



INFORMATION SHEET

Work Health and Safety (General) Regulations 2022 – transitional and savings provisions

Introduction

The following transitional and saving measures apply from the commencement of the Work Health and Safety (General) Regulations 2022 (WHS General Regulations).

Measures that transition or preserve existing arrangements in the Occupational Safety and Health Regulations 1996 (the OSH Regulations) or delay commencement of certain duties in the WHS General Regulations can be found in regulation 2 (Commencement) or Part 11.4 Transitional and savings provisions (transitional).

Applications pending determination under the OSH Regulations

The OSH Regulations will continue to apply to applications that are not finalised prior to commencement of the WHS Act and are also required under WHS General Regulations until granted, or until any form of review or appeal process is exhausted.

WHS General r. 706 transitional

Declaration of conviction or finding of guilt to apply to the *Occupational Safety and Health Act 1984*

WHS General rr. 87, 116, 492

Applicants for licences are required to declare the details of any conviction for finding of guilt under Australian work health and safety laws. This will also apply to any offence under the *Occupational Safety and Health Act 1984* (the OSH Act) and OSH Regulations. Spent convictions are not required to be declared.

WHS General r. 707 transitional

Approved use of carcinogens

WHS General r. 383

Application for authorisation to use, handle or store prohibited and restricted carcinogens

Certain activities under the WHS Regulations require the approval of the regulator.

An approval issued under OSH Regulations 5.31, 5.32 or 5.32A that was in effect immediately before commencement day is deemed to be the equivalent authorisation under the WHS Regulations.

WHS General r. 712 transitional

Asbestos register

WHS General r. 425

Asbestos register

The OSH Regulations require duty holders to prepare a range of documents to meet specific duties. A register relating to asbestos will be deemed to be the equivalent under the WHS Regulations until an aspect of the document must be reviewed, or one year, whichever occurs first.

An additional transitional measure is also in place for duty holders in relation to asbestos registers that were not previously required to be prepared under the OSH Regulations. Under the WHS Regulations, an asbestos register must be prepared and kept at the workplace. Duty holders will have one year to prepare a register.

This does not apply to a workplace if the building was constructed after 31 December 2003 where no asbestos is identified at the workplace or is likely to be present at the workplace from time to time.

WHS General r. 711 transitional

Asbestos removal worker must be trained

WHS General r. 460 (1)

Asbestos removal worker must be trained

A licensed asbestos removalist must not direct or allow a worker to carry out licensed asbestos removal work unless the removalist is satisfied that the worker holds a certification in relation to the specified VET course for asbestos removal relevant to the class of licensed asbestos removal work to be carried out by the worker.

Under the WHS Regulations, workers will be required to have completed a specified VET course for the type of asbestos to be removed (friable or non-friable) before they can be allowed to conduct asbestos removal work.

The titles of the courses are:

Class of asbestos removal licence	VET course for workers
Class A	Remove friable asbestos
Class B	Remove non-friable asbestos

This specific training requirement will not apply for one year after commencement and, instead, the more general requirement for a licensed asbestos removalist to provide appropriate training to a worker carrying out licensed asbestos removal work at a workplace will apply. Workers who have received appropriate training under the current requirements of the OSH Regulations will continue to be able to conduct asbestos removal work during the 12 month grace period.

WHS General r. 2 (c) transitional

Asbestos removal licence – Class A Unrestricted

WHS General r. 485

Requirement to hold Class A asbestos removal licence to conduct friable work.

Unrestricted asbestos removal licences will be deemed to be Class A asbestos removal licences. All unrestricted asbestos licences granted under OSH r. 5.45A that are current at commencement will have their expiry dates extended by one year at no cost.

WHS General r. 477(1A)

Removing friable asbestos

For Class A asbestos removal work, the independent competent person conducting the clearance including air monitoring must be a licensed asbestos assessor.

WHS General r.2, r. 729 transitional

Asbestos removal licence – Class B Restricted

WHS General r. 487

Requirement to hold Class B asbestos removal licence

Restricted asbestos removal licences will be deemed to be Class B asbestos removal licences. All restricted asbestos licences granted under OSH r. 5.45B that are current at commencement will have their expiry dates extended by one year at no cost.

WHS General rr. 2(c), 730 transitional

Asbestos clearance inspection – Licensed Asbestos Assessors (LAA)

WHS General r. 473

Clearance inspection

WHS General r. 477(1A)

Removing friable asbestos

Clearance inspections will be required for all types (both Class A and Class B) of asbestos removal work, including air monitoring.

Persons conducting clearance inspections for Class A removal work will be required to be licensed by the regulator as a licensed asbestos assessor (LAA). A LAA is only required for clearances for Class A removal work.

To provide time for competent persons to apply for a licence to conduct clearance inspections for Class A asbestos removal work, a grace period of one year will apply.

A person conducting a clearance inspection for Class B removal work must be an independent competent person.

During the transition period of one year from commencement, clearance inspections may be conducted for both classes of asbestos removal work by an independent competent person.

WHS General r. 2 transitional

Audiometric testing

WHS General r. 58

Audiometric testing

The WHS Regulations impose a duty on PCBUs to conduct audiometric testing (of a specific type) in relation to workers who are frequently required to use personal protective equipment to protect them from the risk of hearing loss associated with noise that exceeds the exposure standard. While this was considered good practice under the OSH Regulations, it was not a specified duty.

The PCBU who provides the personal protective equipment as a control measure must provide audiometric testing for the worker within 3 months of the worker commencing the work and in any event, at least every 2 years.

PCBUs who will be required to conduct audiometric testing under regulation 58 will have a two year grace period to implement the required procedures.

WHS General r. 2(b) transitional

Demolition licences

WHS General r. 142H

Regulator's functions as to application under r. 142G

Class 1 and Class 2 demolition licences issued under the OSH r. 3.116 will be deemed to be the equivalent licences under the WHS Regulations.

From commencement, work that formerly required a Class 3 Demolition licence may be conducted without a licence. Current holders of Class 3 demolition licences will receive a pro-rata refund of their licence fee, calculated on the unexpired duration of their licence, as soon as practicable after commencement.

WHS General r. 720 transitional

Demolition work

WHS General Part 4.6 Division 2

Conduct of demolition work

Certain activities under the WHS Regulations require the approval of the regulator. An approval under OSH r. 3.121 that was in effect immediately before commencement day is, on and after commencement day, taken to be an approval under regulation 142H of the WHS Regulations.

WHS General r. 716 transitional

Diving work qualifications

WHS General r. 171

Competence of worker: general diving work: qualifications

WHS General r. 171A

Competence of worker: general diving work: knowledge and skill

The WHS Regulations provide more comprehensive prescription for diving work, including a requirement that persons carrying out general diving work must have the competencies specified in AS/NZS 2815 *Training and certification of occupational divers*.

To provide divers with time to acquire the relevant competencies, regulation 171 will be modified for the first 12 months after commencement to instead require that a person must not carry out any type of general diving work unless the person has acquired the knowledge and skills specified in regulation 171A(1) for that type of general diving work

WHS General r. 732 transitional

Dust

WHS General r. 49

Ensuring exposure standards for substances and mixtures not exceeded

The WHS Regulations introduce a new default standard for dust that is not otherwise provided in the Workplace Exposure Standards for Airborne Contaminants.

If there is no exposure standard for a particular substance or mixture, a person conducting a business or undertaking at a workplace must ensure that no person at the workplace is exposed to 8-hour time-weighted average atmospheric concentrations of airborne dust comprising that substance or mixture, that exceed 3.0 mg of respirable dust per cubic metre of air and 10.0 mg of inhalable dust per cubic metre of air.

Duty holders will have one year to comply with the new requirements.

WHS General r. 2(c) transitional

Emergency plan

WHS General r. 43

Duty to prepare, maintain and implement emergency plan

An evacuation procedure prepared under OSH Regulations is taken to be an emergency plan under the WHS Regulations. A person with management or control of a workplace that is required to prepare an emergency plan will have one year to comply.

Irrespective of these transitional provisions, duty holders are encouraged to review documents prepared under the OSH Regulations as soon as possible to incorporate any new or altered requirements of the WHS Regulations.

WHS General r. 710 transitional

Exemptions

WHS General Regulations Part 11.2

Exemptions

Exemptions will continue to operate as if the OSH Act had not been repealed but will only be effective to the extent that they can be applicable to an equivalent regulation under the WHS Regulations.

Persons who hold a current OSH rr. 2.12 or 2.13 exemption may wish to consider whether a new exemption will be required under the WHS Regulations or if the OSH Regulation exemption is no longer applicable.

WHS General r. 713 transitional

Falls from height – high risk construction work

WHS General r. 79

Specific requirements to minimise risk of fall

The current requirements of the OSHR 3.55 to prevent falls from edges will continue to apply to high risk construction work for a period of two years after commencement.

During the two year transitional period WHS regulation 79 does not apply to high risk construction work.

WHS General rr. 714, 722 transitional

General construction induction training card

WHS General r. 320

Content of card

Workers who hold a general construction induction training certificate under OSH r. 3.135 will be deemed to hold a general construction induction training card under the WHS Regulations.

WHS General r.731 transitional

Globally Harmonised System of Classification and Labelling of Chemicals (GHS)

WHS General r. 5

Terms used – GHS

The WHS Regulations refer to, and will require compliance with, the *Globally Harmonised System of Classification and Labelling of Chemicals*, Seventh revised edition (GHS) for specified matters.

For the first 12 months after commencement, duty holders may also comply with their duties under the current requirements of the OSH r. 5.3(2), which provide the following alternatives:

- the *Globally Harmonised System of Classification and Labelling of Chemicals*, 3rd revised edition, published by the United Nations, or
- the *Approved Criteria for Classifying Hazardous Substances* [3rd Edition: NOHSC: 1008 (2004)].

WHS General r. 717 transitional

Health and safety representative training courses

WHS Act Schedule 1 clause 18(1)(h)

Functions of Commission

Training courses for safety and health representatives accredited by the Commission for Occupational Safety and Health (COSH) under OSH r. 2.2, will be deemed to be approved by the Work Health and Safety Commission (WHSC) under the *Work Health and Safety Act 2020*.

WHS General r. 715 transitional

High risk work licences (HRWL)

Existing high risk work licences

HRWLs issued under the OSH Regulations retain their existing expiry date and are deemed to be the equivalent licence under the WHS Regulations, according to the following table.

Workers with an equivalent HRWL in another Australian state or territory are not required to maintain a licence in Western Australia as the WHS Regulations automatically recognise equivalent licences issued in other Australian jurisdictions.

Equivalent high risk work licences	
WHS HRWL (current class)	OSH HRWL (former class)
Basic scaffolding	Scaffolding work, basic
Intermediate scaffolding	Scaffolding work, intermediate
Advanced scaffolding	Scaffolding work, advanced
Dogging	Dogging work
Basic rigging	Dogging work and rigging work, basic
Intermediate rigging	Dogging work and rigging work, intermediate
Advanced rigging	Dogging work and rigging work, advanced
Tower crane	Crane and hoist operation, tower crane
Self-erecting tower crane	Crane and hoist operation, self-erecting tower crane
Derrick crane	Crane and hoist operation, derrick crane
Portal boom crane	Crane and hoist operation, portal boom crane
Bridge and gantry crane	Crane and hoist operation, bridge crane/ gantry crane
Vehicle loading crane	Crane and hoist operation, vehicle loading crane
Non-slewing mobile crane	Crane and hoist operation, non-slewing mobile crane
Slewing mobile crane – with a capacity up to 20 tonnes	Crane and hoist operation, mobile crane, basic

Equivalent high risk work licences	
WHS HRWL (current class)	OSH HRWL (former class)
Slewing mobile crane – with a capacity up to 60 tonnes	Crane and hoist operation, mobile crane, intermediate
Slewing mobile crane – with a capacity up to 100 tonnes	Crane and hoist operation, mobile crane, advanced
Slewing mobile crane – with a capacity over 100 tonnes	Crane and hoist operation, mobile crane, open class
Materials hoist	Crane and hoist operation, materials hoist
Personnel and materials hoist	Crane and hoist operation, personnel and materials hoist
Boom-type elevating work platform	Crane and hoist operation, boom-type elevating work platform
Concrete placing boom	Crane and hoist operation, vehicle-mounted concrete placing boom*
Reach stacker	No equivalent *
Forklift truck	Forklift operation, forklift truck
Order-picking forklift truck	Forklift operation, order-picking forklift truck
Standard boiler operation	Pressure equipment operation, basic
Standard boiler operation	Pressure equipment operation, intermediate*
Advanced boiler operation	Pressure equipment operation, advanced
Steam turbine operation	Pressure equipment operation, turbine
Reciprocating steam engine	Pressure equipment operation, reciprocating steam engine

WHS General r. 81

Licence required to carry out high risk work

The WHS Act Schedule 3 sets out the high risk work licences and classes of high risk work that are within the scope of each licence. Schedule 4 sets out the qualifications required for a high risk licence. With the following exceptions, holders of current HRWLs will transition to the equivalent licence.

Concrete placing booms

Operators of fixed concrete placing booms will be required to hold a high risk work licence (HRWL) under the WHS Regulations but may continue working for a period of one year under current arrangements if the concrete placing boom is not mounted on a vehicle.

WHS General r. 724 transitional

Material hoists

Operators of materials hoists will be required to hold a high risk work licence (HRWL) under the WHS Regulations. If the vertical movement of the materials hoist's car, bucket or platform is 11 metres or less they will have one year to apply for an HRWL.

WHS General r. 723 transitional

Pressure operating equipment (boilers)

- Standard boiler operation
- Advanced boiler operation
- Steam turbine operation
- Reciprocating steam engine

Under the OSH Regulations there were five classes of HRWL for pressure equipment while the WHS Regulations has only four. To accommodate this, the basic and intermediate classes under the OSH Regulations will transition to the standard boiler operation class under the WHS Regulations.

This approach will potentially expand the types of boilers that may be operated by a worker who currently holds the basic pressure equipment operation class of HRWL. However, PCBU's have a duty to ensure workers are trained to operate specific items of plant, including boilers.

Holders of the intermediate pressure equipment HRWL under the OSH Regulations will continue to be able to operate boilers under the scope of their current HRWL even where that equipment will now require an advanced boiler licence under the WHS Regulations, until the licence expires and is not renewed.

New applicants will need to apply for an advanced boiler operation HRWL.

WHS General r. 721 transitional

Reach stackers

There is a new requirement to have a reach stacker HRWL for the operation of a reach stacker of greater than 3 tonnes capacity that incorporates an attachment for lifting, moving and travelling with a shipping container, but does not include a portainer crane, unless the operator already holds a licence for a slewing mobile crane. Workers will have 2 years from commencement to acquire a reach stacker licence.

WHS General r. 725 transitional

Accreditation of high risk work assessors

Assessors of HRWL training currently registered under the OSH r. 6.22 will be deemed to be accredited under the WHS Regulations. Their licence classes will also transition to the equivalent class consistent with the transition for workers who hold HRWLs.

WHS General r. 726 transitional

Plant design and registration

WHS General Part 5.2

Additional duties relating to registered plant and plant designs

In most circumstances, designs and items of plant that are currently required to be registered under the OSH Regulations Part 4 Division 2 will be deemed to be registered under the WHS Regulations. The registration of items of plant will no longer expire unless the plant is decommissioned or destroyed.

WHS General r. 727 transitional

It is feasible there will be some designs and items of plant not presently required to be registered under the OSH Regulations that will be required to be registered under the WHS Regulations. In these circumstances, where manufacturing or design of this plant is completed no more than two years after commencement, they will not be required to be registered.

WHS General r. 728 transitional

Residual current devices (RCDs)

WHS General r. 164

Use of socket outlets in hostile operating environment

The requirements for residual current devices to be used at the workplace is more expansive in the WHS Regulations. With the exception of construction sites, which are already required to have RCDs, duty holders will have one year to prepare for the requirements imposed by WHS Regulation 164.

WHS General r. 718 transitional

Risk assessments

WHS General r. 12

Assessment of risk in relation to a class of hazards, tasks, circumstances or things

The OSH Regulations require duty holders to prepare a range of documents to meet specific duties. Risk assessments proposed under the OSH Regulations will be deemed to be the equivalent under WHS Regulations until an aspect of the document must be reviewed, or 12 months, whichever occurs first.

Irrespective of these transitional provisions, duty holders are encouraged to review documents prepared under the OSH Regulations as soon as possible to incorporate any new or altered requirements of the WHS Regulations.

WHS General r. 709 transitional

Roll-over protection (ROPS)

WHS General r. 216

Roll-over protection on tractors

The WHS Regulations lower the mass threshold for tractors requiring roll-over protection from 800 kgs to 560 kgs. To permit time for duty holders to adjust, tractors manufactured up to two years after commencement will not require roll-over protection if they are below 800 kgs, consistent with current requirements.

The previous exclusion in the OSH Regulations for tractors manufactured, imported or purchased prior to 1981 will continue to apply.

WHS General r. 719 transitional

Safe work method statements (SWMS)

WHS (General) r. 299

Safe work method statement required for high risk construction work

The OSH Regulations requires duty holders to prepare a range of documents to meet specific duties. SWMS proposed under OSH Regulations will be deemed to be the equivalent under WHS Regulations until an aspect of the document must be reviewed, or one year, whichever occurs first.

Irrespective of these transitional provisions, duty holders are encouraged to review documents prepared under the OSH r. 3.143 as soon as possible to incorporate any new or altered requirements of the WHS Regulations.

WHS General r. 709 transitional