



New South Wales

# Work Health and Safety Amendment (Miscellaneous) Regulation 2012

under the

Work Health and Safety Act 2011

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Work Health and Safety Act 2011*.

GREG PEARCE, MLC  
Minister for Finance and Services

## Explanatory note

The objects of this Regulation are as follows:

- (a) to prescribe an Act as a **corresponding WHS law** for the purposes of the *Work Health and Safety Act 2011* (the **WHS Act**),
- (b) to extend provisions of the WHS Act relating to confidentiality of information to information obtained under the *Occupational Health and Safety Act 2000* (the **OHS Act**),
- (c) to prescribe Acts for the purposes of the administration or enforcement of which certain information obtained under the WHS Act or the OHS Act may be disclosed,
- (d) to revise the time frames applying to internal reviews of decisions under the *Work Health and Safety Regulation 2011* (the **WHS Regulation**) in line with those under the *Administrative Decisions Tribunal Act 1997*,
- (e) to update certain criteria relating to prohibited and restricted carcinogens and hazardous chemicals,
- (f) to provide for various transitional matters including with respect to the following:
  - (i) the date of application of provisions of the WHS Act and WHS Regulation that impose duties on designers of structures and that require clearance inspections and air monitoring for licensed asbestos work,
  - (ii) the deeming of health and safety representatives in relation to mines and coal work places,
  - (iii) the operation of transitional licences for intermediate boiler operation, and application requirements for licences for standard boiler operation work,

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- (iv) the continuation of an exemption for a forklift truck licence in relation to high risk work carried out in mines or coal work places,
- (v) the renewal of expired high risk work licences issued under the *Occupational Health and Safety Regulation 2001* (the **OHS Regulation**), and application requirements for such renewals and renewals of transitional licences,
- (vi) the continued application of the OHS Regulation to demolition work,
- (vii) the enforcement of continued provisions of the OHS Regulation.

This Regulation is made under the *Work Health and Safety Act 2011*, including section 276 (the general regulation-making power), Schedule 3 and clause 1 of Schedule 4.

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## **Work Health and Safety Amendment (Miscellaneous) Regulation 2012**

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### **1 Name of Regulation**

This Regulation is the *Work Health and Safety Amendment (Miscellaneous) Regulation 2012*.

### **2 Commencement**

This Regulation commences on the day on which it is published on the NSW legislation website.

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### Schedule 1 Amendment of Work Health and Safety Regulation 2011

**[1] Clause 5 Definitions**

Omit “issued under” from paragraph (b) of the definition of *general construction induction training card* in clause 5 (1).

Insert instead “issued”.

**[2] Clause 5A**

Insert after clause 5:

**5A Meaning of “corresponding WHS law”**

For the purposes of paragraph (b) of the definition of *corresponding WHS law* in section 4 of the Act, the *Work Health and Safety (National Uniform Legislation) Act 2011* of the Northern Territory is prescribed as such a law.

**[3] Clause 680 Decision of internal reviewer**

Omit “14 days” from clause 680 (1). Insert instead “21 days”.

**[4] Clause 680 (6)**

Omit “14 day period” from clause 680 (6). Insert instead “21 day period”.

**[5] Clause 681 Decision on internal review**

Omit “14 days of making the decision on the internal review”.

Insert instead “21 days after the application for internal review, or the additional information requested under clause 680 (3), is received”.

**[6] Clause 702**

Omit the clause. Insert instead:

**702 Confidentiality of information—exception relating to administration or enforcement of other laws**

The following Acts are prescribed for the purposes of section 271 (3) (c) (ii) of the Act:

- (a) a corresponding WHS law,
- (b) *Crimes Act 1900*,
- (c) *Crimes (Administration of Sentences) Act 1999*,
- (d) *Criminal Procedure Act 1986*,
- (e) *Dust Diseases Tribunal Act 1989*,

- (f) *Environmental Planning and Assessment Act 1979*,
- (g) *Explosives Act 2003*,
- (h) *Fire Brigades Act 1989*,
- (i) *Local Government Act 1993*,
- (j) *National Vocational Education and Training Regulator Act 2011* of the Commonwealth,
- (k) *Occupational Health, Safety and Welfare Act 1986* of South Australia,
- (l) *Occupational Health and Safety Act 2004* of Victoria,
- (m) *Occupational Safety and Health Act 1984* of Western Australia,
- (n) *Protection of the Environment Operations Act 1997*,
- (o) *Public Health Act 2010*,
- (p) *Rural Fires Act 1997*,
- (q) *Water Management Act 2000*,
- (r) *Workplace Health and Safety Act 1995* of Tasmania.

**[7] Schedule 10 Prohibited carcinogens, restricted carcinogens and restricted hazardous chemicals**

Omit “0.1%” from Column 3 of the matter relating to item 10 in table 10.3.

Insert instead “1%”.

**[8] Schedule 15 Hazardous chemicals at major hazard facilities (and their threshold quantity)**

Omit table 15.3. Insert instead:

**Table 15.3 Criteria for toxicity**

Description	Oral Toxicity <sup>1</sup> LD <sub>50</sub> (mg/kg)	Dermal Toxicity <sup>2</sup> LD <sub>50</sub> (mg/kg)	Inhalation Toxicity <sup>3</sup> LC <sub>50</sub> (mg/L)
Very Toxic	LD <sub>50</sub> ≤ 5	LD <sub>50</sub> ≤ 50	LC <sub>50</sub> ≤ 0.2
Toxic	5 < LD <sub>50</sub> ≤ 50	50 < LD <sub>50</sub> ≤ 200	0.2 < LC <sub>50</sub> ≤ 2

**Key**

- 1 In rats
- 2 In rabbits
- 3 1 hour in rats. If results for 1 hour exposure testing are not available, then the results for 4 hour exposure testing can be multiplied by 4 and then compared to the criteria

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### [9] Schedule 18B Savings and transitional provisions

Omit “Sections 22–26 of the WHS Act do not apply to or in respect of the design,” from clause 7.

Insert instead “Sections 23–26 of the WHS Act do not apply to or in respect of the”.

### [10] Schedule 18B, clause 7 (2)

Insert at the end of clause 7:

- (2) Section 22 does not apply to or in respect of the design of a structure where the activity concerned commenced before 1 January 2013.

### [11] Schedule 18B, clause 12 (1)

Omit the subclause. Insert instead:

- (1) A person is a health and safety representative under the WHS Act (a *deemed health and safety representative*) if the person is a worker who was, immediately before the repeal of the OHS Act:
  - (a) an OHS representative or an elected member of an OHS committee under the OHS Act, and elected as such no earlier than 2 years before that repeal, or
  - (b) a member of an OHS committee under the OHS Act by virtue of being:
    - (i) a site check inspector or an electrical check inspector in relation to a coal workplace, and elected as such under the *Coal Mine Health and Safety Act 2002* no earlier than 2 years before that repeal, or
    - (ii) a site check inspector in relation to a mine, and elected as such under the *Mine Health and Safety Act 2004* no earlier than 2 years before that repeal.

### [12] Schedule 18B, clause 12 (2)

Omit “an OHS representative or an elected member of an OHS committee under the OHS Act”.

Insert instead “such a representative, member or inspector”.

### [13] Schedule 18B, clause 22 (4A)–(4C)

Insert after clause 22 (4):

- (4A) A licence for standard boiler operation that was converted from a transitional licence for intermediate boiler operation under

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subclause (4) is taken to cover the same work as that covered by the transitional licence, and may be renewed as such a licence.

- (4B) Subclause (4A) ceases to have effect on and from 1 January 2014. Accordingly, on and from that date, a licence the subject of subclause (4A) or a renewed such licence ceases to cover any work that is not within the class of high risk work described in Schedule 3 in relation to a standard boiler operation licence.
- (4C) For the purposes of an application made before 1 January 2014 for, or for the renewal of, a high risk work licence for standard boiler operation work under the WHS Regulation, a certification in the VET course “Operate a Boiler—Basic” or “Operate a Boiler—Intermediate” is deemed to be certification in the VET course for standard boiler operation class (specified in item 26 of Schedule 4 to the WHS Regulation).

**[14] Schedule 18B, clause 22 (10)–(13)**

Insert after clause 22 (9):

- (10) A person who held an expired high risk work licence under Part 9.1A of the OHS Regulation immediately before the repeal of that Regulation may apply for renewal of the licence:
- (a) before 1 January 2013, under clause 103 (a) of the WHS Regulation (regardless of when the licence expired), or
  - (b) on or after 1 January 2013, under clause 103 (b) of the WHS Regulation,
- as though the licence were an expired, equivalent licence issued under Part 4.5 of the WHS Regulation, to which clause 103 (a) or (b) (as the case may be) applies.
- (11) Despite any other provision in this clause, clauses 86, 87 (2) (f) and 89 (2) (e) do not apply in relation to an application for renewal of a high risk work licence under subclause (10) or renewal of a transitional licence.
- (12) A person is exempt from the requirement for a forklift truck licence or an order-picking forklift truck licence in relation to high risk work carried out at a mining workplace that is a mine, or at a coal workplace, until 30 June 2013.

**[15] Schedule 18B, clause 45 (1)**

Omit “for 6 months after the commencement of that Regulation”.

Insert instead “until 1 January 2013”.

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**[16] Schedule 18B, clause 45 (2)**

Omit “6 months to 12 months after the commencement of the WHS Regulation”.

Insert instead “1 January 2013 until 30 June 2013”.

**[17] Schedule 18B, clause 46**

Omit “12 months”. Insert instead “18 months”.

**[18] Schedule 18B, clause 64**

Omit “, until 1 July 2013”.

**[19] Schedule 18B, clause 64 (2)**

Insert at the end of clause 64:

- (2) Chapter 10 of the OHS Regulation, as continued in force by subclause (1), may be enforced under the OHS Act as if that Act and the regulations under that Act had not been repealed.

**[20] Schedule 18B, clause 65 (2)**

Insert at the end of clause 65:

- (2) Part 9.1 of the OHS Regulation, as continued in force by subclause (1), may be enforced under the OHS Act as if that Act and the regulations under that Act had not been repealed.

**[21] Schedule 18B, clauses 69 and 70**

Insert after clause 68:

**69 Confidentiality of information obtained under OHS Act**

- (1) Section 271 of the WHS Act extends to apply to information obtained and to documents to which access was gained by a person in exercising any power or function under the OHS Act (other than section 81 of the OHS Act).
- (2) Section 148 of the WHS Act extends to apply to information and documents obtained under section 81 of the OHS Act.

**70 References to “corresponding WHS law” in Parts 4.5 and 5.3 and clause 318 of WHS Regulation**

- (1) A reference to a *corresponding WHS law* in Part 4.5 of the WHS Regulation in relation to a high risk work licence, or in



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Part 5.3 or clause 318 of the WHS Regulation, includes a reference to any of the following:

- (a) *Occupational Health, Safety and Welfare Act 1986* of South Australia,
  - (b) *Workplace Health and Safety Act 1995* of Tasmania,
  - (c) *Occupational Health and Safety Act 2004* of Victoria,
  - (d) *Occupational Safety and Health Act 1984* of Western Australia.
- (2) Clause 318 of the WHS Regulation does not apply to a card issued before 1 September 2009 under the *Work Safety Act 2008* (repealed) of the Australian Capital Territory (being a card that is deemed by the regulations under the *Work Health and Safety Act 2011* of the Australian Capital Territory to be a general construction induction training card issued under that Act).