regulation.

Regulation amended

Clause 15 provides that this regulation amends the *State Penalties Enforcement Regulation 2014*.

Amendment of sch 1 (Infringement notice offences and fines for nominated laws)

Clause 16 inserts 18 new infringement notice offences for certain offences under the WHS Regulation.

Regulation amended

Clause 17 provides that this regulation amends the WHS Regulation.

Amendment of s 2 (Commencement)

Clause 18 amends section 2 (Commencement) to postpone the commencement of the five yearly renewal requirements for plant item registration under sections 272 and 279(2)(d) until 1 January 2019.

Amendment of s 55 (Minimising risk associated with falling objects)

Clause 19 amends section 55 to correct a drafting error.

Amendment of s 101 (Application for renewal)

Clause 20 insert a new administrative measure in the process for renewing a high risk work licence. The new measure ensures all information about current licences is included in the application for a renewal of licence and will require an applicant to declare that he or she has obtained a reassessment of competency if they were directed to obtain a reassessment under section 95.

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

Clause 21 consequentially amends section 272A to reflect the delay in the commencement of the five yearly renewal requirements for plant item registration under clause 18.

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

Clause 22 consequentially amends section 279A to reflect the delay in the commencement of the five yearly renewal requirements for plant item registration to under clause 18.

Amendment of s 328 (Application of pt 7.1)

Clause 23 amends section 328(5) to correct a drafting error.

Amendment of s 335 (Labelling of hazardous chemicals)

Clause 24 amends sections 335 by setting out two ways a hazardous chemical can be 'correctly labelled'. First, a hazardous chemical can be correctly labelled if the selection and use of label elements is in accordance with the GHS and it complies with Part 3 of Schedule 9. This is consistent with the omitted provision. Part 3 of Schedule 9 specifies general requirements for the labelling of hazardous chemicals. Second, a hazardous label is correctly labelled if the label includes content that complies with another labelling requirement imposed by the Commonwealth, provided the content is the same, or substantially the same, as the content that is required by Part 3 of Schedule 9.

In cases where some, but not all, elements of a label are the same, or substantially the same, as the content required by Part 3 of Schedule 9, only those elements, that are not already included on the label are required to be added.

It is intended that this provision not be construed in a technical manner. It recognises that there may be some minor differences in the kinds of information and manner in which that information is displayed in accordance with different laws. However, if the content requirements provided for under another law of the relevant jurisdiction or of the Commonwealth result in a hazardous chemical being labelled with information that is, overall, the same or substantially the same, as that required under Part 3 of Schedule 9, section 335(1) will be satisfied.

In addition, this clause clarifies that section 335 does not apply to certain veterinary chemicals listed in the Poisons Standard i.e. Schedule 4 veterinary medicines where they are in a form intended for direct administration to an animal for therapeutic purposes and Schedule 8 veterinary medicines.

Amendment of s 341 (Labelling hazardous chemicals – general requirement)

Clause 25 inserts a new sub-section to exempt a person conducting a business or undertaking (PCBU) from the requirement to ensure that a hazardous chemical used, handled or stored at the workplace is correctly labelled in accordance with section 335 if the chemical was supplied to the PCBU before 1 January 2017, and labelled according to the national labelling code.

The effect of this item is that there is no requirement for a PCBU to relabel a hazardous chemical that was correctly labelled in accordance with the National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)] when it was supplied to the PCBU prior to 1 January 2017.

If the hazardous chemical is supplied by the PCBU to another workplace after 1 January 2017, section 338 will apply to require the PCBU to correctly label the hazardous chemical in accordance with regulation 335.

Amendment of s 342 (Labelling hazardous chemicals – containers)

Clause 26 has the effect that a PCBU is not required to ensure that a hazardous chemical is correctly labelled in accordance with section 335 if the chemical:

- was manufactured, or transferred or decanted from its original container at the workplace, before 1 January 2017, and
- was, at the time it was manufactured, or transferred or decanted from its original container at the workplace, labelled in accordance with the National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)] as in force at that time.

In addition the new clause also has the effect that a PCBU is not required to ensure, so far as is reasonably practicable, that a container that stores a hazardous chemical is correctly labelled in accordance with section 335 (while the container contains a hazardous chemical) if the container:

- was supplied before 1 January 2017; and
- was, at the time it was supplied, labelled in accordance with the National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)] as in force at that time.

These new clauses ensure that there is no requirement to relabel a hazardous chemical or a container that stores a hazardous chemical if that hazardous chemical or container was correctly labelled in accordance with the National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)] when it was supplied to the PCBU prior to 1 January 2017.

If the hazardous chemical or container is supplied by the PCBU to another workplace after 1 January 2017, section 338 will apply to require the PCBU to correctly label the hazardous chemical or container in accordance with regulation 335.

Amendment of s 435 (duty to provide health monitoring)

Clause 27 amends section 435(1)(b) to correct a drafting error.

Amendment of ch 8, pt 8.8, hdg (Asbestos removal requiring class A licence)

Clause 28 amends the heading of chapter 8, part 8.8 to clarify the part applies to class A asbestos removal licences.

Amendment of s 475 (Air monitoring – asbestos removal requiring class A licence)

Clause 29 amends the heading of section 475 to clarify the provision applies to class A asbestos removal licences.

Amendment of s 589 (Amendment imposed by regulator)

Clause 30 amends section 589(3)(c) and 589(3)(c)(ii) to align these provisions with the national model work health and safety regulations.

Amendment of s 689 (Major hazard facility – regulator to be satisfied about particular matters)

Clause 31 amends section 689(2) to correct a drafting error.

Insertion new s 701A

Clause 32 inserts a new part that prescribes the Acts that apply under section 271(3)(c)(ii) of the WHS Act.

Amendment of sch 3 (High risk work licences and classes of high risk work)

Clause 33 amends schedule 3 to clarify that holders of a ‘Personnel and Materials Hoist’ licence are entitled to operate a materials hoist without also holding a ‘Materials Hoist’ licence.

It also clarifies that the existing high risk work licensing class ‘Turbine operation’ specifically focuses on the operation of ‘steam turbines’, which is affirmed by the existing ‘Turbine’ definition that refers to a turbine driven by ‘steam’. In addition, this amendment aligns the WHS Regulation with the terminology of the existing high risk work unit of competency ‘Licence to operate a Steam Turbine’.

Amendment of sch 4 (High risk work licences – competency requirements)

Clause 34 amends Schedule 4 to align the terminology with the revised ‘Licence to operate a concrete placing boom’ unit of competency and with ‘concrete placing boom’ references used elsewhere in the regulations. It also clarifies that the existing high risk work licensing class ‘Turbine operation’ specifically focuses on the operation of ‘steam turbines’.

Amendment of sch 5 (Registration of plant and plant designs)

Clause 35 amends Schedule 5 to correct drafting errors.

Amendment of sch 13, s 3 (Outer warning placards – requirements)

Clause 36 amends Schedule 13, section 3 to correct a drafting error.

Insert new sch 18A

Clause 37 inserts a new schedule that lists the Acts prescribed under new section 701A.

Amendment to sch 19 (Dictionary)

Clause 38 amends schedule 19 to:

- insert a definition for ‘national labelling code’;
- use the term ‘articulating’ instead of ‘knuckle’ in the definition of concrete placing boom as the term ‘articulating’ is more precise and less colloquial;
- use the term ‘fluid’ instead of ‘liquid’ in the definition of pressure piping as it is an established industry term that defines material in both the liquid and gaseous states; and
- clarify in the tower crane definition that a tower crane is a crane with a boom or jib on the tower structure.