

# Work Health and Safety Amendment Regulation 2023 (No 2)

Subordinate law SL2023–30

made under the

*Work Health and Safety Act 2011*, section 276 (Regulation-making powers)

## EXPLANATORY STATEMENT

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### OVERVIEW OF THE REGULATION

The *Work Health and Safety Amendment Regulation 2023 (No 2)* (Amendment Regulation) amends the *Work Health and Safety Regulation 2011* (WHS Regulation).

The Amendment Regulation makes a minor and technical amendment to an Australian Standard reference in the WHS Regulation in relation to boilers.

Relevantly, the [Work Health and Safety Amendment Regulation 2023 \(No 1\)](#) (Amendment Regulation No 1) was notified on 28 August 2023 and included amendments to update references to superseded Australian Standards and correct typographic errors, as provided by Safe Work Australia’s model *Work Health and Safety Amendment Regulation 2023* (model WHS Regulation).

In adopting the model WHS Regulation changes, one of the amendments updated the use of the now superseded 2004 Standard (AS 2593:2004) in relation to unattended boilers to the new 2021 Standard (AS 2593:2021). This is relevant to the high risk work licensing (HRWL) requirements, as unattended boilers do not require a HRWL.

However, as the 2021 Standard combined two definitions from the 2004 Standard (‘limited attendance operation’ and ‘unattended operation’) into a single definition (‘unattended operation’) some confusion has arisen relating to the continued requirement for limited attendance boiler operation requiring a HRWL.

To avoid any confusion and ensure there are no unintended changes to the HRWL requirements applying to boiler operation, the updated Standard reference is being removed under this Amendment Regulation to retain the superseded 2004 Standard until the definitional issues are resolved under the model WHS Regulation.

## **CONSULTATION ON THE PROPOSED APPROACH**

Given the minor and technical nature of the Amendment Regulation, local stakeholder consultation was not undertaken, noting that this amendment arose through consultation undertaken in the national Safe Work Australia forum.

## **CONSISTENCY WITH HUMAN RIGHTS**

All amendment regulations must be compatible with the *Human Rights Act 2004* (HRA). The compatibility of this Amendment Regulation with the HRA was considered during its development and given it will operate to retain the status quo arrangements referring to the 2004 Standards it is assessed as not engaging with the HRA.

## CLAUSE NOTES

### Work Health and Safety Amendment Regulation 2023 (No 2)

#### Clause 1 Name of regulation

Clause 1 provides that the regulation is the *Work Health and Safety Amendment Regulation 2023 (No 2)*.

#### Clause 2 Commencement

This clause provides for the commencement of the regulation immediately after the commencement of the [Work Health and Safety Amendment Regulation 2023 \(No 1\)](#), section 12.

This will remove the updated Australian Standard reference in section 12 of the *Work Health and Safety Amendment Regulation 2023 (No 1)* in relation to the definition of *boiler* with the effect of retaining the current arrangements under the WHS Regulation referring to the AS 2593:2004 (Boilers—Safety management and supervision systems).

#### Clause 3 Legislation Amended

This clause provides that the regulation amends the *Work Health and Safety Regulation 2011* (WHS Regulation).

#### Clause 4 Dictionary, definition of boiler, paragraph (b) (iii) (C) and notes

This clause omits the reference to AS 2593:2021 and retains the AS 2593:2004 Australian Standard reference regarding the definition of *boiler*.

The purpose of this amendment is to retain the current arrangements applying the 2004 Australian Standard until the corresponding HRWL requirements are clarified within the nationally agreed model work health and safety regulations. This is consistent with the intention that current HRWL requirements for operating boilers are not adjusted when incorporating the updated Standard into law.