



New South Wales

Work Health and Safety Amendment (Miscellaneous) Regulation 2020

under the

Work Health and Safety Act 2011

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

KEVIN ANDERSON, MP
Minister for Better Regulation and Innovation

Explanatory note

The object of this Regulation is to amend the *Work Health and Safety Regulation 2017* (the **WHS Regulation**) for the following purposes—

- (a) to make certain amendments consequent on the end of savings and transitional provisions on 1 January 2021 relating to the registration of items of plant under the *Occupational Health and Safety Regulation 2001* (as in force immediately before its repeal) rather than the WHS Regulation, including—
 - (i) to maintain the current registration period of 1 year for items of plant, and
 - (ii) to clarify the items of plant that will be required to be registered under the WHS Regulation,
- (b) to clarify that **traffic control work** includes directing traffic in accordance with a work zone traffic management plan and is not limited to using a stop/slow bat or boom gate to direct traffic,
- (c) to convert monetary amounts in penalty provisions to penalty units to be consistent with the other penalty provisions in the WHS Regulation and to increase the amount of the maximum penalty in those penalty provisions,
- (d) to prescribe certain offences as penalty notice offences, being offences for failing to minimise the risk of an object falling on a person by providing adequate protection against the risk and failing to take certain actions in connection with the use of a scaffold at a workplace,
- (e) to make other consequential and minor amendments.

This Regulation is made under the *Work Health and Safety Act 2011*, including sections 42, 44 and 243, section 276 and Schedule 3 (the general regulation-making powers) and clause 1 of Schedule 4.

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1 Name of Regulation

This Regulation is the *Work Health and Safety Amendment (Miscellaneous) Regulation 2020*.

2 Commencement

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

Schedule 1 Amendment of Work Health and Safety Regulation 2017

[1] Clause 184A Definitions

Omit “using a stop/slow bat or boom gate” from the definition of *traffic control work*.

Insert instead “in accordance with a work zone traffic management plan”.

[2] Clauses 184B, 184C(1) and 184K

Omit “\$3,600” wherever occurring in the penalty provisions.

Insert instead “40 penalty units”.

[3] Clauses 184B, 184C(1) and 184K

Omit “\$18,000” wherever occurring in the penalty provisions.

Insert instead “210 penalty units”.

[4] Clause 184J Duties of workers

Omit “\$1,250” wherever occurring in the penalty provisions.

Insert instead “15 penalty units”.

[5] Clauses 184J and 184O(1)

Omit “\$6,000” wherever occurring in the penalty provisions.

Insert instead “70 penalty units”.

[6] Clause 184N Existing photo card taken to be training card

Omit “Roads and Maritime Services” from section 184N(1).

Insert instead “Transport for NSW”.

[7] Clause 184N

Omit “using a stop/slow bat or boom gate” from the matter relating to traffic controller in the table to the clause.

Insert instead “in accordance with a work zone traffic management plan”.

[8] Clause 184O Duty to ensure workers cutting manufactured stone are protected

Omit “\$30,000” from the penalty provision to section 184O(1).

Insert instead “345 penalty units”.

[9] Clause 272

Omit the clause. Insert instead—

272 Duration of registration

* * * * *

Note. Not adopted in NSW. See clause 272A (Duration of registration for an item of plant).

[10] Clause 272A

Insert after clause 272—

272A Duration of registration for an item of plant

A registration of an item of plant takes effect on the day it is granted and expires 1 year after that day.

[11] Clause 279 Decision on application

Omit “272” from clause 279(2)(b). Insert instead “272A”.

[12] Clause 702A, heading

Insert “**and transitional provisions**” after “**Savings**”.

[13] Clause 702A(4)–(8)

Insert after clause 702A(3)—

- (4) An item of plant registered under Subdivision 2 of Division 3 of Part 5.2 of the *Occupational Health and Safety Regulation 2001* immediately before 1 January 2021 is taken, on and from 1 January 2021, to be registered under Part 5.3 of this Regulation.
- (5) An existing application for registration of an item of plant made but not finally determined before 1 January 2021 is to be determined in accordance with Division 4 of Part 5.3 as if it were an application for registration made under that Division.
- (6) An existing application for the renewal of registration of an item of plant made but not finally determined before 1 January 2021 is to be determined in accordance with Division 4 of Part 5.3 as if it were an application for renewal of registration made under that Division.
- (7) In the case of a concrete placing boom that was not required to be registered under Subdivision 2 of Division 3 of Part 5.2 of the *Occupational Health and Safety Regulation 2001*—
 - (a) the boom is not required to be registered under Part 5.3 until 1 July 2021, and
 - (b) a person who, before 1 July 2021, uses the boom or directs or allows a worker to use the boom is not guilty of an offence under section 42(1) or (2) of the Act merely because the boom was not registered under Part 5.3 at that time.
- (8) In this clause—

existing application for registration means, in relation to an item of plant, an application for registration of the plant under clause 113 of the *Occupational Health and Safety Regulation 2001*.

existing application for the renewal of registration means, in relation to an item of plant registered under Subdivision 2 of Division 3 of Part 5.2 of the *Occupational Health and Safety Regulation 2001*, a notification under clause 118 of that Regulation in respect of the plant.

[14] Schedule 5 Registration of plant and plant designs

Insert after clause 4(1)—

- (1A) Pressure vessels that do not require periodic internal inspection in accordance with the criteria in Table 4.1 in AS/NZS 3788:2006 (*Pressure equipment—In-service inspection*) are excluded from clause 3.2.

[15] Schedule 5, clause 4(2)(f)

Insert after clause 4(2)(e)—

(f) any devices that are, or may be, operated by manual power.

[16] Schedule 18A Penalty notice offences

Insert “55,” after “50(1),” in the matter relating to offences under this Regulation.

[17] Schedule 18A

Insert “225(2)–(5),” after “184O(1),” in the matter relating to offences under this Regulation.