



Guide for applicants for plant design registration

January 2012

Disclaimer

This publication may contain work health and safety and workers compensation information. It may include some of your obligations under the various legislations that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website legislation.nsw.gov.au

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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Introduction

Why you need plant design registration

The *Work Health and Safety Regulation 2011* (WHS Regulation) provides that a manufacturer, an importer and a supplier must not supply plant specified in Part 1 Schedule 5 of the WHS Regulation unless the design is registered with a work health and safety regulator. (Clauses 231, 232, 233 of the WHS Regulation).

Under section 42 of the *Work Health and Safety Act 2011* (WHS Act), it is an offence to use plant if the WHS Regulation require the plant's design be authorised (registered) and the plant's design is not so authorised (registered).

Scope

The design of an item of plant specified in part 1 of schedule 5 of the WHS Regulation must be registered. (Clause 243 of the WHS Regulation).

List of plant items requiring registration of design:

- Pressure vessels, categorised as hazard level A, B, C or D according to the criteria in section 2.1 of AS 4343: 2005 (*Pressure equipment – hazard levels*).
- Boilers categorised as hazard level A, B, C or D according to the criteria in section 2.1 of AS 4343: 2005 (*Pressure equipment – hazard levels*).
- Gas cylinders covered by section 1 of AS 2030.1: 2009 (*Gas cylinders – general requirements*).
- Tower cranes including self-erecting tower cranes.
- Lifts, including escalators and moving walkways.
- Building maintenance units.
- Hoists with a platform movement exceeding 2.4 metres, designed to lift people.
- Work boxes designed to be suspended from cranes.
- Amusement devices covered by section 2.1 of AS 3533.1: 2009 (*Amusement rides and devices – design and construction*), except:
 - class 1 devices
 - playground devices
 - water slides where water facilitates patrons to slide easily, predominantly under gravity, along a static structure
 - wave generators where patrons do not come into contact with the parts of machinery used for generating water waves
 - inflatable devices that are sealed
 - Inflatable devices that do not use a non-return valve.
- Concrete placement units with delivery booms.
- Prefabricated scaffolding.
- Boom-type elevating work platforms.
- Gantry cranes with a safe working load (SWL) greater than five tonnes or bridge cranes with a SWL greater than 10 tonnes, and any gantry crane or bridge crane which is designed to handle molten metal or schedule 11 hazardous chemicals.
- Vehicle hoists.
- Mast climbing work platforms.
- Mobile cranes with a rated capacity of greater than 10 tonnes.

Further exceptions:

- A heritage boiler
- A crane or hoist that is manually powered
- An elevating work platform that is a scissor lift or a vertically moving platform, or
- A tow truck.

Who may apply for a plant design registration

A person conducting a business or undertaking that designs an item of plant or a person who has management or control of an item of plant may apply to WorkCover NSW for the registration of the plant's design. (Clause 249 of the WHS Regulation).

Person conducting a business or undertaking (PCBU) is defined in section 5 of the WHS Act. A person conducting a business or undertaking may be an individual, a body corporate, a government agency, a partnership or an unincorporated association. It includes a manufacturer, importer or supplier of the plant. If the PCBU is registered in another work health and safety jurisdiction they should apply for design registration in that jurisdiction

Drawings

Representational drawings of the design are to be submitted with the application. The drawings or other documents provided with the application must be capable of being kept in electronic form. (Clause 250 of the WHS Regulation).

In addition the drawings must be in the English language, or dual language with one being English.

Plant designer

The designer of the plant must complete the section of the application form declaring that they have complied with the designer obligations under section 22 of the WHS Act in respect to the design of the plant and specify the published technical standards and engineering principles used in the design. (Clause 250 (2) (e) of the WHS Regulation).

Plant design must be verified

The application for registration includes a statement by a person who has verified the design that the design was produced in accordance with the technical standard or engineering principles specified in the application. (Clause 251 of the WHS Regulation).

Who is eligible to verify a plant design

A person is eligible to verify a plant design if the person is a competent person. (Clause 252 (1) of the WHS Regulation). Competent person is defined in clause 5 of the WHS Regulation as a person who has the skills, qualifications, competence and experience to design the plant or verify the design.

A person is ineligible to be a design verifier:

- If the person was involved in the production or the plant's design, or
- At the time the design was produced, the person was engaged by the person conducting the business or undertaking that produced the design. This does not apply if the person conducting the business uses a quality system to undertake the design that has been certified by a body accredited or approved by the Joint Accreditation System of Australia and New Zealand.

(Clause 252 of the WHS Regulation).

Residence/location

WorkCover must register, subject to the applicant meeting the other requirements of the WHS Regulation, the design if:

- The design is not registered with another state or territory or the commonwealth work health and safety regulator. (Clause 256 (2) (b) of the WHS Regulation)
- If an individual applicant resides in NSW or, if residing outside NSW, satisfies the WorkCover of the circumstances justifying the granting of the registration. (Clause 256 (2) (c) of the WHS Regulation), or
- If a body corporate applicant, the registered address is located in NSW or, if located outside NSW, satisfies WorkCover of circumstances justifying the granting of the registration. (Clause 256 (2) (d) of the WHS Regulation).

Duration of registration

A plant design registration is granted for an unlimited duration. (Clause 259 of the WHS Regulation).

Altered plant designs

If the design of an item of plant specified in part 1 of schedule 5 that is registered has been altered, the altered design must be registered. (Clause 244 (1) of the WHS Regulation).

A reference to the alteration of a design is a reference to an alteration that may affect health and safety. (Clause 244 (2) of the WHS Regulation).

Recognition of interstate design registration

A design of an item of plant is not required to be registered by WorkCover if the design is registered by another state or territory or the commonwealth work health and safety regulator. (Clause 245 (1) of the WHS Regulation).

A design that has been altered is not required to be registered by WorkCover if the design alteration has been registered by another state or territory or the commonwealth work health and safety regulator. (Clause 245 (2) of the WHS Regulation).

How to apply for registration

Complete and submit the *Application for the registration of plant design form* PD3 (catalogue no. WC03608) available on the WorkCover website. Lodgement instructions are on the application form.

Fees

Refer to the [WorkCover NSW fees schedule \(catalogue no. WC01011\)](#) on the WorkCover website or call **13 10 50**.

Granting/renewing/refusing

What does the regulator take into account when deciding whether to grant a plant design registration

WorkCover will consider the following in making a decision to grant registration:

- whether the design has been registered by another state or territory or the commonwealth work health and safety regulator
- whether the applicant lives in the NSW or if a body corporate applicant has its registered address in the NSW or if the applicant resides/is located outside of the jurisdiction WorkCover is satisfied that special circumstances exist to grant the registration
- whether the applicant is able to ensure compliance with any condition that will apply to the registration
- whether the applicant in making the application has given information that is false or misleading or has failed to provide information that should have been given. (Clause 256 of the WHS Regulation).

WorkCover may request additional information if an application for registration does not contain enough information to enable it to make a decision. (Clause 255 (1) of the WHS Regulation).

If WorkCover decides to grant the registration, it must notify the applicant within 14 days after making the decision. (Clause 256 (4) of the WHS Regulation).

If WorkCover does not make a decision within 120 days after receiving the application, or additional information requested under clause 255, the application is taken to have been refused. (Clause 256 (5) of the WHS Regulation).

Granting of a conditional plant design registration

WorkCover may impose any condition it considers appropriate on a plant design registration. Such conditions may include:

- use and maintenance of the plant
- recording or keeping of information
- provision of information to the work health and safety regulator.

A decision to impose a condition(s) on the registration of a plant design is a reviewable decision. (Clause 258 of the WHS Regulation).

It is an offence for a person to fail comply with a condition of registration (section 45 of the WHS Act).

Refusing to grant a plant design registration

WorkCover must refuse to grant a registration if satisfied that in making the application the applicant has given false or misleading information or failed to provide information that should have been given. (Mandatory refusal). (Clause 256 (3) of the WHS Regulation).

If WorkCover proposes to refuse to grant a registration, it must give the applicant a written notice:

- informing the applicant of the reasons for the proposed refusal
- advising the applicant that they may, by a specified date (not being less than 28 days after giving notice), make a submission in relation to the proposed refusal.

After the specified date WorkCover must:

- if the applicant has made a submission, consider the submission
- whether or not the applicant has made a submission, decide whether to grant or refuse to grant the registration
- within 14 days after making the decision, give the applicant written notice of the decision, including the reasons for the decision.

A decision to refuse to register plant design is a reviewable decision. (Clause 257 of the WHS Regulation).

Obligations

Inspection

The registration holder must keep the registration document available for inspection under the WHS Act. This does not apply if the registration document has been returned to WorkCover for amendment at the request of WorkCover NSW or the registration holder has applied for but has not received a replacement registration document for one that has been lost or stolen or destroyed. (Clause 262 of the WHS Regulation).

Design registration number to be kept in the vicinity of the item of plant

The person with management or control of the plant in the workplace for which a plant design is registered must ensure the design registration number is readily accessible and in the vicinity of the plant at all times. (Clause 260 (5) of the WHS Regulation).

Design registration number to be given to the manufacturer, importer or supplier

The person to whom the plant design registration number is issued must give the registration number to the manufacturer, importer or supplier of plant to that design. (Clause 260 (3) of the WHS Regulation).

Duty of design verifiers

A design verifier of a design of plant specified in part 1 of schedule 5 must document the design verification process carried out by that person and the results of that process. (Clause 253 of the WHS Regulation).

Change of details

The registration document holder must give WorkCover written notice of changes to their name or to any information provided to WorkCover when they applied for the design registration, within 14 days after the registration holder becomes aware of the change. (Clause 282 (1) of the WHS Regulation).

Replacement registration document

A registration document holder must give written notice to WorkCover as soon as practicable, if the registration document is lost, stolen or destroyed and may apply for a replacement registration document. An application for a replacement registration document must include a declaration describing the circumstances in which the original was lost, stolen or destroyed.

A decision to refuse to issue a replacement registration document is a reviewable decision.

(Clause 288 of the WHS Regulation).

Application for review of decision

The table in clause 676 of the WHS Regulation sets out decisions that are reviewable (reviewable decisions) and who is eligible (eligible person) to apply for the review of a reviewable decision.

The applicant is the eligible person to request a review of a decision to refuse to grant a registration of a plant design (clause 256 of the WHS Regulation) or to impose condition(s) on the grant of registration of plant design. (Clause 258 of the WHS Regulation).

The registration holder or the person in management or control of the item of plant is the eligible person to request a review of a decision to refuse to issue a replacement registration document. (Clause 288 of the WHS Regulation).

Internal review

An application for internal review allows a WorkCover decision to be reviewed and possibly changed by a person who was not involved in the original decision. A written application for the internal review of a reviewable decision is made using the application form provided by WorkCover. The application must be lodged with 28 days of the day on which the decision first came to the eligible person's notice or such longer period as WorkCover allows. (Clause 678 (1) of the WHS Regulation).

The internal reviewer may:

- confirm or vary the reviewable decision, or
- set aside the reviewable decision and substitute another decision that the internal reviewer considers appropriate.

(Clause 680 (2) of the WHS Regulation).

If the reviewable decision is not varied or set aside within the 14 day period the internal decision is taken to have been confirmed. (Clause 680 (6) of the WHS Regulation).

WorkCover will give the applicant written notice of the decision on the internal review and reasons for the decision within 14 days of making the decision. (Clause 681 of the WHS Regulation).

An application for an internal review does not affect the operation of the original decision or prevent the taking of any lawful action to implement or enforce the decision, though once the decision on internal review is made if a new decision is substituted then that new decision takes effect. (Clause 682 of the WHS Regulation).

External review

If the applicant or the registration holder or the person in management or control of the item of plant is not satisfied with the decision on internal review, they can apply to the NSW Civil and Administrative Tribunal (NCAT).

Further information

For all general enquiries contact WorkCover's Customer Service Centre on **13 10 50** or fax **(02) 9287 5498** or email operations@workcover.nsw.gov.au.

Legislation

The WHS Regulation is located on the WorkCover website workcover.nsw.gov.au

List of jurisdiction contacts

Jurisdiction	Name of regulator	Telephone	Website
New South Wales	WorkCover NSW	13 10 50	workcover.nsw.gov.au
Victoria	WorkSafe Victoria	1800 136 089	worksafe.vic.gov.au
Queensland	Workplace Health and Safety Qld	1300 369 915	justice.qld.gov.au
South Australia	SafeWork SA	1300 365 255	safework.sa.gov.au
Western Australia	WorkSafe WA	1300 307 877	worksafe.wa.gov.au
Australian Capital Territory	WorkSafe ACT	(02) 6207 3000	worksafety.act.gov.au
Tasmania	Workplace Standards TAS	1300 366 322 (inside Tasmania) (03) 62337657 (outside Tasmania)	wst.tas.gov.au
Commonwealth	Comcare	1300 366 979	comcare.gov.au
Northern Territory	NT WorkSafe	1800 019 115	nt.gov.au/justice/worksafe

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