

2014

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

WORK HEALTH AND SAFETY AMENDMENT REGULATION 2014 (NO 2)

SL2014-20

EXPLANATORY STATEMENT

Circulated with the authority of
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Minister for Workplace Safety and Industrial Relations

Overview

This Work Health and Safety Amendment Regulation 2014 (No 2) is made under the provisions of Section 276 of the *Work Health and Safety Act 2011* that provides:

(1) *The executive may make regulations for this Act in relation to any matter relating to work health and safety.*

Background

The ACT is a signatory to the Inter-Governmental Agreement (IGA) for regulatory and operational reform in occupational health and safety. The Work Health and Safety Act 2011 and the Work Health and Safety Regulations 2011 which commenced on 1 January 2012 enabled the Territory to meet its commitment to the IGA..

Under the IGA, the process for agreeing to the regulation involves tripartite consultation between governments, industry and employee union organisations..

A review of the regulation has identified a number of technical amendments which have been agreed to through this tripartite process. The amendments correct inadvertent errors, clarify policy intent and address workability issues.

Clause 1 - Name of Regulation

The clause sets out the name of the regulation

Clause 2 - Commencement

This regulation will commence on the 7th day after its notification day.

Clause 3 – Regulation Amended

Work Health Safety Regulation 2011.

Clause 4 – Section 21(2)

The section relates to the approval (by the regulator) of a course of training for health and safety representatives. The section is amended to state, the regulator may have regard to *any* relevant matters, as opposed to may have regard to *all* relevant matters

Clause 5 – Section 25(3)

The section relates to the prescribed training requirements approved by the regulator for Work Health Safety permit-holders. The section is amended to state, the regulator *may* have regard to *any* relevant matters, as opposed to *must* have regard to *all* relevant matters.

Clause 6 – Section 43(3)

The section relates to the duty of a PCBU to prepare, maintain and implement emergency plans. The section is amended to state, the PCBU *must have regard to* all relevant matters, as opposed to *must consider* all relevant matters.

Clause 7 – Section 82 (1A) and (1B)

These sections provide for exceptions from the requirement to hold a license to carry out high risk work.

Section 82 (1A) clarifies that a person is not required to hold a license if the person holds the necessary certification and has applied for a license.

Section 82(1B) clarifies a person is not required to hold a license whilst the person is being assessed for competency in respect of the high risk work.

Clause 8 – Section 82(3)

This section relates to persons who are not required to hold a license for high risk work and clarifies that the term *moving the plant within the workplace*, includes situations where the plant is operated only to load the plant onto or unload the plant from a vehicle or equipment used to move the plant.

Clause 9 – Section 85(2)

This section relates to responsibilities of the PCBU and clarifies that where the exemptions in sections 82 apply the PCBU must see written evidence the worker is undertaking a course of training..

Clause 10 – Section 85(3)

This section is a consequential amendment to the changes made by section 82 and clarifies the cross reference to section 82(1).

Clause 11 – Section 85(4)

This section relates to a PCBU who is required to sight evidence of a worker holding a high risk licence. The amendment clarifies only a record of the written evidence provided under the regulation must be kept – not the original licence document.

Clause 12 – Section 87 (2) (b)

This section relates to an application for the grant of a high risk licence. The amendment clarifies a photograph included in the application must be in the form required by the regulator as opposed to “a recent photograph of the applicant”.

Clause 13 – Section 87 (2) (f) (i)

This section relates to the application for the grant of a high risk licences and clarifies that a copy of each certification relating to the high risk license being applied for is required.

Clause 14 – New Section 91A

The section provides for the regulator to impose conditions, considered appropriate on high risk work licence.

Clause 15 – Section 93(2) (b)

This section relates to the licence document and amends the regulation to require the document include a photograph as opposed to a recent photograph and is necessary due to the amendment made at 87(2)(b)

Clause 16 – Section 101(2)(b) and (c)

These sections relate to an application for a renewal of a high risk work licence clarifies a photograph included in the application must be in the form required by the regulator as opposed to “a recent photograph of the applicant. This provides consistency with the amendment reflected in regulation 87(2) (b)

Clause 17 – Section 104(1)(b)

This section relates to the renewal of a high risk licence and makes consequential amendments caused by the amendment to 91A.

Clause 18 – Section 104 (2), note

The note clarifies a refusal to renew a high risk work licence is a reviewable decision.

Clause 19 – Section 106 (1)(ab)

The section relates to the suspension or cancellation of a licence and makes consequential amendments caused by the amendment to Section 91A

Clause 20 – 106(2), note

This note is omitted due to duplication with the section 104 (2) note.

Clause 21 – Section 106(3) and (4)

These sections make consequential amendments caused by the amendment to Section 91A.

Clause 22 – Section 108

This section is consequentially amended to reflect the amendment to Section 91A

Clause 23 – Section 109(2)(b)(v)

The section relates to the requirement for the regulator to give written notice of a decision to suspend or cancel a high risk work license and is consequentially amended to reflect the amendment to regulation 91A.

Clause 24 – Section 152

The section applies to electrical work on energised electrical equipment and clarifies the exception at regulation 152 applies in relation to electricity supply – not generation.

Clause 25 – Section 161(4) (a) (ii)

The section outlines how work on energised electrical equipment is to be carried out and clarifies a safety observer must be competent to rescue *and resuscitate* a worker. This corrects an inadvertent omission.

Clause 26 – Section 167

The section relates to Diving work and removes reference to “a person *carrying out* a business or undertaking” replacing this with ‘a person *conducting* a business or undertaking’, which is the correct term.

Clause 27 – Section 169(a)

The section relates to the requirements of a certificate of medical fitness and amends the regulation so that the registered medical practitioner who issues the certificate must have training in underwater medicine as opposed to *appropriate* training in underwater medicine.

Clause 28 – Section 171 and 171A

These sections relates to the competence of a worker to undertake general diving work. The amendments restructures the sections to improve readability.

Clause 29 – Section 172(1), except note

This clause amends the section to reflect the consequential amendment to reflect the amended section 171A.

Clause 30 – Section 173(1) (a)

This section relates to the competencies of a worker performing limited scientific diving work and is a consequential amendment from the amended section 171A.

Clause 31 – Section 174(a)

This Section relates to the competence of a competent person supervising general diving work and the amendment is a consequential numbering amendment to reflect the amended section 171A..

Clause 32 – Section 215(1)

This section relates to specific control measures for powered mobile plant. The amendment removes the words *person conducting a business or undertaking*, reflecting the duty lies with the person who has management or control of the plant.

Clause 33 – Section 217

Section 217 has been omitted. This reflects a decision taken through the Intergovernmental Agreement process,. Relevant codes of practice and guidance material are used to determine when protective structures should be used.

Clause 34 – Section 235(2) and (3)

Section 235(2) relates to the duties of a person with management and control of registered mobile cranes and tower cranes. The amendments reflect that the requirements relating to inspections of these cranes apply to major inspections only. The amendments also clarify that a major inspection is recognised should the crane or tower crane be moved interstate.

New section 235 (3) provides for the automatic recognition of ‘major inspections’ carried out interstate, providing they were carried out under and in accordance with corresponding WHS laws.

Clause 35 – Section 235(4)

This amendment clarifies the definition of “competent person” to carry out a major inspection of plant.

Clause 36 – New Section 235(6)

This amendment clarifies the requirement for a major inspection of cranes.

Clause 37 – Subdivision 5.2.4.2 Heading

The heading of this sub-division has been amended to reflect the inclusion of passenger ropeways in this sub-division

Clause 38 – Sections 238 to 241

Section 238 to Section 241 has been amended to ensure the passenger ropeways are included in the relevant duties of a person with management or control.

Section 241(5)

This section relates to the annual inspection of amusement devices and passenger ropeways, and has been amended to provide clarity in respect of the qualifications of a competent person.

Clause 39 – New Section 244(3)

This section clarifies that altered plant designs do not need to be registered for tower and gantry cranes if the design of the supporting structure are only altered for the purpose of the safe operation of the plant at a new site..

Clause 40 – Section 252 (2) and (3)

This section outlines the requirements of a person who can be the design verifier for an item of plant and clarifies a person is not eligible for the person was involved in the production of the design of the plant.

Clause 41 – Section 266(2)(f)

This section has been omitted as it duplicates section 266(2)(i)

Clause 42 – Section 266 (2)(i)

The section relates to an application for the registration of an item of plant. The amendment clarifies that the date the plant was first commissioned must be provided in the application if that information is known.

Clause 43 – Section 269(2)(b) and (c)

These sections relate to a decision by the regulator to register plant, and adds the words item of to where the word plant appears on both sections..

Clause 44 – New Division 5.3.6 Cancellation of Registration

This new division makes explicit the regulators power to cancel a registration issued under this part. It provides consistency with similar provisions in this Act.

There is a pre-existing power to cancel registrations at general law. The new provisions build in important requirements of procedural fairness, including certain rights to have a decision reviewed.

Clause 45 – Section 318

This section relates to the recognition of general construction induction training cards issued in other jurisdictions and clarifies that this recognition does not extend to cards that have been cancelled..

Clause 46 – Section 676 (1), table

The section outlines which decisions under this regulation are reviewable and is consequentially amended to reflect the insertion of several provisions including regulation 91A and regulations 288A-288D.

Clause 47 – Section 700

This section relates to Inspectors' identity cards and is amended for consistency with comparable provisions, allowing the the regulator to determine specific requirements for photographs..

Clause 48 – Schedule 3, table 3.1 items 15 - 18

The schedule covers high risk work licences and classes of high risk work. The amendment corrects inadvertent omissions and ensures consistent implementation.

Under pre-harmonised WHS laws (or under administrative arrangements) most WHS regulator’s ‘encompassed’ certain related licence classes. These arrangements allowed holders of a licence ranked ‘higher’ in the class to operate plant covered by a ‘lower’ licence class automatically without the need for an additional licence. In other words the ‘higher’ licence already ‘encompassed’ all licences ranked lower in the hierarchy.

Clauses 49 - 55 – Schedule 5 Registration of plant and plant design

Schedule 5 now reflects consequential amendments and addresses unforeseen workability issues with the registration process.

Clause 56 – Dictionary, definition of *amusement device*

This amendment clarifies the definition of amusement devices by omitting *passengers travel on to passengers or others travel or move on.* .

Clause 57 – Dictionary, definition of *appropriate training in underwater medicine*

This definition has been amended to remove an unnecessary reference to a technical standard and allow more detailed guidance to be developed around standards for courses and also available courses in each jurisdiction.

Clauses 58 – 62 Schedules 10 -16.

These amendments address consistency and consequential issues across the regulations.

Clause 63 – Dictionary, definition of *emergency service organisation, note*

This amendment reflects the correct title used in the Territory ACT Fire and Rescue as opposed to fire brigade.

Clause 64 – Dictionary, definition of *emergency services worker*

This amendment omits the definition of emergency services worker.

Clause 65 – Dictionary, new definition of *emergency service worker*

This amendment include a definition of emergency service worker.

Clause 66 - Definition, definition of *gantry crane, paragraph (a)*

This amendment corrects a drafting error and ensures the definition of ‘gantry crane’ covers both the traditional ‘two-legged’ gantry cranes and also the ‘one legged’ or semi-gantry cranes.

Clause 67 Dictionary, definition of *hazardous area and note*

This amendment replaces the previous definition with a more self-contained definition that does not rely on external technical standards

Clause 68 Dictionary, definition of *incidental diving work, paragraph (c)*

This amendment omits paragraph (c) as agreed though the tri-partite arrangements under the intergovernmental agreement.

Clause 69 Dictionary, new definitions

These amendments introduce new definitions to clarify the definition of inflatable devices (continuously blown) and passenger ropeway consistent with the amendments at clause 38.

Clause 70 Dictionary, definition of *specified VET course*

This amendment clarifies the definition of the specified VET Course in respect of general construction induction training, and high risk work.