

# Legislation Update

## Exemption from requirement for high risk licences for forklift trucks in NSW mining

### Purpose

To provide information about an exemption from compliance with the requirement for high risk work licences for the use of forklift trucks and order-picking forklift trucks in mining.

### Information

#### Exemption

Exemption No. 011/13 was made by the WorkCover Authority of New South Wales under clause 686 of the *Work Health and Safety Regulation 2011* (WHS Regulation). It was gazetted on 13 December 2013 and has effect until 31 December 2015.

#### Application

This exemption applies to persons when carrying out work at a coal workplace or at a mine to which the *Mine Health and Safety Act 2004* applies. Those persons are exempt from the requirement under clause 81 of the WHS Regulation to hold a high risk work licence in relation to the use of a forklift truck or an order-picking forklift truck.

It also applies to persons conducting a business or undertaking (PCBU) at a coal workplace or at a mine to which the *Mine Health and Safety Act 2004* applies. Those persons are exempt from the requirement under clause 85 of the WHS Regulation to:

- not direct or allow a worker to use a forklift truck or an order-picking forklift truck for which a high risk work licence is required unless the person sees written evidence that the worker has the relevant high risk work licence
- not direct or allow a worker to supervise use of a forklift truck or an order-picking forklift truck unless the person sees written evidence that the worker holds the relevant high risk work.

#### Information, training and instruction required

This exemption is subject to the condition that the person using the forklift truck or order-picking forklift truck has been provided with any information, training and instruction necessary for them to be competent to use the specific forklift truck or order-picking forklift truck.

#### Continuation of OHS Regulation 2001 arrangements

The exemption continues the arrangements that existed under the *Occupational Health and Safety Regulation 2001* and the transitional arrangements under the WHS Regulation. The requirement for high risk work licences for the use of forklift trucks and order-picking forklift trucks in mining will be specifically addressed as part of the public consultation process for the proposed Work Health and Safety (Mines) Regulation to be made under the *Work Health and Safety (Mines) Act 2013*.

### **PCBU duties for use of plant**

Despite this exemption, a PCBU has a primary duty of care under the *Work Health and Safety Act 2011* in relation to, among other things, the provision and maintenance of safe systems of work, and the safe use, handling and storage of plant.

A PCBU at a coal workplace or a mine must comply with the provisions of Chapter 3 of the WHS Regulation, including the provision of information, training and instruction in clause 39 of the WHS Regulation.

### **Other workplaces**

A high risk licence for the use of a forklift truck or an order-picking forklift truck is still required if carrying out work outside a coal workplace or mine.

## **Further information**

Exemption No. 011/13 can be accessed online at:

[www.resources.nsw.gov.au/safety/legislation/gazettals/gazette-notices](http://www.resources.nsw.gov.au/safety/legislation/gazettals/gazette-notices)

## **Disclaimer**

This Legislation Update is issued for information only and does not constitute legal advice. Duty holders should familiarise themselves fully with the changes made with the introduction of new legislation and obtain independent legal advice if necessary.

## **Issued by**

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