



New South Wales

Work Health and Safety Amendment Regulation 2022

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*.

VICTOR DOMINELLO, MP
Minister for Fair Trading

Explanatory note

The objects of this Regulation are—

- (a) to give effect to the *Model Work Health and Safety Legislation Amendment 2022*, Part 3 by—
 - (i) requiring a person conducting a business or undertaking to manage psychosocial risks, and
 - (ii) specifying what details must be recorded in a log book for an amusement device, and
 - (iii) requiring a person with management or control of an amusement device to make the log book for the device available to a person to whom control of the device is relinquished, and
- (b) to make other minor amendments.

This Regulation is made under the *Work Health and Safety Act 2011*, including sections 271(3)(c)(ii) and 276, the general regulation-making power, and Schedule 3, clauses 5 and 6.

Work Health and Safety Amendment Regulation 2022

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Work Health and Safety Act 2011

1 Name of Regulation

This Regulation is the *Work Health and Safety Amendment Regulation 2022*.

2 Commencement

This Regulation commences as follows—

- (a) for Schedule 1[1] and [5]—on 1 October 2022,
- (b) for Schedule 1[6]–[11]—on 1 December 2022,
- (c) otherwise—on the day the Regulation is published on the NSW legislation website.

Schedule 1 Amendment of Work Health and Safety Regulation 2017

[1] Clause 5 Definitions

Insert in alphabetical order in clause 5(1)—

psychosocial hazard—see clause 55A.

psychosocial risk—see clause 55B.

[2] Clause 15 References to standards

Insert at the end of the clause—

Note—A person is only required to comply with an Australian Standard or Australian/New Zealand Standard that is applied, adopted or incorporated by, or otherwise referred to in, this Regulation to the extent this Regulation provides, whether expressly or by necessary implication.

For example, in clause 5(1), definition of *boiler*, there is an exception in paragraph (e)(iii). The definition does not require a person to comply with AS 2593–2004, but equipment must be certified in compliance with AS 2593–2004 in order to fall within that particular exception.

The reference to an Australian Standard in this case is part of a description of equipment excluded from the definition of boiler. As a result, the equipment is not covered by particular provisions of this Regulation relating to high risk work.

[3] Clause 28, heading

Omit “section 117”. Insert instead “Part 7, Division 2”.

[4] Clause 28(1)

Omit “section 117”. Insert instead “the Act, Part 7, Division 2”.

[5] Chapter 3, Part 3.2, Division 11

Insert after clause 55—

Division 11 Psychosocial risks

55A Meaning of “psychosocial hazard”

A *psychosocial hazard* is a hazard that—

- (a) arises from, or relates to—
 - (i) the design or management of work, or
 - (ii) a work environment, or
 - (iii) plant at a workplace, or
 - (iv) workplace interactions or behaviours, and
- (b) may cause psychological harm, whether or not it may also cause physical harm.

55B Meaning of “psychosocial risk”

A *psychosocial risk* is a risk to the health or safety of a worker or other person arising from a psychosocial hazard.

55C Managing psychosocial risks

A person conducting a business or undertaking must manage psychosocial risks in accordance with Part 3.1 other than clause 36.

55D Control measures

- (1) A person conducting a business or undertaking must implement control measures—
 - (a) to eliminate psychosocial risks so far as is reasonably practicable, and
 - (b) if it is not reasonably practicable to eliminate psychosocial risks—to minimise the risks so far as is reasonably practicable.
- (2) In determining the control measures to implement, the person must have regard to all relevant matters, including—
 - (a) the duration, frequency and severity of the exposure of workers and other persons to the psychosocial hazards, and
 - (b) how the psychosocial hazards may interact or combine, and
 - (c) the design of work, including job demands and tasks, and
 - (d) the systems of work, including how work is managed, organised and supported, and
 - (e) the design and layout, and environmental conditions, of the workplace, including the provision of—
 - (i) safe means of entering and exiting the workplace, and
 - (ii) facilities for the welfare of workers, and
 - (f) the design and layout, and environmental conditions, of workers' accommodation, and
 - (g) the plant, substances and structures at the workplace, and
 - (h) workplace interactions or behaviours, and
 - (i) the information, training, instruction and supervision provided to workers.
- (3) In this clause—

workers' accommodation means premises to which the Act, section 19(4) applies.

Note— WHS Act—section 19 (see clause 9).

[6] Clause 238 Operation of amusement devices and passenger ropeways

Insert after clause 238(2)—

- (3) The reference in subclause (1) to instruction and training in the proper operation of a device or ropeway includes a reference to instruction and training in carrying out the checks and operation required under subclause (2)(a) and (b).

[7] Clause 242 Log book and manuals for amusement devices

Omit clause 242(1)(a). Insert instead—

- (a) the log book for the amusement device records the details required under subclause (1A), and

[8] Clause 242(1A)

Insert after clause 242(1)—

- (1A) The log book for an amusement device must record—
 - (a) for each occasion on which the device is erected—details, including the date, of the erection, and

- (b) for each occasion on which the device is stored—details of the storage, and
- (c) details of the maintenance of the device, and
- (d) for each day on which the device is operated—the number of hours for which it is operated, and
- (e) the total number of hours for which the device has ever been operated, and
- (f) details of any faults, or other matters relevant to the safety of the device, identified during its operation, and
- (g) the following details for each person who operates the device—
 - (i) the person’s name,
 - (ii) whether the person has been provided with instruction and training in the proper operation of the device,
 - (iii) for each occasion on which instruction or training in the proper operation of the device is provided to the person—
 - (A) the date, and
 - (B) a summary of the instruction or training, and
 - (C) the name and qualifications of the instructor or trainer, and
- (h) details of each statutory notice issued in relation to the device, including—
 - (i) the date on which the notice was issued, and
 - (ii) the reasons for issuing the notice, and
 - (iii) any action taken in response to the notice, and
 - (iv) for a notice given under a corresponding WHS law—the location of the device when the notice was issued.

Note— See also clause 238(2)(c).

[9] Clause 242(2)(a)

Omit the paragraph. Insert instead—

- (a) the log book for the amusement device, and

[10] Clause 242(3) and (4)

Insert after clause 242(2)—

- (3) The person with management or control of an amusement device at a workplace must make the log book for the device available to any person to whom the person relinquishes control of the device.

Maximum penalty—

- (a) for an individual—15 penalty units,
- (b) for a body corporate—70 penalty units.

- (4) In this clause—

statutory notice means—

- (a) an improvement notice, prohibition notice or penalty notice, or
- (b) an improvement notice, prohibition notice or infringement notice under a corresponding WHS law.

[11] Clause 242, note

Omit the note.

[12] Clause 702 Confidentiality of information—exception relating to administration or enforcement of other laws

Insert after clause 702(n1)—

(n2) *National Disability Insurance Scheme Act 2013* of the Commonwealth,