



New South Wales

Work Health and Safety Amendment (Fees and Model Laws) Regulation 2019

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*:

- (a) to increase certain fees payable in connection with matters relating to work health and safety, and
- (b) to provide for a mechanism for the automatic adjustment of those fees in future, and
- (c) to adopt in New South Wales certain amendments to the *Model Work Health and Safety Regulations* prepared by Safe Work Australia.

The fee increases effected by this Regulation are generally in line with movements in the Consumer Price Index (rounded to the nearest dollar). This Regulation additionally increases certain administrative fees associated with major hazard facilities.

This Regulation is made under the *Work Health and Safety Act 2011*, including sections 43, 44 and 276 (the general regulation-making power) and Schedule 3.

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1 Name of Regulation

This Regulation is the *Work Health and Safety Amendment (Fees and Model Laws) Regulation 2019*.

2 Commencement

This Regulation commences on 1 July 2019 and is required to be 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):

Agvet Code—see clause 328 (7).

fee unit—see Part 2 of Schedule 2.

steam turbine means equipment that is driven by steam acting on a turbine or rotor to cause a rotary motion.

[2] Clause 5 (1), definition of “concrete placing boom”

Omit “a knuckle boom”. Insert instead “an articulating boom”.

[3] Clauses 5 (1) (definition of “fitness criteria”), 183 and 184

Omit “AS/NZS 2299.1:2007 (*Occupational diving operations—Standard operational practice*)”.

Insert instead “AS/NZS 2299.1:2015 (*Occupational diving operations—Standard operational practice*)”.

[4] Clause 5 (1), definition of “lift”

Omit “, escalator, moving walkway” from paragraph (a).

[5] Clause 5 (1), definition of “pressure piping”

Omit “liquid” wherever occurring in paragraph (a). Insert instead “fluid”.

[6] Clause 5 (1), definition of “turbine”

Omit the definition.

[7] Clause 10 Application of the Act to dangerous goods and high risk plant

Omit “lifts, including” from clause 10 (1B) (c). Insert instead “lifts and”.

[8] Clauses 96, 98 (1), 127 (1), 288 (1) and 513 (1)

Omit “give written notice to” wherever occurring. Insert instead “notify”.

[9] Clause 171 Competence of worker—general diving work—qualifications

Insert “scientific” after “limited” in clause 171 (2).

[10] Clause 171 (3)

Omit “AS 4005.2–2000 (*Training and certification of recreational divers*) or”.

[11] Clause 171A Competence of worker—general diving work—knowledge and skill

Omit “In addition to clause 171, a person” from clause 171A (1). Insert instead “A person”.

[12] Clause 171A (2)

Omit the subclause.

[13] Clause 173 Competence of worker—limited scientific diving work

Omit subclause 173 (1). Insert instead:

- (1) A person must not carry out limited scientific diving work unless the person has:
 - (a) the training, qualification or experience referred to in clause 171A, and
 - (b) if the person is not permanently resident in Australia—relevant diving experience, including relevant diving experience obtained outside Australia.

Note. See section 44 of the Act.

[14] Clause 328 Application of Part 7.1

Omit “In subclause (6) (d)” from clause 328 (7). Insert instead “In this Part”.

[15] Clause 335 Labelling hazardous chemicals

Omit clause 335 (2). Insert instead:

- (2) A hazardous chemical is *correctly labelled* if:
 - (a) the selection and use of label elements is in accordance with the GHS and it complies with Part 3 of Schedule 9, or
 - (b) the label includes content that complies with another labelling requirement imposed by this Regulation or by another law of New South Wales or of the Commonwealth and the content is the same, or substantially the same, as the content that is required by Part 3 of Schedule 9.

[16] Clause 335 (3) (a)

Omit “*Standard for the Uniform Scheduling of Medicines and Poisons 2011* published by the Commonwealth, as in force or remade from time to time”.

Insert instead “Poisons Standard”.

[17] Clause 335 (7) and (8)

Insert at the end of the clause:

- (7) This clause does not apply to a hazardous chemical that is:
 - (a) a veterinary chemical product within the meaning of the Agvet Code, and
 - (b) listed in:
 - (i) the Poisons Standard, Part 4, Schedule 4—if the chemical product is packaged and supplied in a form intended for direct administration to an animal for therapeutic purposes, or
 - (ii) the Poisons Standard, Part 4, Schedule 8.
- (8) In this clause:

Poisons Standard means the *Poisons Standard February 2019* published by the Commonwealth, as in force or remade from time to time.

[18] Clause 341 Labelling hazardous chemicals—general requirement

Insert at the end of the clause:

- (2) Subclause (1) does not apply to a hazardous chemical if the chemical:
 - (a) was supplied before 1 January 2017, and
 - (b) was, at the time it was supplied, labelled in accordance with the *National Code of Practice for the Labelling of Workplace Substances* [NOHSC: 2012 (1994)] as in force at that time.

Note. Clause 338 applies if the chemical is being supplied to another workplace.

[19] Clause 342 Labelling hazardous chemicals—containers

Insert after subclause (1):

(1A) Subclause (1) does not apply to a hazardous chemical if the chemical:

- (a) was manufactured, or transferred or decanted from its original container at the workplace, before 1 January 2017, and
- (b) was, at the time it was manufactured, or transferred or decanted from its original container at the workplace, labelled in accordance with the *National Code of Practice for the Labelling of Workplace Substances* [NOHSC: 2012 (1994)] as in force at that time.

Note. Clause 338 applies if the chemical is being supplied to another workplace.

[20] Clause 342 (2A)

Insert after subclause (2):

(2A) Subclause (2) does not apply to a container if the container:

- (a) was supplied before 1 January 2017, and
- (b) was, at the time it was supplied, labelled in accordance with the *National Code of Practice for the Labelling of Workplace Substances* [NOHSC: 2012 (1994)] as in force at that time.

Note. Clause 338 applies if the chemical in the container is being supplied to another workplace.

[21] Clause 394 Meaning of “lead risk work”

Omit “10µg/dL (0.48µmol/L)” from clause 394 (a). Insert instead “5µg/dL (0.24µmol/L)”.

[22] Clause 394 (b)

Omit “30µg/dL (1.45µmol/L)”. Insert instead “20µg/dL (0.97µmol/L)”.

[23] Clause 407 Frequency of biological monitoring

Omit clause 407 (1) (a) and (b). Insert instead:

- (a) for females not of reproductive capacity and males:
 - (i) if the last monitoring shows a blood lead level of less than 10µg/dL (0.48µmol/L)—6 months after the last biological monitoring of the worker, or
 - (ii) if the last monitoring shows a blood lead level of 10µg/dL (0.48µmol/L) or more but less than 20µg/dL (0.97µmol/L)—3 months after the last biological monitoring of the worker, or
 - (iii) if the last monitoring shows a blood lead level of 20µg/dL (0.97µmol/L) or more—6 weeks after the last biological monitoring of the worker,
- (b) for females of reproductive capacity:
 - (i) if the last monitoring shows a blood lead level of less than 5µg/dL (0.24µmol/L)—3 months after the last biological monitoring of the worker, or
 - (ii) if the last monitoring shows a blood lead level of 5µg/dL (0.24µmol/L) or more but less than 10µg/dL (0.48µmol/L)—6 weeks after the last biological monitoring of the worker.

[24] Clause 415 Removal of worker from lead risk work

Omit clause 415 (1) (a) (i)–(iii). Insert instead:

- (i) for females not of reproductive capacity and males—30µg/dL (1.45µmol/L), or
- (ii) for females of reproductive capacity—10µg/dL (0.48µmol/L), or

[25] Clause 417 Return to lead risk work after removal

Omit “40µg/dL (1.93µmol/L)” from clause 417 (3) (a) (i).

Insert instead “20µg/dL (0.97µmol/L)”.

[26] Clause 417 (3) (a) (ii)

Omit “10µmol/dL (0.48µmol/L)”. Insert instead “5µmol/dL (0.24µmol/L)”.

[27] Part 8.8, heading

Omit “licence”. Insert instead “asbestos removal licence”.

[28] Clause 475, heading

Omit “licence”. Insert instead “asbestos removal licence”.

[29] Schedule 2

Omit the Schedule. Insert instead:

Schedule 2 Fees

(Clause 5 (1), definition of “relevant fee”)

Part 1 Fees payable

Item	Type of fee	Fee (in fee units)
1	Application for high risk work licence (clause 87 (3))	0.75 per class of licence
2	Application for replacement licence document (clause 98 (4) (b)):	
	(a) if both lodged and paid for online in one transaction	0.28
	(b) otherwise	0.34
3	Application for renewal of high risk work licence (clause 101 (3))	0.69
4	Application for accreditation as assessor (clause 116 (3)):	
	(a) initial application in relation to a class or number of classes of high risk work	17.11
	(b) subsequent application in relation to an additional class or number of classes of high risk work to initial application	5.57
5	Application for replacement accreditation document (clause 127 (4) (b))	Nil

Item	Type of fee	Fee (in fee units)
6	Application for renewal of accreditation as assessor in relation to a class or number of classes of high risk work (clause 130 (2) (b)) Note. The fee payable in respect of a subsequent application in relation to an additional class or number of classes of high risk work is the fee set out in item 4 (b).	11.41
7	Application for registration of design of item of plant (clause 250 (4))	2.87 per design
8	Application for registration of item of plant (clause 266 (3))	0.72 for first item and 0.02 for each additional item at the same address and owned by the same applicant
9	Application for renewal of registration of item of plant (clause 277 (3))	0.72 for first item and 0.02 for each additional item at the same address and owned by the same applicant
10	Application for replacement registration document (clause 288 (4) (b))	0.34
11	Application for general construction induction training card (clause 319 (4))	0.23
12	Application for replacement general construction induction training card (clause 321 (3) (b)):	
	(a) if both lodged and paid for online in one transaction	0.28
	(b) otherwise	0.34
13	Administration fee for notice in relation to manifest quantities of Schedule 11 hazardous chemicals (clause 348 (3A))	2.41
14	Application for asbestos removal licence or asbestos assessor licence (clause 492 (3))	57.03 for Class A asbestos removal licence 10.35 for Class B asbestos removal licence 5.57 for asbestos assessor licence
15	Application for replacement licence document (clause 513 (4) (b))	0.34
16	Application for renewal of asbestos removal licence or asbestos assessor licence (clause 516 (3))	57.03 for Class A asbestos removal licence 5.71 for Class B asbestos removal licence 5.57 for asbestos assessor licence
17	Notification fee to be paid by operators of facilities at which Schedule 15 chemicals are present or likely to be present in a quantity that exceeds 10% of their threshold quantity (clause 538 (4))	Nil

Item	Type of fee	Fee (in fee units)
18	Administration fee for determined major hazard facilities (clause 544A)	543 plus 1.04 per hour of the regulator's time in connection with the administration of Chapter 9 in relation to the facility Or such lesser fee determined by the regulator
19	Application for major hazard facility licence (clause 578 (3))	Nil
20	Administration fee for licensed major hazard facilities (clause 585A)	543 plus 1.04 per hour of the regulator's time administering the licence Or such lesser fee determined by the regulator
21	Application for replacement licence document (clause 594 (4) (b))	Nil
22	Application for renewal of major hazard facility licence (clause 596 (3))	Nil
23	Application for transfer of major hazard facility licence (clause 600 (2) (b))	Nil
24	Administration fee in relation to transfer of major hazard facility licence (clause 600 (4A))	1.04 per hour of the regulator's time administering the licence Or such lesser fee determined by the regulator
25	Application for cancellation of major hazard facility licence (clause 601 (2) (b))	Nil
26	Administration fee in relation to cancellation of major hazard facility licence on operator's application (clause 601 (5A))	1.04 per hour of the regulator's time administering the licence Or such lesser fee determined by the regulator

Part 2 Adjustment of fees for inflation

1 Definitions

In this Part:

CPI number means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.

financial year means a period of 12 months commencing on 1 July.

2 Calculation of fee unit for purposes of Regulation

- (1) For the purposes of this Regulation, a **fee unit** is:
- (a) in the financial year 2019–20—\$100, and

- (b) in each subsequent financial year—the amount calculated as follows:

$$\$100 \times \frac{A}{B}$$

where:

A is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.

B is the CPI number for the March quarter of 2019.

- (2) The amount of a fee unit is to be rounded to the nearest cent (and an amount of 0.5 cent is to be rounded down).
- (3) However, if the amount of a fee unit calculated for any financial year is less than the amount that applied for the previous financial year, then the amount for that previous financial year applies instead.

3 Rounding of fee amounts

The amount of a fee calculated by reference to a fee unit is to be rounded to the nearest dollar (and an amount of 50 cents is to be rounded down).

4 Notice of indexed fees

- (1) As soon as practicable after the CPI number for the March quarter is first published by the Australian Statistician, the Secretary is required to:
- (a) notify the Parliamentary Counsel of the amount of the fee unit for the next financial year so that notice of that amount can be published on the NSW legislation website, and
- (b) give public notice on an appropriate government website of the actual amounts of the fees applying in each financial year resulting from the application of the amount of a fee unit calculated under this Part.
- (2) This Part operates to change an amount of a fee that is calculated by reference to a fee unit and that change is not dependent on the notification or other notice required by this clause.

[30] Schedule 3 High risk work licences and classes of high risk work

Insert “Use of a materials hoist” in the column headed “Description of class of high risk work” at the end of the matter relating to item 20 of Table 3.1.

[31] Schedule 3, Table 3.1, item 28 and Schedule 4, Table 4.1, item 28

Omit “Turbine” and “turbine”. Insert “Steam turbine” and “steam turbine”, respectively.

[32] Schedule 4 High risk work licences—competency requirements

Omit “conduct concrete boom delivery operations” from item 22 of Table 4.1.

Insert instead “operate a concrete placing boom”.

[33] Schedule 5 Registration of plant and plant designs

Omit “Lifts, including” from item 1.4 of clause 1 and item 3.4 of clause 3.

Insert instead “Lifts and”.

[34] Schedule 5, clause 1, item 1.8 and clause 3, item 3.6

Omit “covered”. Insert instead “classified”.